

MINUTES
CUMBERLAND TOWN COUNCIL MEETING
Town Council Chambers, 290 Tuttle Road
Monday, May 22, 2006

6:30 p.m. – Workshop – To review Val Halla FY07 Budget

7:00 p.m. – CALL TO ORDER

Present: Chairman Stiles, Councilors Turner, Damon, Storey, Kuntz, Moriarty and Porter.

I. APPROVAL OF MINUTES

May 8, 2006

Motion by Councilor Moriarty, seconded by Kuntz, to accept the minutes as presented.

VOTE: UNANIMOUS PASAGE 6-0-1 (Chairman Stiles abstained)

II. MANAGER'S REPORT

- RWS Update - in approximately one year the trash trucks will be retrofitted to take all recycling materials in one truck. A fairly significant savings is anticipated along with a 24-25% recycling increase. Many tires are left at curbside throughout town. Crews are going back to pick up the remaining tires.
- Island Pond request – road was initially built as a town road, to town standards. Residents are requesting the road be accepted as a town road. The Manager recommended a workshop with these residents.
- Turnpike Authority meeting, July 10, 2006 – MTA to attend the July 10th council meeting. Propose to fast track the rest stop facility replacements. West Cumberland residents will be notified. MTA does not have to go through site plan process but is willing to attend the council meeting. MDOT will be here in September re: the Doughty Bridge replacement. Requesting a detour up to five days.
- MDOT September meeting, Rt.100 Bridge Repair – response re: lowering of speed limit on Goose Pond Road; state denied that request. They have informed us we must change the “illegal” 25 mph sign immediately. Councilor Kuntz requested increased police presence due to increased motorcycle and atv use in the area.

III. PUBLIC DISCUSSION

Gwen Frost, Goose Pond Road, requested an update to the Code Enforcement Officer issue regarding code violations in West Cumberland. Manager responded that one came into compliance immediately and the two remaining property owners are preparing compliance agreements which will come before the council at a subsequent meeting in the near future. Consent Decrees and compliance schedules will be presented to the council.

IV. LEGISLATION AND POLICY

06 – 085. To hold public hearing to consider and act on amendment to the Route One South Contract Zone for Cumberland Foreside Village LLC, Owner, Map R01, Lot 11,11B, 8 and 7.

The Town Manager and attorney Ken Cole were present to respond to questions. The Manager noted that an amendment was drafted this afternoon dealing with the five year window, i.e. “sunset clause.” Attorney Clough requested a sunset clause; however, the Manager explained subdivision plans are not typically sunsetted. The Manager read from the yellow highlighted pages supplied to the council. The amendment puts a limit on the infrastructure, and Mr. Chase has indicated he is comfortable with the language, which becomes more restrictive than the amendments originally presented to the Planning Board. Attorney Cole added that Contract Zoning is “no different than a text amendment.” Rather than just permitting the language through its inclusion in the text, you are in effect allowing a “legal spot zone”- a particular use within a particular location. “We are also allowed to negotiate the terms of how that zone gets allowed. Contract Zoning is “a rezoning with conditions.” The town has no right to say “no we won’t consider it; in fact, the town is obligated to consider” the proposal before them. Through the public process various issues arose that the town has brought back to the applicant. It is also “completely discretionary.” There is no lateral appeal to any other body.” Some of the changes suggested throughout the process are very specific and others are meant only to clarify. This language makes it clear the special exceptions are allowed and in the same process as always. The language is tightened to make it clear that other than the commercial uses

proposed along Route One, offices, etc will have to be set back in the lots off of Route One, and there will be no onsite retail sales in the off Route One lots. Storage warehousing, rather than distribution warehousing is allowed. This allows the use; "it doesn't waive the rules." The subdivision approval is in no way being contemplated tonight. We took the site plan requirement and put it into this contract as well "to be very clear." Other issues not finalized include height restrictions, setback issues. Throughout this process we've seen a plan that everybody has relied on. "We've incorporated the developer's proposal as much as we can and asked them to provide a schedule as an exhibit document." There is also a provision that the contract can not be assigned without the consent of the council.

