

## **AGENDA**

Cumberland Town Council Meeting

Town Council Chambers

**MONDAY, October 12, 2009**

**5:30 p.m.** Finance Committee Meeting

**6:00 p.m.** Workshop

**7:00 p.m.** Call to Order

**TELEVISED WORKSHOP 6:00 p.m.** with the Cool Cities Committee re: Windmills 101

### **I. APPROVAL OF MINUTES**

September 14, 2009

### **II. MANAGER'S REPORT**

### **III. PUBLIC DISCUSSION**

### **IV. LEGISLATION AND POLICY**

**09 – 160** To forward the new State Model Wind Energy Facility Ordinance to the Cool Cities Committee for a recommendation.

**09 – 161** To hear a report re: Question #2 - Excise Tax reductions.

**09 – 162** To hear a report from the Finance Committee Chair re: FY10 1st quarter financials.

**09 – 163** To set a Public Hearing date (*October 26th*) to consider and act on a junkyard/recycler permit renewal for Cumberland Salvage for the period of *October 1, 2009 – September 30, 2010*.

**09 – 164** To hear a report from the Town Clerk re: New Dog License Warrant Law.

**09 – 165** To hear a report from the Town Clerk re: November Early Voting.

**09 – 166** To hold a Public Hearing to consider and act on amendments to the Cumberland Mass Gathering Ordinance.

**09 – 167** To set a Public Hearing date (*October 26th*) to repeal and replace the current Animal Control Ordinance.

**09 – 168** To set a Public Hearing date (*October 26th*) to consider and adopt the revised MMA Model General Assistance Ordinance and Appendixes A-C for the period of *October 1, 2009 – October 1, 2010*.

## **V. NEW BUSINESS**

- Route 88 bus tour of project area, Saturday, October 17<sup>th</sup> & 24<sup>th</sup> @ 9:00 a.m.
- Lamb Memo

## **VI. ADJOURNMENT**

# MINUTES

Cumberland Town Council Meeting  
Town Council Chambers

**MONDAY, September 14, 2009**

**7:00 p.m. Call to Order**

**Roll Call** – Chairman Copp, Councilors Turner, Perfetti, Storey-King, Porter, Moriarty and Stiles. Councilor Perfetti arrived at 7:05 p.m.

## **I. APPROVAL OF MINUTES**

August 24, 2009

Motion by Councilor Moriarty; seconded by Councilor Storey-King, to adopt the minutes with a typographical change as noted by Councilor Stiles.

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

## **II. MANAGER'S REPORT**

None.

## **III. PUBLIC DISCUSSION**

None.

## **IV. LEGISLATION AND POLICY**

### **09 – 146 To hear a presentation from the Maine Forest Service re: Wildland Urban Interface.**

Nate Schools, Deputy Fire Chief, introduced District Fire Ranger Greg Hesslin from the Department of Conservation Forest Service who presented the results of his department's assessment of municipal resources required to address wildfires caused by the spread of fire between wildland and structures. Their goal is to evaluate risks and identify mitigation strategies. Topography, access roads/signage, defensible space/vegetation, building materials, water availability were considered when assessing the risk. He provided an example of a 700 acre fire in Madison, Maine, where 8.38 acres, costing \$10,746.71 for suppression efforts. Cumberland is responsible for fire suppression costs of ¼ to 1% of the town's value before it is eligible to receive state assistance. With particular interest to Cumberland, Mr. Hesslin presented a report identifying hazard areas, and suggested actions and projects. 78% of Cumberland homes assessed had only one access road. The highest concern is "defensible space"; 62% of homes have less than 30 feet of defensible space and only 5% had 71 feet or more. An additional concern is water availability, which is "inconsistent in Cumberland." The department staff includes one ranger for every 18 towns, covering only 1/9 of the state, and containing half of the state's population.

Councilor Stiles noted that the survey data was completed prior to the Range Road water line project. "There are some better things" in Cumberland, but water "is definitely one of the bigger issues." No council action was required. The councilor thanked Fire Ranger Hesslin for his presentation.

