

AGENDA

Cumberland Town Council Meeting

Town Council Chambers

MONDAY, April 13, 2009

6:00 p.m. Workshop

7:00 p.m. Call to Order

6:00 p.m. WORKSHOP with the Greely Road Extension neighbors re: a request for driveway access from Greely Road Extension.

I. APPROVAL OF MINUTES

March 23, 2009

II. MANAGER'S REPORT

III. PUBLIC DISCUSSION

IV. LEGISLATION AND POLICY

- 09 – 045** To hear a recommendation from the Lands & Conservation Commission re: request for a license to locate driveway access from Greely Road Extension.
- 09 – 046** To hold a Public Hearing to consider and act on authorizing a license for driveway access from Greely Road Extension.
- 09 – 047** To hold a Public Hearing to consider and act on a Mass Gathering Permit from the Cumberland Soccer Club for a Labor Day “Just For Fun” soccer tournament to be held at Twin Brooks Recreational Park on September 5th & 6th, 2009.
- 09 – 048** To hold a Public Hearing to consider and adopt the MMA Model General Assistance Ordinance Appendix (B) for the period of April 1, 2009 through September 1, 2009.
- 09 – 049** To approve a Resolution to consolidate the Fire and Rescue Departments to one Fire/EMS Department (Charter Article II, §3(E)).
- 09 – 050** To hold Public Hearing to consider and act on adoption of the FY10 Municipal Budget.
- 09 – 051** To authorize the Town Manager to accept back taxes in the amount of \$14,748.09 and issue a quit claim deed for property identified as Map R08A/Lot 45.
- 09 – 052** To appoint members to vacant seats on Boards/Committees.
- 09 – 053** To award the Range Road waterline and reconstruction project to A.H. Grover and to authorize the Town Manager to negotiate or bid the balance of the project to expend the full amount of the authorized bond.
- 09 – 054** To set a workshop date of April 27th to review a request for shore access at the Town Landing Road.
- 09 – 055** To set a Public Hearing (April 27th) to consider and act on a Victualer's License (Vending Unit operating at Farmer's Market) for Magee's Pantry, 69 John Howland Drive, Yarmouth, Maine.

- 09 – 056** To set a Public Hearing date (April 27th) to consider and act on a Mass Gathering Permit for the Penobscot Valley Kennel Club Dog Show, June 19, 20 & 21, 2009, to be held at the Cumberland Fairgrounds.
- 09 – 057** To receive a validation certification from the Town Clerk regarding an overrule petition referendum and to set a Public Hearing date (April 27th) to act on setting a referendum election date.
- 09 – 058** To hear a report from the Finance Committee Chair re: FY'09 3rd quarter financials.

V. NEW BUSINESS

VI. ADJOURNMENT

MINUTES

Cumberland Town Council Meeting
Town Council Chambers

MONDAY, March 23, 2009

7:00 p.m. Call to Order

Call to Order: 7:00 p.m.

Present: Chairman Turner, Councilors Storey-King, Copp, Porter, Stiles, and Moriarty.

Excused: Councilor Perfetti

I. APPROVAL OF MINUTES

March 9, 2009

Motion by Councilor Stiles, seconded by Councilor Moriarty to approve the minutes as presented.

VOTE: UNANIMOUS PASSAGE 6-0 to approve

II. MANAGER'S REPORT

Town Clerk/HR Director Nadeen Daniels, is sitting in for Town Manager Shane while he is away on vacation. Ms. Daniels announced the availability of nomination papers for the June 9, 2009 election. There are three seats available for Town Council; 1- At-large, 1-Cumberland Foreside, and 1-West Cumberland, there is also 1 seat available for the M.S.A.D. Board of Directors. The nomination papers are due back by the close of business on Monday, April 27, at 5:00 p.m.

Ms. Daniels notified the council that she has issued a petition for an overrule initiative, and expects them to be returned sometime the week of April 6, 2009. The petition papers will need to have somewhere between 580 and 600 signatures. If the signatures are verified, the petition will be returned to the Town Council at the April 27, 2009 meeting at which the Town Council will be asked to hold a public hearing to call the election. Ms. Daniels has been informed that the circulators are intending to have this question on the June 9th ballot. In order to meet that deadline, the Town Clerk needs to receive those signatures no later than April 8th, and it has to come before the council on April 27, 2009. The circulators are aware of this deadline.