Councilor Damon sought clarification regarding the blasting. Blasting can occur as site work is accomplished. The schedule is "in a rough sense, attached as an additional attachment, so the town will have some control..." Site work on a non-subdivision lot can not be predicted. Mr. Cole noted "In each instance...any lot being developed in there...will require review by the Planning Board." The sunset provision says the developer agrees that this contract can be considered changed or repealed by the council if work has not substantially occurred within a period of time. This says to the developer "you've got to complete the infrastructure." Manager added there will be a performance payment bond attached. It's in his best interest to get this done in a more timely fashion because "we can go in and continue those improvements under his bond."

During public comments, Mr. Tom Foley, True Spring Farms president, expressed his belief that the neighbor's concerns "have been listened to" but stated the residents believe significant removal of ledge prior to the sale and/or development of the lots would diminish the quality of the land. It was understood after the meeting with the Town Manager that the 13 acres of land would be subject to stone removal over a period of two years and beyond that time stone work would be done piece by piece by lot. If that is so, "I am very comfortable with that." Manager stated "Once he has approval for all three he can work on all three." If, however, work is not complete at the end of two years, those approvals would be null and void. "That leaves us with only one concern. It has to do with the buffer zone along Route One." The Planning Board has recommended a 75 foot buffer zone be maintained along Route One. If the state performs road widening, the applicant asks that the guidelines be "honored and the buffer zone be kept at 75 feet from the property line."

Santo Cimino, resident of True Spring Farm, concurred that the True Spring Farm residents "generally support the project. The issue is the buffer. In a little over a mile we have eight curb openings." He speculated that 300,000 square feet of building would likely require another lane by MDOT. "It's speculation, but based on good reasoning." He noted the Planning Board recommendation, the neighborhood residents, and the Route One guidelines all reference a 75 foot buffer. In quoting the Route One Guidelines definition of a buffer, he suggested "There's no question...that what you can have there is a very tasteful landscape" through which you can see the building. "That is what the neighbors are looking for. I ask you to support the existing body of standards." The Manager explained that the original 2002 contract zone was 25 feet and the Route One guidelines were adopted after the contract zone was in place. The 65 foot buffer is before the council in the contract zone amendment; and a 35 foot buffer which includes the sidewalk portion as well. The applicant's engineer clarified that the 65 feet is measured from the property line to the face of the building; the buffer is measured from the property line "before you even get to the building. The Manager added that as the buildings are pushed back, there is a corresponding increase in blasting. "You're requiring more blasting to occur. There is a trade off."

Carl Has?, True Spring Farms, commented "We are not eager to see it across the street from us. The more significant issue is what's left behind. Once that's gone, it's gone." He then showed a photo of what he described as the "very tasteful" Catholic Charities of Maine development. "We think this speaks to the character of how that corridor should continue to be developed." He suggested there also be a restriction on the volume of ledge extraction. "This whole plan is not so much about development as it is about the rock and ledge and the value of all that." The applicant's engineer, Steve Mohr, responded that the existing contract zone which mixes residential and commercial was not Mr. Chase's vision. The emphasis of the contract is commercial property. The "thrust of this has always been commercial development." The existing contract zone has seven curb cuts and was dropped down to six after working with the town planner and MDOT. However, only four are from the new development. A deceleration lane would not require cutting into the tree area within the row. "In the ideal world 75 feet gets distributed equally. US Route One is not centered within the right-of-way. "You're gonna end up with a min of 65 feet" of vegetated buffer; 35 feet total, 25 feet of undisturbed plus 10 feet within the right of way of Route One. He noted the state's ability to widen that right of way within the buffered area "is fairly narrow." They also have specific design requirements for the buildings. "It's not floating out there independently of that buffer." Philip Gleason, attorney for Mr. Chase, stated development in a tasteful manner has been part of the comprehensive plan. Mr. Mohr added that with the current 65 foot building setback and 35 foot buffer we "end up with ledge faces". "They will get progressively taller." Mr.