At this time, Chairman Copp announced he would address Item 09-150 out of order.

### **09 – 150 To hold a Public Hearing to amend the Cumberland Traffic Ordinance to authorize a 3-way stop at the intersection of Pleasant Valley and Valley Roads.**

The Manager explained he was bringing forward a recommendation to amend the town's traffic ordinance to create a three-way stop at the intersection of Valley Road and Pleasant Valley due both to residents' requests and concerns regarding speeding traffic near this intersection. "This is a very low

traffic volume intersection, but it's also a little bit confusing...and steep grades." Mr. Jim Gustafson, Valley Road, stressed the importance of traffic enforcement irrespective of signage changes. Without it "It really doesn't mean much." Mr. Bill Bengner, Sturbridge Lane, agreed that it is a low volume intersection. A stop sign at the end of Valley Road is "a good idea...but coming up the hill - I'm not sure what you accomplish. There's only one way out." He prefers a two-way stop. "Three is a little overkill." Mr. Bart Knight, Sturbridge Lane, never recalls an accident or near-miss at this intersection. "No more than ten times in thirteen years have I ever met another vehicle at that intersection. Who are we stopping for?" He also supported less stop signs. "One, possibly two" but a stop sign "to force us to stop coming up hill...makes absolutely no sense to me." The Manager agreed, "The stop sign at Valley Road does make the most sense." The traffic traveling the greatest speed is the traffic coming down the hill leg of that intersection. Heidi Sloan, Pleasant Valley Road, shared her concern over the removal of the stop sign on Valley Road "for the safety of the kids." Councilor Moriarty questioned whether the steepness of the grade on Pleasant Valley Road is such that a stop in the winter time is a problem for cars traveling up the hill. The grade on Bruce Hill is "at least 10 percent." A two-way stop sign intersection wouldn't be "the worst thing in the world" responded the manager. Chairman Copp noted this item is before them as a result of a concern regarding traffic traveling down Pleasant Valley. "In my mind," the stop sign "should continue to stay there. Right now a two-way is a good compromise." Councilor Porter asked why not just one sign, coming down the hill? "If we're not going to do one, I would go three. Two doesn't make any sense to me." Councilor Storey-King suggested one stop sign could lead to confusion with the possibility for a "t-bone" accident at the intersection. Councilor Turner felt a stop sign on Pleasant Valley and at the bottom of Bruce Hill is sufficient.

Motion by Councilor Moriarty, seconded by Councilor Perfetti, to amend the Cumberland Traffic Ordinance to create a two-way stop at the intersection of Pleasant Valley and Valley Roads, and to be more specific: that a stop sign be placed at the intersection of Valley Road and Pleasant Valley, and that a second stop sign be placed on the downhill, or westbound leg, of Pleasant Valley Road as it intersects Valley Road. Councilor Stiles confirmed this motion suggests "putting a sign where one formerly was."

VOTE: UNANIMOUS PASSAGE 7-0

**09 – 147 To hear a report from Gorrill-Palmer Consulting Engineers re: the Route 88 shoulder and drainage project and public informational meetings.**

Design Engineers Tom Gorrill and Al Palmer presented the project scope and key elements of the Route 88 design and public process. The purpose of the project is to provide pedestrian safety; address significant drainage issues; encourage vehicles to travel at the posted speed; and provide connectivity to Cumberland Center. The project limits run from the Falmouth town line to 300 feet north of Schooner Ridge Road. Design challenges and opportunities include context sensitive design – impacts of widening for pedestrians and bicyclers; concrete roadway issues; alignment of Tuttle Road; speed of motor vehicles; containment of project within right-of-way; utility issues; drainage issues; and mini-parks. Traffic volumes may allow for lanes less than 12 feet wide. Narrower lanes result in less maintenance and less impervious areas. Engineer Al Palmer addressed the drainage challenges, noting the contributing or resulting factors of surface flow, shoulder conditions, and pipe/culvert flow, downstream erosion. Mr. Palmer referenced opportunities to reduce surface flow and erosion through the treatment of shoulders, regrading of intersections, use of curb, redirect flow from existing culverts and direct to stable outlets such as Seacove Road and Town Landing Road, slip-line existing culverts rather than introduce road cuts, and attenuate quantity and quality impact of new pavement. Low Impact Development (LID) techniques will be explored and incorporated into design plans where appropriate. Examples may include tree box filters and rain gardens/bioswales to increase the street