III. PUBLIC DISCUSSION

Mr. Frank Dewolfe, of Orchard Road, spoke regarding the MSAD budget and the Town Budget. Mr. Dewolfe thanked the council and especially Town Manager Shane for putting together such a fiscally conservative budget. After reviewing the MSAD budget, Mr. Dewolfe is concerned that revenues are going to fall short. The public could not get an answer regarding revenues at the MSAD meeting, so with that said, no concerns could be raised at this point. Mr. Dewolfe wanted to point out a couple of issues that he had been researching the last couple of weeks. The first issue has to do with home values and home sales. If the first quarter of this year is an indication of the future sales in Cumberland, he has concern regarding this matter. If home sales this quarter are looked at compared to last year during this quarter, last year we had 20 sales, this year we have only 6 sales. Mr. Dewolfe stated that those 6 sales are representative in reviewing sales in other communities; we are about 300% lower in sales volumes than our surrounding communities with the exception of Yarmouth. This is pointed out, because, one, if the

MSAD revenues do fall short and we do have to increase taxes to a percentage where he feels we may have too, that will put the town of Cumberland far in excess of our neighbors, which raises concerns about our home values and if people are looking to sell, how quickly those houses will turn around. Mr. Dewolfe asked if the council could provide the public with the amount of money that is assessed in the TIF districts that does not go to the municipal fund, the incremental increase. He asks this because he knows that a couple of years ago it was passed by the council that 100% of those incremental revenues coming from the TIF districts does not go to the municipal fund anymore. Can the council provide information as to what those revenues consist of in both districts? What the original captured number was vs. what it is now? What is the incremental increase that is not coming to the municipal fund? What was the original number on the route 100 district and what is it now? If the revenue numbers do not hold true, with what the MSAD thinks is going to happen, Mr. Dewolfe requested that the council would decrease the 100% funding, maybe down to 50-75% to allow some of that money to come back into the municipal fund. Mr. Dewolfe asked if he was correct in assuming that the money is not going into the municipal fund now. Councilor Stiles responded that Mr. Dewolfe was mixing a little bit of apples, oranges, and nuts. Anything that goes into the TIF district stays within the town by state law. It is a formula set up by the state. The valuation is such that almost all of the funds are going to improve infrastructure that we already have on the books. "While your thinking that those funds or that availability might be able to go back into the general budget, ultimately they will when the TIF projects have been expanded, we cannot do that now by state law." Mr. Dewolfe stated that when the original TIF district was originally funded maybe 10 years ago on Route One, 50% of those taxes were going to the municipal fund. About four years ago, the council approved the change from 50% to capturing 100% of those increases. Is it possible for the council, if there is a shortfall, to change that election from 100%? Councilor Stiles responded that it is possible to change the way the TIF's are set up, but there is a legal process to do that. Councilor Stiles also responded that he doesn't see that happening, because those funds are promised at the moment. Mr. Dewolfe stated that he has a concern with revenues for the town. He noticed that in the rescue budget there is a \$150,000.00 reduction from revenues that we were receiving last year that we will not be receiving this year. My question is twofold. First, "what is the benefit of consolidating the rescue and fire departments from a recording standpoint?"; "second, I would like to ask the council to consider not consolidating those two departments into one, so that the taxpayers can still see the two as we have for the last 20 years." Chairman Turner responded that Mr. Dewolfe's observation of home sales concerns him too. In his experience, there is a vast amount of activity going on now in the market, especially with the First time home buyers incentive etc. The Town of Cumberland does not have a lot of property that would fall into that market, so that could be skewing the numbers a bit. Mr. Dewolfe also discussed home sales data; he did a comparison sheet to show that if taxes are increased again, which they may or may not be what impact that would have relative to Cumberland's taxes. On his sheet, Mr. Dewolfe has plugged in a 5% increase, and that puts us at a 20% increase above our surrounding communities. Anything above a 5% increase makes the numbers even worse. Councilor Storey-King asked in Mr. Dewolfes research, does it include how many homes were actually on the market in that data? She would like to look at the numbers side by side. Mr. Dewolfe stated that the number of homes expired or withdrawn in Cumberland is significantly higher than surrounding towns.

