

AGENDA

Cumberland Town Council Meeting

Town Council Chambers

MONDAY, August 10, 2009

6:00 p.m. Workshop

7:00 p.m. Call to Order

6:00 – 6:30 p.m. WORKSHOP with the Town Attorney re: unsafe structures.

6:30 – 7:00 p.m. WORKSHOP to review Twin Brook Recreation Facility Use Policy

I. APPROVAL OF MINUTES

July 27, 2009

II. MANAGER'S REPORT

III. PUBLIC DISCUSSION

IV. LEGISLATION AND POLICY

09 – 123 To set a Public Hearing date (*August 24th*) to consider and act on authorizing the demolition of an unsafe structure located at 74 Valley Road, Tax Map R08A/Lot 16.

09 – 124 To hold a Public Hearing to consider and act on a “blanket” Mass Gathering Permit for Twin Brook Recreation Area events.

09 – 125 To hold a Public Hearing to consider and act on a recommendation from the Twin Brook Committee re: amendments to the Twin Brook Recreation Facility Use Policy.

09 – 126 To hold a Public Hearing to consider and act on the reappointment of William Healey as Cumberland Tax Assessor for a three-year term, *August 2009 – 2012*.

09 – 127 To hold a Public Hearing to consider and act on setting the FY10 tax rate as recommended by the Tax Assessor.

09 – 128 To hold a Public Hearing to set rates at which interest will be paid for delinquent

and over paid taxes, and to authorize applying tax payments to the oldest unpaid taxes.

09 – 129 To hear a report from the Finance Committee Chairman re: FY09 4th quarter financials.

09 – 130 To hold a Public Hearing to set Sewer User Fees as recommended by the Town Manager.

09 – 131 To hear a report from the Town Manager regarding the FY '10 Circuit Breaker Program.

09 – 132 To hold a Public Hearing to consider and act on a Mass Gathering Permit for the Central Maine Kennel Club/Mid Coast Kennel Club dog show to be held at the Cumberland Fairgrounds *August 27 – 30, 2009*.

09 – 133 To set a Workshop date of *August 24th* to discuss:

- 1) Town Center Advisory Committee Charge
- 2) Small Wind Energy System Ordinance

09 – 134 To set a Public Hearing date (*August 24th*) to consider and act on a Mass Gathering Permit and Victualer's Licenses for the Cumberland Fair, *September 20 – 26, 2009* at the Cumberland Fairgrounds.

09 – 135 To authorize the Town Manager to file a creditor petition for probate of the Estate of David R. Garnett, 269 Gray Road, pursuant to 18-A MRSA 3-203(a)(6).

09 – 136 To set a Public Hearing date (*August 24th*) to authorize the Town Manager to request from MDOT a reduction in the speed limit on Orchard Road and Bruce Hill Road.

V. NEW BUSINESS

VI. ADJOURNMENT

MINUTES

Cumberland Town Council Meeting

Town Council Chambers

MONDAY, July 27, 2009

5:00 – WORKSHOP with Planning Board and Comprehensive Plan Committee to continue a review new Comprehensive Plan draft.

ROLL CALL – 7:00 p.m.

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

I. APPROVAL OF MINUTES

July 13, 2009

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

VOTE: UNANIMOUS PASSAGE 7-0

II. MANAGER’S REPORT

- Town Council Pictures (August 10th)
- Set Sewer User Fees (August 10th)

III. PUBLIC DISCUSSION

None.

IV. LEGISLATION AND POLICY

09 – 109 To hold a Public Hearing to consider and act on a Consent Decree for properties located at 52 Idlewood Drive, Map R05C/Lot 5 and 74 Idlewood Drive, Map R05C/Lot 8.

The Manager explained there has been excessive cutting over several years on the majority of the lots in the Idlewood subdivision. The Code Enforcement Officer investigated after a complaint was made and found these two lots out of compliance with the subdivision approval requirements. The two homeowners, present this evening, have agreed to the conditions of the Consent Decree.

Mr. Walbridge, 74 Idlewood Lane, requested a waiver of the \$500 fee claiming they were unaware of the subdivision conditions. He stated he sought guidance from town staff who incorrectly informed him he was able to cut trees within a specific setback area. “We did make an effort...prior to clearing the land.”