Chase responded to statements made regarding blasting of the ledge that stated his "primary concern is the development of the lots...not going after the gravel." His realtor is also advising him that the lots will not sell "if the buildings can't be seen from Route One." He feels he has agreed to a compromise for more buffer than what presently exists at the Seafax lot. "I think the town is protected" and "Quite frankly I'm not interested in a 75 foot buffer. I'm afraid I'm not gonna be able to sell these lots. I need to have a viable subdivision when we're all done." In response to further comments by Mr. Cimino, Attorney Phil Gleason clarified "we can not live with the 75 foot buffer. We have no confidence in being able to gain flexibility from the Planning board on that point." The public hearing was closed at 9:12 p.m.

Councilor Turner stated "We're looking at a historical situation that we're all well aware of." These things come down to a question of benefit and burden. Even a ledge face is going to eventually have some kind of building in front of it. He believes the 35 foot compromise, under the circumstances, makes sense. "We do have a checks and balance system sufficient with individual sites being looked at by the Planning Board to take care of any problems that arise down the road."

Councilor Storey stated that if some of these questions had been posed prior to the development of the northern end of Route One, "all of Schooner Ridge would have come out. You couldn't possibly picture what it was gonna look like. The best we can do is have our safeguards built in." Councilor Kuntz believes it is the council's legislative responsibility to determine whether these are viable projects. "I think it's gonna be good for the town of Cumberland." Mr. Chase "could very well go back to the original agreement and bring something that none of us want." Councilor Moriarty questioned why the walkway is placed in the buffer rather than right-of-way. Mr. Chase responded that "that's an awful lot of buffering. The only way we added the ten feet was to accommodate the walkway." The buffer is a 25 foot undisturbed buffer and Mr. Chase feels it is more than sufficient as it is. Councilor Porter expressed comfort with the proposal "as drafted. This has been what a public process should be. I can see the neighbors concerns. I am very confident with what is going on here; I don't want to go backwards." Councilor Damon asked whether it can be included in the contract that the buffer would not be disturbed during the first five years. "That might give that extra buffer" during the clearing of the land "and give that potential to the buyer to be more restrictive." Councilor Moriarty questioned whether this item is in order for approval this evening. In response, Manager Shane, stated that "the missing component is the time schedule as to how this would progress. Outside of that, I believe everything else is in order to go forward."

Councilor Porter moved, seconded by Councilor Kuntz, to approve an amendment to the Route One South Contract Zone for Cumberland Foreside Village, LLC, Map R01, Lot 11, 11B, 8 and 7, as drafted.

At this time, Councilor Kuntz moved to amend the motion. After discussion, Councilor Moriarty clarified the amendment as follows: "to make the vote on the main motion conditional upon subsequent approval, review and approval by the council of the four designated attachments, presumably at our next meeting, our next scheduled meeting."

AMENDMENT VOTE: UNANIMOUS PASSAGE 7-0
MAIN MOTION AS AMENDED: UNANIMOUS PASSAGE 7-0
TIME: 9:42 p.m.

A short recess was taken.

06 – 086. To hold public hearing to consider and act on the On Premise Hotel License(Class 1-A), Off Premise Liquor License, Victualer's and Special Amusement permit renewals for Chebeague Island Inn for the period June 2006-2007.

The Manager indicated all inspections were complete and satisfactory and the licenses were in order for consideration.

Motion by Councilor Storey, seconded by Councilor Turner, to approve an On Premise Hotel License (Class 1A) Off-Premise Liquor License, Victualer and Special Amusement Permit renewals for Chebeague Island Inn for the period June 2006-2007.