Mr. Mike Tardif spoke to the council and stated his disappointment in the council's vote to support the contract zone for the Credit Union on Main Street. He is also disappointed that it was stated that in a contract zone, "we can control right down to faucets". To find out that the drive-thru was in the contract, to bad, tough, the drive-thru will be there. Councilor Porter stated that there is no surprise here, that we differ on this.

Nothing was hidden; the entire debate was done publically. Everybody was given the same information, that the contract zone is what we are dealing with. This was all a part of the public debate, part of the public process. We had the debate and discussion. Mr. Tardiff stated, "It was his understanding that this was not the case." Councilor Porter responded that we actually had many discussions on what was the best course. Mr. Tardiff questioned, "Specifically to the drive-thru?" Councilor Porter responded, "Absolutely". Councilor Porter responded that there were discussions on the drive-thru, and whether there would be an ATM. Mr. Tardiff stated he recalled discussion regarding the canopy, (the carriage house), but that was all design. In hindsight, the drive-thru is a lock, and "I am just disappointed in finding that out." Councilor Copp stated that it was announced at one of the meetings, by the gentleman doing the presentation, the drive-thru was a part of the contract zone. It is unfortunate that some people misunderstood that. Chairman Turner stated that he feels some of the misunderstanding came from his statement that in a contract zone, we can control virtually everything to a leap of faith, that that control would be exercised by the planning board after the contract zone is approved. Mr. Tardiff stated, "except for the language in the contract." Mr. Tardiff addressed the comments that have been made.

IV. LEGISLATION AND POLICY

09 – 037 To hold a Public Hearing to consider and act on a request from Foundation 51 to conduct a star gazing event on April 10th or 11th at the Twin Brook Recreation Facility beginning at 7:30 p.m.

Ms. Daniels explained that Town Manager Shane had been contacted by Mrs. Issacson for this request. Town Manager Shane asked the Public Services Director to look at the request. Mr. Landis has since done that. According to the Twin Brook Policy, there is express permission that is necessary from the Public Services Director, especially after daylight hours and Mrs. Issacson is here to explain the event and what is needed.

Mrs. Issacson spoke in regards to the star gazing event. Mrs. Issacson stated that she is on the board of Foundation 51. Chairman Turner asked Mrs. Issacson to explain what Foundation 51 is. Mrs. Issacson explained that the foundation is a group of basically concerned parents who volunteer their time to raise money to give out grants to the teachers of MSAD 51. Grants are given out twice a year. They have an auction every year to raise money to give grants to the teachers. This year the foundation decided that they wanted to do group parties. The foundation wanted to offer an astronomy party for the auction. Some members of the Southern Maine Astronomy Group will be there, with their big powerful telescopes. They need a big open dark area to do this in. There are approximately 8 families coming to the event, approximately 40-50 people. They anticipate being there from 7:30 – 10:30 p.m. to observe the sky. They will have four telescopes being used. Motion by Councilor Storey-King, second by Councilor Moriarty to approve a request from Foundation 51 to conduct a star gazing event on April 10th or 11th at the Twin Brook Recreation Facility from 7:30 – 10:30 p.m.

VOTE: UNANIMOUS PASSAGE 6-0 (Councilor Perfetti absent)

09 – 038 To hold a Public Hearing to consider and act on sending a recommendation to the Planning Board re: changes to Section 501 (Non-Conforming Uses) and Section 423 (Shoreland Areas) of the Cumberland Zoning Ordinance.

Councilor Moriarty explained that the ordinance committee met and many discussions took place with regard to what the current existing zoning ordinance provides for non-conforming uses. The committee met twice in workshop sessions with the Board of Appeals over the past month. The current zoning ordinance has a provision regarding non-conforming uses and the terms under which a non-conforming use can continue, can change, can expand, or can be modified, and under which it can be abandoned. What was found when reviewing the current zoning ordinance was that it is confusing in terms of its organization and wording, and it is internally inconsistent in some places.

