

## **AGENDA**

Cumberland Town Council Meeting

Town Council Chambers

**MONDAY, SEPTEMBER 22, 2008**

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

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

**6:00 p.m. WORKSHOP** re: NIMS 700 Training

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

September 8, 2008

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

- Mark Robinson recognition
- CMP Power Expansion Project

### **III. PUBLIC DISCUSSION**

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

**08 – 144** To hear a report from a citizen re: free range of poultry, § 402.4 of the Cumberland Zoning Ordinance.

**08 – 145** To hold a public hearing to consider and act on junkyard/recycler permit renewal for Cumberland Salvage for the period 10/01/08 through 9/30/09.

**08 – 146** To hold a public hearing to consider and act on a “blanket” Mass Gathering Permit for Twin Brook Recreation Area events.

**08 – 147** To countersign the MSAD 51 Referendum Warrant re: Reorganization.

**08 – 148** To authorize the Town Manager to accept a promissory note/mortgage with the owner of Map U20, Lot 9A, for the repair/replacement of a septic system and chimney.

### **V. NEW BUSINESS**

**VI. EXECUTIVE SESSION** – pursuant to Title 36 M.R.S.A., § 841, re: Poverty Abatement Application.

**VII. ADJOURNMENT**

# MINUTES

Cumberland Town Council Meeting  
Town Council Chambers

**MONDAY, SEPTEMBER 8, 2008**

**5:30 p.m. Workshop**

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

**5:30 p.m. WORKSHOP w/ School Board Directors and North Yarmouth Selectmen re: M.S.A.D. 51 School Reorganization.**

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

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

## **I. APPROVAL OF MINUTES**

August 11, 2008

Moved by Councilor Moriarty seconded by Councilor Porter, to approve the August 11, 2008 minutes.

VOTE: PASSAGE 6-0-1 (Councilor Perfetti abstained)

August 25, 2008

Moved by Councilor Porter, seconded by Councilor Stiles, to approve the August 25, 2008 minutes.

VOTE: PASSAGE 6-0-1 (Councilor Porter abstained)

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

The Manager announced that he received a phone call Friday from Brian Grassa of Cedarwood Development to inform him of their decision to withdraw their application for a Contract Zoning Agreement for the Chase property off Route One. The Manager notified the councilors personally over the weekend and included a copy of the written withdrawal notification this evening.

## **III. PUBLIC DISCUSSION**

None.

## **IV. LEGISLATION AND POLICY**

**08 – 131 To hold a Public Hearing to consider and act on a Mass Gathering Permit for Twin Brook Recreation Area events. ~ ITEM TABLED TO 9/22/08**

Councilor Moriarty explained the Twin Brook Committee met last week to review the issue of a 'blanket' Mass Gathering Permit and voted to recommend the report of Public Services Director, Bill Landis, identifying the AYSO Recreational Soccer League, the Recreation Youth Running All-League Meet, the Maine College Cross Country Meet, and the High School Regional Cross Country meet, as reoccurring annual events falling under the blanket permit umbrella.

Moved by Councilor Perfetti and seconded by Councilor Copp, to table to the meeting of 9/22/08.

VOTE: UNANIMOUS PASSAGE 7-0

**08 – 132 To hold a Public Hearing to consider and act on amendments to Sections 1, 3 & 5 of the Cumberland Property Tax Assistance Ordinance re: minimum age and amount of eligibility.**

The Senior Circuit Breaker Subcommittee, comprised of Councilors Stiles, Copp and Storey-King, met to consider and recommend changes to the existing Property Tax Assistance Ordinance. Councilor Stiles, speaking for the committee, shared the committee's recommendation to decrease the age of eligibility from 70 to 67 years and increase the amount of assistance from \$500 to \$700.

Councilor Porter questioned whether this change would impact the budget. The Manager explained that some surplus funds were transferred from last year's reserve fund to the senior circuit breaker fund, which increased the fund balance to \$100,000. Thirty nine residents took advantage of the assistance last year. Councilor Perfetti questioned what precipitated the reduction in age and increase in benefit. The committee felt that a goal of 65 was needed, but felt it should be accomplished "in stages." They believe also this program is "another benefit" to assist with fuel constraints many senior citizens will face this winter. Chairman Turner stated, "We were quite satisfied with the people who did apply and receive the funds" last year. Councilor Moriarty clarified these funds are only available to those who are eligible to receive a property tax refund. Councilor Copp explained further that not all applicants will receive the maximum amount; rather, eligibility is based on the value of your state refund.

Moved by Councilor Storey-King, and seconded by Councilor Copp, to approve amendments to Sections 1, 3 and 5 of the Cumberland Property Tax Assistance Ordinance to decrease the minimum age for participation from 70 years to 67 years, and to increase the amount of eligibility from \$500 to \$750.