tree canopy and provide an opportunity to attenuate the flows. Concrete roadway issues exist and need to be considered. "That's going to be difficult." A variety of alternatives to provide a safer intersection at Tuttle Road and King's Highway will be considered. Public meetings beyond this evening include ongoing meetings with MDOT and a return to the town council with a design concept on October 26<sup>th</sup> and final submittal to MDOT and council on December 1<sup>st</sup>. It is hoped the town council will authorize the town manager to proceed with bid requests on January 11, 2010, with a bid opening date of February 17, 2010 in order to take advantage of construction cost savings. Neighborhood meetings will be held at town hall next Thursday, September 17<sup>th</sup> and again Saturday, September 17 and 24, 2009, as well as a bus tour of the project area Saturday October 17 and 24<sup>th</sup> beginning at 9:00 – 9:15 a.m.

Carolyn Smith, 1 Starboard Lane, stated in 1995, the culvert which runs from the uphill side of Route 88 to Starboard Lane was opened and a "gigantic ditch was dug in front of my fence" creating "terrible waterflow" down Starboard. There is now a "ditch running down to the ditch which is totally filled with sand" and "so extraordinarily dangerous." The ditch fills with water to a depth of about four feet and ices over in the winter. "I am thrilled that something is being done, but I do hope that you will not put a culvert again right leading up to my property." A resident expressed concern that the project scope will end at Schooner Ridge. Due to financial constraints, the manager explained Phase One will run to Schooner Ridge, and Phase II will run from Schooner Ridge to the Yarmouth town line. "If money is a concern... maybe we should consider scaling back" the scope for the first phase, responded the resident, referring somewhat specifically to the mini-parks. Councilor Porter shared the expressed concern regarding the high cost, given the lack of participation by the state. "Our town budget is \$8 million dollars. We're talking about essentially our entire town budget to take care of that road." Councilor Turner added that mini-parks sound potentially costly; however, they are intended to be small stopping off points to highlight certain historical points and relative to the entire project, the "cost of those is going to be very small. It isn't as if we eliminated those we could do the rest of the road." Councilor Storey-King shared the resident's concerns regarding shoulder wash-out. Town Manager Shane remarked, "This is not our road." We do not own it; we're not responsible for maintaining it. The difficulty is to allow it to stay as it is. Councilor Storey-King wondered aloud whether the road would get repaired faster if it washed out. Mrs. Smith questioned whether Route 88 will be plowed. MDOT plows the road. She is concerned with the cyclers riding three abreast, suggesting the area at the turn needs a bike lane "even if we don't do anything with the road. It's an accident waiting to happen." Chairman Copp added the project scope was extended from Tuttle Road to Ledge Road to allow an additional seventy-eight homes access to the project. Rita Kavinsky, 16 Ole Musket Road, offered comments regarding the new transfer facility charges, suggesting they "fly in the face" of the Fire Ranger's earlier presentation which encouraged removing vegetation around your home. She is unclear on the future impact of maintenance or a plan to budget for proper road maintenance. She questioned whether this expenditure will be placed on a future referendum ballot. The Town Manager explained the council has the authority to issue project bonds, however, a citizen repeal initiative is provided by Charter for projects in excess of \$100,000. Councilor Moriarty clarified that thus far the council has authorized engineering costs only and will not make a final project determination until 2010. Ms. Kavinsky questioned when the property tax implication will be known. The project cost is currently estimated at \$3.2 million dollars. A final number will be provided in December 2009 prior to a bonding request. The \$200,000 engineer costs are being funded through property taxes.