In the packet tonight, there is a copy of the existing zoning ordinance, and a copy of the ordinance committee's recommendation for a revised ordinance. Because this involves a possible ordinance change, it is required by the zoning ordinance, to refer recommendations to the Planning Board for their comment before it comes back to the Town Council for final action. Councilor Moriarty emphasized that although this review sort of began as a product of our Main street debate, it in fact is not a Main street issue, because this ordinance applies town wide. One of the proposed changes is to expand the period of abandonment from one year to two years on the theory that one year in the event of a fire or insurance issue, the period of one year is just too short a period of time, and we don't want to create a lot of dead zones. It is proposed that if the non-conforming use is residential, in nature that the discontinuance or abandonment period be four years. The committee has also replaced three alternatively phrased standards of review by a single standard of review which would apply in all instances involving expansion or change of use.

Chairman Turner commented that in his view, this review has been brilliantly done. Chairman Turner opened the public hearing. Mr. Mike Tardiff asked if changing it from one year to two years is retroactive. "Would this apply to the property next door to me?" Councilor Moriarty responded, "That there is no retroactivity language in the proposed changes at all, it is forward looking only." Councilor Storey-King stated that for a point of clarification, "you cannot just switch from one non-conforming use to another non-conforming use." Chairman Turner closed the public hearing. Councilor Stiles stated that when this was discussed, he did not recall coming to a conclusion about the two year period on the commercial side. He thought something longer than that was being looked at because we wanted to retain the commercial units we have, not necessarily expand them, but retain them. "My offer would be that if you are going to make it four years for residential than maybe the commercial should be four years as well." Councilor Moriarty responded that this could certainly be revised by the council right now before it is passed on to the Planning Board, it is absolutely appropriate. Councilor Porter stated that he agreed one hundred percent with Councilor Stiles; he would like to see the period increased to four years. Councilor Copp also agreed with Councilor's Stiles and Porter. Chairman Turner stated he had no objection with changing it to four years either. Councilor Moriarty stated that it will be changed and sent on to the Planning Board.

Motion by Councilor Porter, seconded by Councilor Stiles, to forward to the Planning Board for review and recommendation the amendments to Sections 504 & 423 and of the Cumberland Zoning Ordinance as prepared by the Town Council Ordinance Subcommittee and reviewed this evening with the four year provision.

VOTE: UNANIMOUS PASSAGE 6-0 (Councilor Perfetti absent)

09 – 039 To hold a Public Hearing to consider and act on a Victualer's license application from Kim Knight, d/b/a, Beach Dawgs to operate a food cart on the 9th or 10th Hole of the Val Halla Golf Course for the period of 03/23/09 – 06/30/09.

Ms. Daniels explained that the manager of Val Halla, Mr. Charlie Sparrows has spoken with Mr. Kim Knight and his wife Sheila with regard to providing a food cart on the 9th and 10th hole of the Val Halla Golf Course. The cart will provide only food, there are no alcoholic beverages included in this that is a separate license that has already been issued to Mr. Sparrow under his existing license. Mr. Knight and his wife Shiela spoke. They explained that the cart will sell hot dogs, nachos, and soda. Ms. Daniels asked what hours the cart will be used? Mr. Knight responded that they plan on being there from probably 9:00 a.m. to 5:00 or 6:00 p.m. on mainly Saturdays and Sundays and during tournaments. Ms. Daniels stated she had spoken with the Chairman of the Board of Val Halla Trustees and the board fully supports this effort. Chairman Turner opened the public hearing. Chairman Turner closed the public hearing.

Motion by Councilor Stiles, seconded by Councilor Copp, to approve the application from Kim Knight d/b/a Beach Dawgs for a Victualer's license to operate a food cart on the 9th or 10th Hole of the Val Halla Golf course for the period of 03/23/09 – 06/30/09.
VOTE: UNANIMOUS PASSAGE 6-0 (Councilor Perfetti absent)

- 09 – 040 To set a Public Hearing date (April 13th) to consider and act on a Mass Gathering Permit from the Cumberland Soccer Club for a Labor Day “Just For Fun” Soccer Tournament to be held at Twin Brook Recreation Facility on September 5th & 6th, 2009.**