VOTE: UNANIMOUS PASSAGE 7-0

**08 – 133 To hold public hearing to consider and act on sending to the Planning Board for recommendation an amendment to the Cumberland Zoning Ordinance adding Section 206.8A re: Additional Review Requirements for Large-Scale Retail Development.**

Chairman Turner restated the announcement regarding the receipt of Cedarwoods withdrawal "a little more than 72 hours ago" and requested a motion to table this item and items 135 & 136, suggesting "We've had 72 hours to assimilate the fact Cedarwoods is gone" and "...at this state...we have really nothing before us."

Motion made by Councilor Copp, and seconded by Councilor Perfetti, to table items 133, 135 and 136 until a later date.

Councilor Porter responded that he did not understand the logic of tabling all three items. "Now we have an opportunity with nothing before us to have a debate on changing the zoning ordinance," noting that he has received feedback in support of sending this out to referendum. Many residents are very "energetic about seeing some type of development out there." Chairman Turner reiterated there has been no time in the last 72 hours "to assimilate going forward what should be done;" however, Councilor Porter did not agree with that application to item 133. "If Cedarwood is gone, this is still something we should have discussion on."

Chairman Turner recommended a workshop over the next week or two, explaining there was a “huge” outcry which suggested a perception that the council was “precipitous” in this whole process. “I just want to make sure that we do everything we can to show that we’re being deliberative about this... and not try to put something forward for the sake of putting something forward.” Councilor Porter countered if the project was not pulled, “we’d be having this discussion this evening.” Councilor Moriarty added his feeling that as a result of the withdrawal, there is nothing pending. “We’re back to the status quo,” and added that he no longer considers himself in a conflict of interest status as a result of the withdrawal. Councilor Moriarty agreed that the items should be considered separately and suggested tabling item 133 to hear from the town attorney and planner whether “we need this extra type of ordinance at all.” Councilor Copp agreed with tabling the three items because “they’re all tied to the same project.” Councilor Perfetti remarked, “The reality is we would not be discussing this unless we had somebody approaching us.”

Motion by Councilor Moriarty, seconded by Councilor Stiles to move the question.

VOTE: PASSAGE 5-2 (Councilor Moriarty and Porter opposed)

Motion by Councilor Porter to remove item #135 from the table; seconded by Councilor Storey-King.

Chairman Turner concurred there should be “some question put out to the voters at referendum.” There could conceivably be language created that puts it to referendum “without taking it to the level of big box.” Councilor Porter stated if a question is to be put out to the voters, a decision needs to be reached shortly.

Councilor Perfetti expressed “doubts about the referendum in the first place” and said, “This would unnecessarily complicate the election process...aside from how I feel about a referendum.” Councilor Copp believes that without Cedarwoods “there’s no need for a referendum question” right now. Councilor Moriarty referenced two advisory referendums put before the voters in the past. These issues have been “very well defined and very focused and precise. We have not...put broad, nonspecific policy changes out to a referendum” and he opposes it at this time. “There are other ways to solicit public opinion,” referring to surveys, forums and petitions. Councilor Perfetti remarked “if we bring this off the table” we have to pass it and “we’re a long way from getting there.” Chairman Turner commented that the council’s motive has been called into question wrongly so, but “I can’t really blame them for misinterpreting some things.” Councilor Porter reiterated that there is a very large segment of our community “that’s not being heard,” claiming he has received “overwhelming” support of “moving this process forward. Let’s have additional workshops” to address those who have not been heard. Councilor Storey-King added the council has been accused of “being in the pocket of a developer through the whole process,” suggesting the “cleaner we can keep it the better off we would be.” She’s not entirely comfortable relying on the comprehensive plan data (only 200 responses). “I would really like to know where people stand on future development in this community.”

Councilor Perfetti moved, seconded by Councilor Copp, to call the question.

VOTE: UNANIMOUS PASSAGE

VOTE on motion to remove item #135 from the table.

VOTE: FAILED 1-6 (Councilor Porter supporting)

Motion by Councilor Moriarty, seconded by Councilor Porter, to clarify the council's intent that none of these items appear on our agenda until or unless there is a real proposal before us.

VOTE: PASSAGE 6-1 (Councilor Copp opposed)

**08 – 134 To hold a public hearing to amend the Cumberland Zoning Ordinance to amend §417.1 (parking and loading) and add §206.8.5.7 (parking layout and design) as recommended by the Planning Board.**

The Manager explained an application was made this summer to build an antique auto storage building on Route 100, requiring 20 parking spaces. This amendment will allow the Planning Board “some flexibility in site plan and subdivision review “so they don’t have to overbuild parking lots.” Staff is favorable of this amendment.