Councilor Perfetti responded to the brush facility fee comments, noting that there are very few fees that are not offset by some fee structure. In the last few years the town has been at or very close to a zero increase in the town's operating budget. The engineering costs "did not create any increase on the mill rate" this year. Councilor Stiles added that the town has kept this year's budget in line even while utilizing 15 cents on the tax rate for this project. "That's already built into the budget." Despite decreased revenues, the town maintained a zero expenditure increase this year. Mr. Sherwood, 16 Ole

Musket Road, asked how the state can own this road and demand the town repair it to current standards. The manager explained the state has defined the road as “passable” and does not represent as high a use percentage as other roads in the area. They have informed us they will not allocate funds to this road and will not likely rebuild the road as is required during the next 20 years. The legal ramifications are safe travel across Route 88. In closing, Chairman Copp urged residents and neighbors to attend future meetings regarding this project. No council action required.

**09 – 148 To hold a Public Hearing to consider and act on a permit request by the Greely Football Boosters Club to hold a bonfire at the Twin Brook Recreation Area on Thursday, October 29, 2009, and to allow the use of charcoal to heat food.**

Mr. Bob King addressed the request for authorization of the group’s annual bonfire event. The event has become a tradition before the final game against Falmouth. Last year the group heated hot chocolate on a propane burner and would like to acknowledge the 185 participating youth this year. The site will be cleaned within 72 hours.

Motion by Councilor Moriarty, seconded by Councilor Perfetti, to permit the Greely Football Boosters Club to hold a bonfire at the Twin Brook Recreation Area on Thursday, October 29, 2009, and to allow the use of charcoal to heat food.

VOTE: UNANIMOUS PASSAGE 7-0

**09 – 149 To hold a Public Hearing to consider and act on adopting a Post-Construction Stormwater Management Ordinance.**

The Manager explained this ordinance is required by the DEP to reduce the impact of post-construction discharge of storm water and soil erosion.

Motion by Councilor Perfetti, seconded by Councilor Turner, to adopt a Cumberland Post-Construction Storm water Management Ordinance.

VOTE: UNANIMOUS PASSAGE 7-0

**09 – 151 To appropriate funds from undesignated fund balance to complete Town Hall roof repairs and sidewalk paving at the Senior Housing complex.**

Finance Chairman Stiles explained a committee meeting was held earlier this evening to discuss needed repairs to the senior housing complex sidewalks, as well as the repairs needed to the town hall roof. The committee recommends approval to move forward on both repairs. Councilor Turner indicated he received comments regarding the need for sidewalk repairs. Councilor Stiles added that the town anticipates a grant for solar roof panels.

Motion by Councilor Stiles, seconded by Councilor Porter, to approve the appropriation of \$100,000.00 from undesignated fund balance to complete Town Hall roof repairs and paving of sidewalks at Senior Housing.

VOTE: UNANIMOUS PASSAGE 6-0 (Councilor Moriarty out)

**09 – 152 To forward amendments to Section 414 - Home Occupations and Home Based Occupations of the Cumberland Zoning Ordinance to the Planning Board for Public Hearing and recommendation.**

The Ordinance Committee met and recommends changes to the ordinance to make clear that any resident seeking to operate a home occupation or a home-based occupation must apply to the Code Enforcement Officer who may approve the proposed user as a special exception if certain standards

are met. Any appeal of the code officer's decision will require a notice to abutters within a 1000 foot radius.

Motion by Councilor Perfetti, seconded by Councilor Turner, to forward amendments to Section 414, Home Occupations and Home Based Occupations, of the Cumberland Zoning Ordinance, to the Planning Board for Public Hearing and recommendation.