Councilor Stiles supported reducing the penalty due to the homeowners’ claim of contact with the town, and recommending reducing the fine to half. Councilor Perfetti did not support the request “absent” the administration’s support for a reduction of the fee. Councilor Turner felt “\$250 is enough. I’m in sympathy...assuming there...was some communication with the town.” The cutting “affects...for the most part...an area where there’s nobody else there. If there was some element of adverse impact on a neighbor I’d have a totally different attitude.” The Town Manager was not able to confirm or deny the validity of the claim, but added, “This penalty could be much worse.” Councilor Stiles pointed out the town has assessed only attorney’s fees, and not a fine, in prior instances. Councilor Moriarty commented, “Many of these things do arrive in the context of second or fourth generation ownership” and the current owner is “completely without fault.” But these penalties are assessed as part of the negotiation process. Councilor Porter supported imposing the attorney fees and fine “because these will not be the only two properties in the neighborhood that will find it necessary

to address such a violation. "It's important that we handle this properly." Councilor Storey-King asked about item #7 of the deed referring to soil disturbance. "Are any of those situations present; has the DEP been consulted?" The Manager stated that this area of concern is between the homeowner and DEP. There could be a separate consent decree and fines imposed by the DEP. "I just don't want to penalize them twice for the same thing" replied Councilor Storey-King. The Manager clarified that subdivision requirements are not recorded as part of an individual property owner's deed, but are filed as part of the subdivision filing. Councilor Porter added, "I do think there should be a fine, let's keep it small and move forward." Councilor Moriarty asked how the Town Manager intends to handle other homeowners with similar subdivision violations. The town's practice is reactive, not proactive. We respond to these items as they come in, we don't look for violations. "It's really a council to council action." The remaining Idlewood homeowners may request a similar consent decree or "roll the dice" and deal with what occurs when or if their home is sold. He estimated eighty percent of Idlewood homeowners are non-compliant.

Motion by Councilor Perfetti, seconded by Councilor Turner, to authorize the Code Enforcement Officer to enter into a Consent Decree for properties located at 52 Idlewood Drive, Map R05C/Lot 5 and 74 Idlewood Drive, Map R05C/Lot 8.

Motion by Councilor Stiles, seconded by Councilor Porter, to reduce the fine to \$250 in both cases.
VOTE: UNANIMOUS PASSAGE 7-0

09 – 110 To hold a Public Hearing to consider and act on certain amendments to the 2007–2010 Agreement between the Town of Cumberland and the Cumberland Police Benevolent Association. TABLE TO AUGUST 24TH.

The Town Manager noted he is not prepared to bring this item forward for consideration at this time and recommended the item be tabled. No public comments received.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to Table this item to August 24, 2009.
VOTE: UNANIMOUS PASSAGE 7-0

09 – 111 To hold a Public Hearing to consider and act on a recommendation from the Twin Brook Committee re: amendments to the Twin Brook Recreation Facility Use Policy.

The Town Manager noted the Twin Brook Advisory Committee recommends the following four policy changes: (1) Gas grills are presently allowed only on the Tuttle Road side of Twin Brook. The committee recommends use of gas grills in the area of the new building. (2) Incendiary devices are not permitted. (3) The police department requested the committee consider fixed hours rather than daylight to sunset hours. The committee recommends hours of 6 am to 9 pm April 1 – November 1 and 6 am to 6 pm November 2nd to March 31st. (4) Evening stargazing events are recommended with administrative approval up to four times per year. The committee will bring forward a recommendation regarding the concession stand use later this fall.

Councilor Perfetti suggested Item 11(n) is in opposition to Item 11(i). The intent is to allow gas grills at the shelter. Councilor Stiles feels there should be a definition of "incendiary devices." Councilor Porter complimented the Twin Brooks committee for making these "common sense changes" and sought clarification regarding hours of use. The Manager noted the hours of operation have always referred to "when the facility is open." He has informed the abutters in the past that the town will attempt to restrict park use during non-daylight hours. Councilor Moriarty added he has always understood the park to be closed at sunset. "That means nobody is supposed to be in there at all." "The reason we have not heard about it is because people are using it respectfully" replied Councilor Porter.

Councilor Turner suggested “unintended consequences can arise” from wording different than “the park is closed. You’re increasing the problematical part of enforcement. Saying nothing along that line is better.” The Manager recommended tabling the item for further review and clarification. Councilor Perfetti believes “everybody gets what they want” with the way it’s presently worded. No public comments received.

Motion by Councilor Stiles, seconded by Councilor Storey-King, to table this item to August 10, 2009.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 112 To hold a Public Hearing to consider and act on adopting a Stormwater Discharge Ordinance.