Paul Weiss stated the University of Southern Maine has a new parking lot and garage built with fairly modern inexpensive penetrative surfaces which “reduces runoff dramatically.” Councilor Moriarty pointed out that the last page in the handout, under Section 208.6.5.7, says, “Established previously.” So, “I think it has a cap built in.” They can’t exceed the spaces in the first subsection. “You can only modify it down.”

Moved by Councilor Porter, seconded by Councilor Perfetti, to amend, as recommended by the Planning Board, the Cumberland Zoning Ordinance by adding Sub-Section 206.8.5.7 and by amending Sub-Section 417.1 to allow the Planning Board to waive or modify requirements in Section 417 re: parking when it finds that the proposed development will not require the number of spaces established in that section based upon the specific use or conditions of the site.

VOTE: UNANIMOUS PASSAGE 7-0

**08 – 135 To consider and act on calling a Special Advisory Referendum Election pursuant to MRSA Title 30-A, Section 2528(5), to be held coincident with the MSAD 51, State and Federal Election on Tuesday, November 4, 2008, between the hours of 7:00 am and 8:00 pm at Cumberland Town Hall, 290 Tuttle Road, regarding whether the Cumberland Town Council should approve a contract zone along the northwesterly sideline of Route One at the Falmouth town line authorizing large-scale retail development, subject to later review by the Cumberland Planning Board of the proposed development’s economic impact and to site plan and subdivision approval.**

Tabled earlier under item #08-133.

**08 – 136 To consider and approve the ballot question for a November 4, 2008 Special Advisory Referendum re: large-scale retail development contract zone on Route One at the Falmouth town line (pursuant to call of election).**

Tabled earlier under Item #08-133.

**08 – 137 To review proposed amendment to Section 424 of the Cumberland Zoning Ordinance re: temporary political signs, and to consider referral to the Planning Board.**

Councilor Moriarty explained the ordinance subcommittee met this week to consider this item. While the town can not create an ordinance which will prevent illegal activity; we can and will insist that a permit is required to place a political sign and identify where the sign is placed. We could not do too much more to address offensive language, but we can address signs placed

without permit approval. This must go to the Planning Board for review and recommendation. Chairman Turner feels that a size of sixteen square feet is “considerably larger than necessary” for almost any sign, and especially temporary political signs. Councilor Perfetti questioned how this will prevent the issue that occurred during the Forest Lake referendum. The Manager explained this request was brought by Nancy Heyner, and added the “midnight bandits” had no accountability for the offensive signs. “I can not restrict what’s on those signs, but I can require a permit.” We also had no control over signs placed on state roads and with this ordinance revision we have “some limited authority” by requiring a permit. Councilor Moriarty explained the permit requirement applies to both state and local roads and we will modify the form to include the name and applicant responsible for placement and removal. With this change, we can also remove any sign placed without a permit. Councilor Porter sought clarity that this amendment does not regulate political speech and Councilor Perfetti added his sensitivity to free speech.

Nancy Heyner, 66 Forest Lake Road, asked the council for certainty that a non-permitted sign can be removed by the town. No identifying information is required to be placed on the sign but the permit is public information. Paul Weiss asked for an explanation regarding right-of-ways. The Manager responded we have no jurisdiction on private property. A permit is required if the sign is placed between the road and the lot. It can’t be any closer than 15 feet to any lot line or five feet from the edge of any public way.

Motion by Councilor Stiles, seconded by Councilor Storey-King, to refer to the Planning Board for review and recommendation an amendment to Section 424 of the Cumberland Zoning Ordinance re: temporary political signs.

VOTE: PASSAGE 6-1 (Councilor Perfetti opposed)

**08 – 138 To create a Veterans Memorial Committee and authorize the Town Manager to advertise for committee members.**

The Town Manager reminded the council he raised this topic during the last council meeting and is asking that a committee be given direction to return with a plan for a veterans monument within six months. “I think this is a great start.” He advised the creation of a seven member committee.

Moved by Councilor Stiles, seconded by Councilor Copp, to establish a Citizens’ Committee and authorize the Town Manager to advertise to fill seats on the Veterans Memorial Committee.

VOTE: UNANIMOUS PASSAGE 7-0

**08 – 139 To appoint a member to the Cumberland Planning Board to fill a vacancy whose term expires December 31, 2008.**

Motion by Councilor Porter, seconded by Councilor Moriarty, to appoint John Ferland to the Cumberland Planning Board, for an unexpired term to expire December 31, 2008.

VOTE: UNANIMOUS PASSAGE 7-0

**08 – 140 To set a public hearing date (October 13th) to hear a report from the Shellfish Conservation Commission re: proposed ordinance amendments.**

Moved by Councilor Perfetti, seconded by Councilor Stiles, to set a public hearing date of October 13<sup>th</sup> to hear a report from the Shellfish Conservation Commission re: proposal for ordinance amendments.