VOTE: UNANIMOUS PASSAGE 7-0

**09 – 153 To forward amendments to Section 400 – General Regulations, Sub-Section 402.3, of the Cumberland Zoning Ordinance to the Planning Board for Public Hearing and recommendation.**

Councilor Stiles stated this proposed ordinance change only changes the lot size from 3 to 2 acres. His personal concern relates to chicken houses. He doesn't believe properties in the center of town "can comply with this" and feels a 25 foot property line distance for placement of a chicken house is viable. Councilor Perfetti noted that his research suggests that two acres allows chickens in 85% of the town in RR1 and RR2 zones. The ordinance committee felt the Portland ordinance would require an additional layer of administration that is not needed. Councilor Turner sympathizes with Councilor Stiles but is uncertain there is any logic to 100 feet as opposed to 50 feet. He wondered whether the charge to the Planning Board should be to recommend a specific distance. Councilor Moriarty stated that both a resident and the Planning Board can make a recommendation. While he does not have "any better ideas" relative to distance, he felt "it seemed to be working" and without complaints from residents is not sure of the need for a change. Councilor Storey-King is in favor of moving it forward. She is aware of at least one existing hen house that is not in compliance. There are no roosters in these hen houses. The state has rules against certain exotic pets in the state of Maine and wondered whether there should be a reference. Councilor Moriarty believes guidance is important. Councilor Perfetti would prefer to leave the amendment as is and not broaden the section of review because the council has not discussed it. The ordinance in place has led to very few, if any, issues and he is comfortable with the way it's currently drafted.

Motion by Councilor Moriarty, seconded by Councilor Perfetti, to forward amendments to Section 400, General Regulations, Sub-Section 402.3, of the Cumberland Zoning Ordinance, to the Planning Board for Public Hearing and recommendation.

VOTE: UNANIMOUS PASSAGE 7-0

**09 – 154 To forward the Cumberland Shoreland Zoning Ordinance to the Planning Board for a Public Hearing and recommendation re: housekeeping comments received from the Department of Environmental Protection.**

The manager explained these amendments consist of housekeeping comments from the State DEP upon submission by the town of our shore land zoning ordinance amendments.

Motion by Councilor Stiles, seconded by Councilor Perfetti, to forward the Cumberland Shore land Zoning Ordinance to the Planning Board for public hearing and recommendation re: housekeeping comments received from the Department of Environmental Protection.

VOTE: UNANIMOUS PASSAGE 7-0

**09 – 155 To set a Public Hearing date (October 12<sup>th</sup>) to repeal the current Animal Control Ordinance, and replace with revised Animal Control Ordinance.**

Councilor Moriarty explained the town desires to bring the current Dog Control Ordinance to current standards. It is slightly better and more comprehensive. Councilor Perfetti asked that every ordinance

reference to dog be changed to animal. Discussion regarding the need for this expansion and an understanding of the Animal Control Officer's responsibilities resulted in a request for further review by staff and committee.

Motion by Councilor Moriarty, seconded by Councilor Perfetti, to table this item for review by the Police Chief and Animal Control Officer.

VOTE: UNANIMOUS PASSAGE 7-0

**09 - 156 To set a Public Hearing date (October 12th) to consider and act on amendments to the Cumberland Mass Gathering Ordinance.**

The committee is recommending minor changes to the ordinance. A change involves lowering the attendance threshold from 1000 to 500 in order to require a Mass Gathering Permit.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a public hearing date of October 12<sup>th</sup> to consider and act on amendments to the Cumberland Mass Gathering Ordinance.

VOTE: UNANIMOUS PASSAGE 7-0

**09 – 157 To hear a report from the Nominating Committee re: committee vacancies.**

Vacancies exist on several boards. The manager requested direction regarding timing of advertising for these vacancies. Councilor Moriarty believes advertising should occur immediately. No council action necessary.

**09 – 158 To set a workshop date of October 12<sup>th</sup> to meet with the Cool Cities Committee re: windmills.**

The Cool Cities Committee has recently lost two committee members.