VOTE: PASSAGE 6-1 (Councilor Kuntz opposed)

06 – 087. To hold public hearing to approve Solid Waste Commercial Hauler's Licenses for the period June 2006-07.

Each of the five existing Commercial Haulers has submitted renewal applications. They include BBI-Waste Industries, Old Orchard Beach; Waste Management of Maine, Portland; Pine Tree Waste, Scarborough; Troiano Waste Services, Portland; and Reynolds & Sons Disposal, Portland. The licenses are in order for consideration.

Motion by Councilor Moriarty, seconded by Councilor Storey, to approve the Solid Waste Commercial Hauler's Licenses.

VOTE: UNANIMOUS PASSAGE 7-0

06 – 088. To hold public hearing to consider and act on a sewer rate increase for fiscal year 06-07.

The Manager explained letters were mailed to each of the 1,000 sewer system users. A 15% increase is proposed effective July 1 2006. Councilor Turner expressed his belief that perhaps the town should have sewerred the bulk of the town originally. "If it gets inordinate, the town as a whole ought to have some responsibility" in the future.

Motion by Councilor Moriarty, seconded by Councilor Damon, to approve a 15% sewer rate increase for Fiscal Year \ 06-07.

VOTE: UNANIMOUS PASSAGE 7-0

06 – 089. To hold public hearing to consider and act on a Resolution relating to the establishment of a 401 Retirement plan.

The Town Clerk/Human Resources Director explained this item relates to the establishment of an additional retirement plan for senior level employees. This plan differs from the existing 457 plan in that it does not require contribution matching contributions. Employer contributions are not subject to FICA, saving the required employer Social Security and Medicare contributions otherwise made by the town. This plan also provides another retirement tool for those senior level employees who may be reaching maximum contribution levels under the 457 plan. As a management tool, contributions to the plan may be made in lieu of salary increases. Contribution levels may also vary by employee or group. She also explained this plan can be used as a recruitment and retention tool by the Manager. Additionally, the Town Manager's recent contract renewal included a new 401 plan, in addition to his 457 plan.

Motion by Councilor Porter, seconded by Councilor Kuntz, to authorize the Town Manager to execute a Resolution relating to the establishment of a 401 Retirement Plan.

VOTE: UNANIMOUS PASSAGE 7-0

06 – 090. To make appointments to Boards & Commissions.

Councilor Porter explained the Nominating Committee interviewed 20 plus candidates, indicating there was a very good mix of people involved in the past, as well as new candidates and two student representatives. He identified the nominees as: Coastal Waters Commission – Paul Belesca, 62 Sawyer Road; and Comprehensive Plan Committee – Bob Vail, 177 Main Street; Mark Robinson, 388 Main Street; Jo-Ann Smith, 226 Blanchard Road; Daniel Nuzzi, 271 Main Street; Randall Copp, 144 Gray Road; Bill Follett, 371 Main Street; Emily Hill, 33 Skillin Road; R. Samuel York, 1 Fox Run Road; Peter Hayes, 15 Farwell Avenue; Eileen Wyatt, 363 Tuttle Road; Mark Lapping, 12 Acorn Lane; Megan Stroud, 23 Cider Hill Lane (student); Peter Bingham, 19 Brook Road; Ruth Frydman, 12 Mill Ridge Road; John Ferland, 2 Birch Lane; and Patrick Skahan, 8 Oak Ridge Road. The student members will be non-voting members. One or two council liaison members are also anticipated, as well as SAD and Planning Board representatives.

Motion by Councilor Porter, seconded by Councilor Moriarty, to appoint those persons named above.

VOTE: UNANIMOUS PASSAGE 7-0

06 – 091. Notice of Election and extended voter registration hours.