Motion by Councilor Stiles, seconded by Councilor Moriarty, to set a Public Hearing date of April 13th to consider and act on a Mass Gathering Permit from the Cumberland Soccer Club to hold a Labor Day “Just for Fun” Soccer Tournament at the Twin Brook Recreation Facility on September 5th and 6th, 2009.
VOTE: UNANIMOUS PASSAGE 6-0 (Councilor Perfetti absent)

- 09 – 041 To set a Public Hearing date (April 13th) to consider and adopt the revised Appendix B to the MMA General Assistance Ordinance for the period of April 1, 2009 through September 1, 2009.**

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a Public Hearing date of April 13th to consider and adopt the newly revised Appendix B to the MMA General Assistance Ordinance for the period of April 1, 2009 through September 1, 2009.
VOTE: UNANIMOUS PASSAGE 6-0 (Councilor Perfetti absent)

- 09 – 042 To affirm an April 13th date for a workshop meeting with the neighbors in the vicinity of Greely Road Extension re: a driveway extension license request from Robert Simonds.**

Motion by Councilor Moriarty, seconded by Councilor Copp to affirm a 6:00 p.m. workshop meeting with the neighbors in the vicinity of Greely Road Extension re: A driveway extension license request from Robert Simonds.
VOTE: UNANIMOUS PASSAGE 6-0 (Councilor Perfetti absent)

- 09 – 043 To leave on the table until April 13, 2009 the request received on 12/22/08 to establish a Village Center Committee.**

Motion by Councilor Stiles, seconded by Councilor Porter to leave on the table until April 27, 2009 the request received on 12/22/08 from Councilor Perfetti to establish a Village Center Committee.

VOTE: UNANIMOUS PASSAGE 6-0 (Councilor Perfetti absent)

09 – 044 To set a Public Hearing date (April 13th) to consider and act on adoption of the FY10 Municipal Budget.

Motion by Councilor Copp, seconded by Councilor Stiles to set a public hearing date of April 13th, 2009 to consider and act on adoption of the FY 10 Municipal Budget.

VOTE: UNANIMOUS PASSAGE 6-0 (Councilor Perfetti absent)

V. NEW BUSINESS

Councilor Copp- None

Councilor Storey-King- None

Councilor Porter- Mr. Greenlaw has challenged the court ruling made to superior court. The Cool Cities Committee had received an application from Blue Sky Environmental for an Emissions License. The committee felt they did not have enough information at this point. There is an open house at Skillin's Greenhouse this weekend.

Councilor Turner- Informed today of a Supreme Court decision that involved Fryeburg and the bottling company. Part of that decision was made in reference to the interpretation of a comprehensive plan and contract zoning. As I understand it, it was determined that a comprehensive plan is visionary rather than regulatory.

Councilor Stiles- Range Road is starting to get really rough, please take it easy.

Councilor Moriarty- On Thursday of this week, there is going to be a public hearing in Augusta on the bill to cut excise tax in half. The MMA believes the bill will not be favorably recommended, but will probably be going to the polls this November. Note that there is a workshop on April 27th for Sturdivant Island access.

VI. EXECUTIVE SESSION – pursuant to 1 M.R.S.A., § 405(6)(A) re: Town Manager evaluation and contract renewal.

Councilor Stiles motioned, second by Councilor Copp to recess to Executive Session pursuant to 1 M.R.S.A. § 405(6)(A) re: Town Manager evaluation and contract renewal.
VOTE: UNANIMOUS 6-0 (Councilor Perfetti absent).
TIME: 8:03 p.m.

Motion by Councilor Porter, seconded by Councilor Stiles to return from Executive Session.

VOTE: UNANIMOUS 6-0 (Councilor Perfetti absent)
RETURN TIME: 9:57 p.m.

Motion by Councilor Porter, seconded by Councilor Copp to enter into an Employment Agreement between the Town of Cumberland and William R. Shane for a 3 year period beginning 04-01-2009.

VOTE: UNANIMOUS PASSAGE 6-0 (Councilor Perfetti absent)
TIME: 9:57 p.m.

VII. ADJOURNMENT

Motion by Councilor Stiles, seconded by Councilor Copp, to adjourn.

VOTE: UNANIMOUS PASSAGE 6-0 (Councilor Perfetti absent)
TIME: 9:59 P.M.

Respectfully Submitted,

Tamara P. O'Donnell
Deputy Town Clerk