VOTE: UNANIMOUS PASSAGE 7-0

**08 – 141 To set a public hearing date (September 22<sup>nd</sup>) to consider and act on junkyard/recycler permit renewals for Greenlaw Salvage and Cumberland Salvage for the period 10/01/08 through 9/30/09.**

Councilor Moriarty questioned whether there has been any mediation/arbitration with Mr. Greenlaw. The Town Manger responded that the town attorney has advised him that Mr. Greenlaw has the right to request an application for a permit for 08/09. Councilor Moriarty did not feel action could be taken this evening since no application was presented for the meeting. .

Moved by Councilor Storey-King, seconded by Councilor Copp, to set a public hearing date of September 22<sup>nd</sup> to consider and act on a junkyard/recycler permit renewal for Cumberland Salvage only.

**08 – 142 To set two public hearing dates (September 29<sup>th</sup> or 30<sup>th</sup>, and October 27<sup>th</sup>) re: Range Road improvements.**

The Manager recommended a first hearing date of Wednesday, October 1<sup>st</sup>. The consultant will provide information, maps and recommendations, and take testimony. Councilor Perfetti asked and was advised that both meetings are for the “same identical purpose” in order to provide the maximum opportunity to receive the same information.

Motion by Councilor Perfetti, seconded by Councilor Porter, to set a public hearing date of October 13 and 27 re: Range Road improvements.

VOTE: UNANIMOUS PASSAGE7-0

**08 – 143 To approve Victualer’s Licenses for the Cumberland Fair, to be held at the Cumberland Fairgrounds, September 21 - 27, 2008.**

The Manager indicated the town has received a list of vendors from the fairgrounds which has received a recommendation for approval by town staff.

Moved by Councilor Perfetti, seconded by Councilor Storey-King, to approve Victualer’s Licenses for the list of vendors as submitted by the Cumberland Fairgrounds for the Cumberland Fair, September 21 – 27, 2008.

VOTE: UNANIMOUS PASAGE 7-0

**V. NEW BUSINESS**

**Councilor Copp** – noted Ken Dorr’s passing last week, we will now need to determine who the new oldest citizen is; Mill Road closed ...from 8 am to Noon.

**Councilor Perfetti** – heard that town staff went above and beyond for a resident seeking a burn permit; received positive comments from spectators watching a run at Twin Brook who commented on the field looking “fantastic.”

**Councilor Storey-King** – extended condolences to the Dorr family; sorry for your loss; also Peggy Dyer’s loss on Chebeague Island last week; proposed that at our next meeting we take a vote in support of school consolidation with Falmouth; comp plan committee continues to meet; a lot of time discussing land use; always thought provoking but a slow process; thanked community for patience in waiting for committee recommendation; in support of a vote on chool consolidation; both she and Councilor Turner feel we “should jump right out in front of it”.

**Councilor Porter** – referring to endorsing the school reorganization - “it is a slippery slope”; wonderful Cumberland Soccer Club Labor Day tournament; everything worked very well; asked when we will dedicate the new building and fields; it’s important that our citizens see that significant upgrade.

**Chairman Turner** – no items.

**Councilor Stiles** – expressed desire to “strengthen” the noise ordinance; spoke to event occurring over the weekend in the Range Road neighborhood explaining it went beyond what was expected; some participants were harassing those who passed by; 9/21 is Fair Week and he will be late for the council meeting because of his participation in the 4-H activities.

**Councilor Moriarty** – ordinance committee dealt with the noise ordinance a year ago re: a Winn Road compliant and determined the real solution is police involvement around charges of disorderly conduct/nuisance/disturbing the peace; noise ordinance would not address the issues he raised re: chasing or harassing; the Manager added the town does not have a noise ordinance and said the District Attorney will not hear a noise complaint but will enforce disturbing the peace, typically at 11:00 p.m. Chairman Turner said there is a reference to an acceptable measure of noise in the special exception zoning language.

**Manager Shane** – none

**VI. EXECUTIVE SESSION** – pursuant to Title 36 M.R.S.A., § 841, re: Poverty Abatement Application.

Motion by Councilor Stiles; seconded by Councilor Perfetti, to recess to Executive Session pursuant to Title 36 M.R.S.A. §841, re: Poverty Abatement Application.

VOTE: UNANIMOUS PASSAGE 7-0  
TIME: 8:45 p.m.

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

VOTE: UNANIMOUS PASSAGE 7-0  
TIME: 9:06 p.m.

Motion by Councilor Stiles, seconded by Councilor Perfetti, to deny the poverty abatement request.

VOTE: UNANIMOUS PASSAGE 7-0  
TIME: 9:06 p.m.

**VII. ADJOURNMENT**

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

VOTE: UNANIMOUS PASSAGE 7-0  
TIME: 9:07 p.m.

Respectfully submitted,

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Nadeen Daniels, CMC  
Cumberland Town Clerk