The Town Clerk noted that she will offer extended hours to conduct voter registration and absentee voting. She reminded the viewers that absentee ballots are available by telephone, mail, fax or in person; however, email requests for absentee ballots can not be accepted. Friday, May 26, 2006, represents the deadline for a voter to change their party designation, and after that date, all new voter registrations must be received in person. She also explained that a new law will be in effect for the first time during the June 13, 2006 primary election, which requires our voting machines to “kick back” any ballot which contains more votes than is required for a candidate race. If a race instructs the voter to vote for one, even though the field of candidates includes more than one candidate, and the voter votes for more than one candidate the ballot will be returned to the voter by the machine and the voter will then be requested to vote a second ballot. The rejected ballot will be spoiled by the election worker and a replacement ballot issued.

Motion by Councilor Kuntz, seconded by Councilor Damon to set the following extended voter registration hours for the June 13, 2006 election, as recommended by the Town Clerk: Wednesday, June 7 and Thursday, June 8, 2006 from 5:00 to 7:00 p.m., and Saturday, June 10, 2006 from 8:00 am to Noon.

VOTE: UNANIMOUS PASSAGE 7-0

06 – 092. To consider and act on a change in Council venue for the June 12, 2006 regular meeting.

Due to the use of the Chambers on Election Day, the Manager requested the next town council meeting be changed either in date or location.

Motion by Councilor Porter, seconded by Councilor Damon, to move the next town council meeting to Thursday, June 15, 2006 at 7:00 p.m.

VOTE: UNANIMOUS PASSAGE 7-0

06 – 093. To send amendments to the Zoning Ordinance, Section 414, Home Occupations to the Planning Board for its review and recommendation.

Councilor Moriarty explained he, Councilor Turner and the Town Manager have held several meetings with the Code Enforcement Office, William Longley to discuss the ordinance regulating home-based businesses. In particular a “business based in one’s home but all the work is done elsewhere; on the road for instance.” The proposed amendment has “already been reviewed by the Zoning Board of Appeals” with some “minor tinkering.” This amendment would allow home-based occupations as defined to take place in town subject to special exception. A special exception would not be required for “minimal type home businesses.” It is designed to take care of a “vacuum that currently exists in the zoning ordinance.” Councilor Turner added that they “left in some equivocal language with the intent of making sure we give the ZBA as much ability to make decisions on a meritorious basis as possible and still maintain the legal standard of language that needed to be in place.”

Councilor Damon expressed concern that businesses such as an oil company or plow service, which have been operating in the past, will find the changes “onerous.” If “all these things have to go to the ZBA, is anybody ever gonna have a business again in town?” The Chair commented that under section 414.1 a home occupation or home-based occupation does not require approval as a special exception if the seven conditions stated are met and there are no exterior indications of the home based occupation.

Motion by Councilor Porter, seconded by Councilor Kuntz, to send amendments to the Zoning Ordinance, Section 414, Home Occupations, to the Planning Board for its review and recommendation.

VOTE: UNANIMOUS PASSAGE 7-0

06 – 094. To authorize the Town Manager to reallocate funds within the existing 2006 Town Budget.

The Manager explained this action generally occurs annually and is required by Charter. Any appropriations over the budgeted amount must be authorized by Manager pursuant to the Charter. Although overall expenses are in line, there are certain expenses which are over budget in several departments, such as fuel, salt, and library mold remediation expenses. We did not exceed our overall budget; in fact we were able to allocate \$100,000 in revenues toward the next budget year.

Motion by Councilor Turner, seconded by Councilor Damon, to order that the Town Manager is authorized to transfer revenues and unexpended operating funds from the 2006 fiscal year budget to cover unanticipated overages in the FY 2006 Operations Budget. Be it further ordered that the Town Manager is hereby authorized to transfer \$100,000 from Undesignated Fund Balance to be applied for property tax reduction purposes in FY 2007.

VOTE: UNANIMOUS PASSAGE 7-0

06 – 095. To set public hearing date of June 12, 2006 to consider and act on amendments to the Zoning Ordinance, Section 204.9.1, Industrial District Regulations re: Additional Permitted Uses.