The Manager explained this ordinance is mandated by the state under its Clean Water Act. The concentration of population in Cumberland is located along the Foreside where there are more than 1,000 people per square mile. This density “kicks you into an urban compact designation.” Cumberland’s stormwater area is bound by the Foreside, Main Street, Greely and Tuttle Roads. The ordinance addresses discharge types and prohibits floor drains from discharging to streams. Councilor Porter noted this ordinance provides the town with enforcement capability as well. While he supports the ordinance, he “guarantees” ordinance corrections will need to be addressed in the future. Nevertheless, “It’s important to move forward.” Councilor Storey-King referred to the attached NPDES map which shows inclusion of a part of Harris Road and Willow Lane. The Manager responded the map is identified as Attachment A and referenced in the document. No public comments received.

Motion by Councilor Turner, seconded by Councilor Moriarty, to adopt a Cumberland Stormwater Discharge Ordinance.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 113 To hold a Public Hearing to establish fees for the Town of Cumberland Yard Waste Facility, effective August 1, 2009.

The Manager recommended postponing the fee implementation to August 8th. Information will be provided to residents this weekend and the town will publish information in the Forecaster over the next two weeks. He recommends a \$25 resident pass; and a \$250 commercial pass, used for Cumberland businesses only. Individual passes can be purchased at \$5 per trip. Annual passes will be issued via stickers, which are tied to the vehicle plate number and must be affixed to the vehicle’s windshield. Councilor Storey-King clarified the permit period is the same as the fiscal year, July to June. Councilor Stiles questioned why there is not a one-day pass for commercial businesses. Councilor Porter complimented the Manager on this proposal as a good response to concerns raised by some constituents. “It’s a very good compromise.” No public comments received.

Motion by Councilor Moriarty, seconded by Councilor Perfetti, to amend the Cumberland Fees ordinance to establish fees for the Town of Cumberland Cumberland Yard Waste Facility as recommended by the Town Manager, to become effective August 8, 2009.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 114 To set October 19 – October 23, 2009 as Bulky Waste Pick-Up Week.

Motion by Councilor Perfetti, seconded by Councilor Turner, to set October 19 – October 23, 2009 as Bulky Waste Pick-Up Week. No public comments received.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 115 To set a Workshop date of August 24th to discuss the Small Wind Energy Systems Ordinance.

Motion by Councilor Stiles, seconded by Councilor Storey-King, to set a Workshop date of August 24th to discuss the Small Wind Energy Systems Ordinance.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 116 To set a Public Hearing date (August 10th) to set rates at which interest will be paid for delinquent and over paid taxes, and to authorize applying tax payments to the oldest unpaid taxes.

Motion by Councilor Perfetti, seconded by Councilor Turner, to set a Public Hearing date of August 10th to set rates at which interest will be paid for delinquent and over paid taxes, and to authorize applying tax payments to the oldest unpaid taxes.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 117 To set a Public Hearing date (August 10th) to consider and act on the reappointment of William Healey as Cumberland Tax Assessor for a three-year term.

As required by the Town Charter, Article II, Section 3, Enumeration of Powers, the Manager recommended the re-appointment of Tax Assessor William Healey for a three-year term. Councilor Porter expressed his pleasure with “the professional job” performed by Assessor Healey. “He has served our communities and taxpayers very well.” Councilors Perfetti, Turner and Chairman Copp echoed the comments of support. No public comments received.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a Public Hearing date (August 10th) to consider and act on the reappointment of William Healey as Cumberland Tax Assessor for a three-year term.

VOTE: UNANIMOUS PASSAGE 7-0

09 - 118 To set a Public Hearing date (August 10th) to consider and act on setting the FY10 tax rate as recommended by the Tax Assessor.

Tax Assessor will recommend a tax rate of \$14.55, an increase of 3.9% to the current tax rate.

Motion by Councilor Moriarty, seconded by Councilor Turner, to set a Public Hearing date of August 10th to consider and act on setting the FY10 tax rate as recommended by the Tax Assessor.

VOTE: UNANIMOUS PASSAGE 7-0

09 - 119 To set a Public Hearing date (August 10th) to set Sewer User Fees as recommended by the Town Manager.

The proposed sewer fee increases are based on conservative projections of sewer growth over the next few years. The Manager recommends a 3% increase, or \$2.00 per-month average, and an August 2009 implementation. We project this percentage increase to be “sustainable for the next” several years, due to the addition of over 50 users since the amnesty program, which expires on December 31st. “You’re paying 75 cents on the dollar” due to the amnesty program. The approximate 1,000 unit owners will receive a letter tomorrow informing them of this fee increase. No public comments received.

Motion by Councilor Stiles, seconded by Councilor Storey-King, to set a public hearing date of August 10th to set Sewer User Fees as recommended by the Town Manager.