Motion by Councilor Perfetti, seconded by Councilor Stiles, to set a workshop date of October 12<sup>th</sup> to meet with the Cool Cities Committee re: windmills.

VOTE: UNANIMOUS PASSAGE 7-0

**09 – 159 To consider and act on the cancellation of the September 28, 2009 Town Council meeting.**

Motion by Councilor Stiles, seconded by Councilor Turner, to cancel the September 28, 2009 Town Council meeting.

VOTE: UNANIMOUS PASSAGE 7-0

**V. NEW BUSINESS**

**Councilor Perfetti** – attended a Zoning Appeals Board meeting and offered constructive criticism regarding what his observations of a hyper-technical board unable to admit what seemed to be an obvious error; upon research he felt the board was technically within their rights but pushing the limits a little bit; encouraged residents to know and understand the process and consider representation to protect their interests; congratulated the Nominating Committee for their appointments to the Town Center Committee.

**Councilor Turner** –As council liaison to the Board of Adjustments and Appeals, what appears to be over-technical really isn't; the process was entirely appropriate from a legal standpoint; the board members are very dedicated and have not made any decisions that aren't completely defensible.

**Councilor Porter** – reinforced Councilor Perfetti’s remarks regarding the Town Center committee; a good committee with open minds; played golf in a number of courses this past weekend and his appreciation for Val Halla was increased; our course is in great shape; a place on the move in the positive.

**Councilor Storey-King** – congratulated those who pulled together a new varsity field behind Greely High School; a collaborative effort between the school and many booster organizations; brand new bleachers; great turnout at last two football games.

**Chairman Copp** – Cool Cities committee is very interesting; encouraged residents to consider filling vacancies on this committee.

**Councilor Stiles** – asked for an update on Range Road project; extended his sympathies to the Jacobson family for the loss of Ray Jacobson.

**Councilor Moriarty** – asked about the Range Road guardrail; manager responded that Range Road project originally included guardrail from Idlewood to Winn Road with only a few gaps, this has been cut substantially back to protect wetland only; to put that much guardrail didn’t make sense and we shortened it up to those sensitive areas.

**Town Manager Shane** – Range Road is coming along well; expecting pavement a month ahead of schedule; binder coat in early October to Idlewood; Grover has done a phenomenal job; he will meet with some neighbors to discuss the guardrails in the next week or so; anticipate a mid-October completion date and next phase of water line to continue throughout the winter; 160+ residents have purchased a compost facility sticker; asked that residents not berate front counter staff with complaints regarding the new fees; please see him personally rather than berate staff; Board of Appeals hearing – applicant did not have a survey or all the necessary information required; the board worked hard to make it work. Councilor Turner asked the transfer facility fee: \$5 per use or \$25 unlimited. Food Stop sells them as well as Town Hall. The town prefers not to handle money at the facility.

**EXECUTIVE SESSION:** pursuant to Title 36 M.R.S.A., § 841, re: Poverty Abatement Requests for property identified as Map U12/Lot 8.

Motion by Councilor Storey-King, seconded by Councilor Stiles, to recess to Executive Session pursuant to Title 36 M.R.S.A., §841, re: Poverty Abatement Requests for property identified as Map U12/Lot 8.

VOTE: UNANIMOUS PASSAGE 7-0  
TIME: 9:24 p.m.

Motion by Councilor Stiles, seconded by Councilor Perfetti, to come out of Executive Session.

VOTE: UNANIMOUS PASSAGE 7-0  
TIME: 9:50 p.m.

Motion by Councilor Storey-King, seconded by Councilor Perfetti, to deny the poverty abatement request based on evidence that taxes are paid in full for fiscal year 2009 for property identified as Map U12/Lot 8.

VOTE: UNANIMOUS PASSAGE 7-0  
TIME: 9:51 p.m.

**VI. ADJOURNMENT**

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

VOTE: UNANIMOUS PASAGE 7-0

TIME: 9:52 p.m.

Respectfully submitted,

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Nadeen Daniels, Town Clerk, CMC