The Manager indicated the amendment was changed from the Industrial Zone to the Office Commercial Zone at the town Council level. As such, a second advertisement is required. Additionally, the Manager will bring the item before the Planning Board again, to represent the council’s revision to the OC Zone, and will add Mr. Chase’s request for an increase in the structure size from 15,000 to 20,000 square feet.

Motion by Councilor Porter, seconded by Councilor Kuntz, to send the amendment changes to the Planning Board.

VOTE: UNANIMOUS PASSAGE 7-0

06 – 096. To set public hearing date of June 12, 2006 to consider and act on amendments to the Traffic Ordinance to add stop sign locations.

It was noted to remove Birch Lane at Wildwood Boulevard. It should state Concord at Wildwood. The Manager will return this location at a later date. Dean’s Way at Route 88 was also removed. All streets noted have existing stop signs.

Motion by Councilor Porter, seconded by Councilor Kuntz, to set a public hearing date of June 15, 2006.

VOTE: UNANIMOUS PASSAGE 7-0

• Carriage Road	at Route 88	• Pine Lane	at Ocean Terrace
• Hallmark Road	at Carriage Road	• Birch Lane	at Wildwood Blvd
• Surry Lane	at Carriage Road	• Sylvan Lane	at Birch Lane
• Heritage Road	at Carriage Road	• Sylvan Lane	at Pine Lane (south)
• Heritage Road	at Route 88	• Dean’s Way	at Route 88
• Hallmark Road	at Route 88	• Sea Cove Road	at Route 88
• Longmeadow Road	at Route 88	• Union Road	at Highland Ave
• Starboard Lane	at Route 88	• Road 3 and 3a	at Forest lake Road(east)
• Lantern Lane	at Route 88	• Whitney Road	at Orchard Road(south)
• Highland Ave	at Old Gray Road	• Mill Ridge Road	at Mill Road
• Union Road	at George Road	• Valley Road	at Bruce Hill Road(south)
• Lake Road	at Union Road	• Bruce Hill Road	at Pleasant Valley Road(north)

V. NEW BUSINESS

Councilor Turner - none

Councilor Damon - request from resident for streaming video of email addresses across the bottom of local cable access channel. Info re: Memorial Day Parade put on website

Councilor Storey - none

Councilor Kuntz – none

Chairman Stiles – absent last meeting – was a guest at Lions Club and honored as Citizen of the year; received a letter from churches on Sports Done Right initiative; Maritime Northeast pipeline request; carcass of a large dog was deposited at the fairgrounds property - counseled public regarding dumping on private property..

Councilor Moriarty – pipeline – will there be a town position on the pressure increase request? Fire chief will issue his recommendation. Next meeting is 3.5 weeks away - suggested workshop on Range Way.

Councilor Porter – complimented North Yarmouth on the sidewalk installation along Route 9 – asked where we are with discussions re: Police coverage. Chair will wait for new council to hold meeting with No Yarmouth. Councilor Moriarty requested a workshop prior to that meeting; reminder re: compost bins available at town hall for \$30; complimented suburban little league on the field conditions; he and Peter Bingham will host a candidate's night on Wed 5/31 at 7:00 pm.

Town Manager – request from citizen on Tuttle Road re: entrance to Twin Brook across from Harris Road. He will present it to the Twin Brook Advisory Board; new council orientation meeting this Wednesday and Thursday evenings for all town council candidates; Island Pond request – asked for a workshop before the next meeting and suggested Police Chief and Island Pond Road road acceptance and Range Way be addressed as well.; June 15th will be a meeting and workshop following; meeting on the 19th to swear in new council members and a meeting to follow at 7:00 p.m.

VI. ADJOURNMENT

Motion by Councilor Porter, seconded by Councilor Moriarty, to adjourn.

VOTE: UNANIMOUS PASSAGE 7-0

TIME: 10:49 p.m.

Respectfully submitted,

Nadeen Daniels, CMC
Town Clerk