VOTE: UNANIMOUS PASSAGE 7-0

09 - 120 To set a Public Hearing date (August 10th) to review and consider amending the Cumberland Circuit Breaker Ordinance and establish refund rates for FY10.

Councilor Storey-King noted that the committee will meet tomorrow morning at 8:30 am to review the ordinance and refund rates.

Motion by Councilor Stiles, seconded by Councilor Storey-King, to set a public hearing date of August 10th to review and consider amending the Cumberland Circuit Breaker Ordinance and establish refund rates for FY '10.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 121 To set a Public Hearing date (August 10th) to consider and act on a “blanket” Mass Gathering Permit for Twin Brook Recreation Area events.

The Manager explained the council will consider a “blanket” Mass Gathering Permit at its next meeting, covering all the events that occur at Twin Brook during the fall. This will “give you a snap shot” of those events. These events do not require a Mass Gathering Permit by ordinance.

Motion by Councilor Perfetti, seconded by Councilor Moriarty, to set a Public Hearing date of August 10th to consider and act on a “blanket” Mass Gathering Permit for Twin Brook Recreation Area events.

VOTE: UNANIMOUS PASSAGE 7-0

09 – 122 To set a Public Hearing date (August 10th) to consider and act on a Mass Gathering Permit for the Central Maine Kennel Club/Mid Coast Kennel Club dog show to be held at the Cumberland Fairgrounds August 27 – 30, 2009.

Motion by Councilor Stiles, seconded by Councilor Turner, to set a Public Hearing date of August 10th to consider and act on a Mass Gathering Permit for the Central Maine Kennel Club/Mid Coast Kennel Club dog show to be held at the Cumberland Fairgrounds August 27 – 30, 2009.

VOTE: UNANIMOUS PASSAGE 7-0

V. NEW BUSINESS

Councilor Turner – congratulated the town for having reduced the interest penalty on late taxes; it shows a little sensitivity.

Councilor Perfetti – received an email from Valley Road resident re: an abandoned and dilapidated building; requested to discuss addressing this item during the next agenda; at last week’s Planning Board meeting a member made requests “completely outside” their purview of rights; “I don’t want applicants walking away thinking the Planning Board has more power than it does.”

Councilor Porter – reiterated Councilor Perfetti’s point; was well intentioned, but certain things can and can not be raised within a board member’s power; congratulated Finance Director Alex Kimball and the Cool Cities Committee re: the reduction of energy use at Town Hall;

Councilor Storey-King – thanked the Comprehensive Planning Committee for their work and encouraged the public to get involved in the process; take a look at the plan on the town’s web site.

Chairman Copp – our ‘new neighbors’, the Atlantic Federal Credit Union made a donation to the summer camp program for tickets to the Circus Smirkus; a positive gesture; the lawsuit against the town has officially been dropped.

Councilor Stiles – asked for updates re: Range Road and the Garnett property.

Councilor Moriarty – requested update on the Greely Road Ext driveway issue.

Town Manager –

- Range Road is going well; water line is almost to the first residence (former Merrill property) and road is close behind that; a concern has been expressed re: excessive amount of guardrail specified for Range Road; prior to installation they will walk the site to mark the placement areas, which are usually drop-off areas; construction is moving along well – some of the worst soils;
- Garnett property on Route 100 is a home which has a second mortgage from the town; the owners have deceased; our attorney is working with PROP;
- driveway extension on Greely Road Extension – no movement since last meeting; he has met with the abutting landowner, but we have not received a document to date. Councilor Perfetti felt there should be “some kind of sunset.” After discussion, the Manager was requested to send a letter on behalf of the council requesting an update and timeline for the project; if nothing received by the end of the year, the approval will expire and a new public hearing process required.
- First annual Greely Alumni Golf Tournament will be held this Friday at Val Halla to benefit the Greely golf and basketball teams. Sevee/Mahar is a tournament sponsor, Gorrill Palmer and Storey Bros are golf cart sponsors.
- Update on Route 88 - engineer working on the plans; Gorrill-Palmer will be at the second meeting in August.
- Planning Board recommended approval of the credit union on Main Street; hoping to break ground shortly. We hope they will be up and running by spring 2010.
- Nancy Tims received approval for an expansion of her Route 100 Bird Refuge business; great addition to the area;
- Requested an 8/10 workshop re: the Twin Brook Policy amendments and Town Attorney re: unsafe building removal process. .

VI. ADJOURNMENT

Motion by Councilor Perfetti, seconded by Councilor Turner, to adjourn.

VOTE: UNANIMOUS PASSAGE 7-0

TIME: 8:20 pm

Respectfully submitted,

Nadeen Daniels, Town Clerk