

MINUTES
CUMBERLAND TOWN COUNCIL MEETING
Town Council Chambers, 290 Tuttle Road
Monday, June 26, 2006

7:00 p.m. – CALL TO ORDER

Present: Chairman Moriarty, Councilors Copp, Damon, Turner, and Stiles.

Excused: Storey-King and Porter.

I. APPROVAL OF MINUTES

Motion by Councilor Stiles; seconded by Councilor Copp; to approve the May 22, 2006 minutes as printed.

VOTE: UNANIMOUS PASSAGE 5-0

Motion by Councilor Stiles; seconded by Councilor Copp; to approve the June 15, 2006 minutes as printed.

VOTE: UNANIMOUS PASSAGE 5-0

Motion by Councilor Stiles; seconded by Councilor Damon, to approve the June 19, 2006 minutes as printed.

VOTE: UNANIMOUS PASSAGE 5-0

II. MANAGER'S REPORT

The Manager requested the addition of an Executive Session this evening to discuss real estate and personnel matters. At the July 10, 2006 meeting, Director Bill Landis and Asst. Director Sarah Davis will be present to provide a Recreation & Community Education Report. Also at the July 10, 2006 meeting, a representative from the Maine Turnpike Authority will speak about the Cumberland Turnpike "plaza reconstruction." It is currently slated to become a 24 hour truck stop, and neighbors have expressed concerns regarding lighting and other issues. The MTPA and MDOT are exempt from the local Planning Review process; however, they have agreed to attend our meeting to receive comments. The Manager will notify the residents of West Cumberland, within 1,000 feet of the turnpike, of the meeting date.

III. PUBLIC DISCUSSION

None.

IV. LEGISLATION AND POLICY

06 – 107. To hold a public hearing to consider and act on amendments to the Zoning Ordinance to add Self Storage Facilities as a permitted use in the southern OC Zone.

Chairman Moriarty described the Southern OC Zone as that portion along Route One beginning from the Falmouth line running north. This new use is recommended only for the Southern Zone, "and nowhere else in town." Questions were posed regarding how this issue came about. The Manager explained the Contract Zone of David Chase had a self-storage component to it and a new definition needed to be developed. The amendment envisions the type of facility currently found in the Maine Mall area of South Portland; a facility that has "some architectural style" to it.

Councilor Damon asked if these are "guidelines as such, or are they binding? My concern is either we want something to be a certain way, or we don't. Do they really have any real meaning?" The Manager clarified that this is an ordinance and not a guideline. There are guidelines; however, related to the architectural style of the building. Councilor Turner suggested "guidelines are real; it's a question of how you interpret guidelines."

Motion by Councilor Stiles; seconded by Councilor Turner, to amend Section 204.8, Office Commercial, of the Cumberland Zoning Ordinance, to add Subsection 204.8.1.11 to allow Self-Storage Facilities as a permitted use in the Southern OC District only.

VOTE: UNANIMOUS PASSAGE 5-0

Motion by Councilor Stiles; seconded by Councilor Copp; to amend Section 104, Definitions, of the Cumberland Zoning Ordinance to add Subsection 104.117-A, Self Storage Facilities.

VOTE: UNANIMOUS PASSAGE 5-0

Motion by Councilor Stiles; seconded by Councilor Copp, to amend the Cumberland Zoning Ordinance to add Section 423-A, Self Storage Facility.

VOTE: UNANIMOUS PASSAGE 5-0

06 – 108. To hold a public hearing to consider and act on an increase of the annual compensation for Town Council members from \$1,200 to \$2,000 and from \$1,200 to \$2,400 for the Chairman for FY 08.

Chairman Moriarty stated this recommendation for compensation increase was raised “some months ago” by then-councilor Harland Storey. Councilor Damon added the selectmen were compensated “from the first day the town was founded.” They were compensated based on the number of hours contributed. “So if you looked at it in today’s dollars, they were compensated at a much, much, higher rate than we are compensated.” Chairman Moriarty explained the council has existed since 1973 and the original town charter established pay at \$600 per year for 1 year. In November of 1999 a charter amendment was approved by the voters doubling the pay to the current \$1,200. It has remained at \$1,200 for sixteen years. Therefore, since originally established, there has been “only one pay increase in the 33 ½ years.” The item is on the agenda as a public hearing, and “there are a number of options for the council to consider.” They include: no interest in an increase in any form; an increase in the form of an ordinance; or submission of a charter amendment to the voters. The Chair indicated he will support a motion for increased compensation, but is undecided about an ordinance or charter amendment. Any increase in compensation would take effect on July 1, 2007.

Councilor Damon clarified that the increase has been budgeted and the charter clearly provides for the council to make this decision. “I have the least to gain from this. And, I agree with Mark that the amount of time put in on this council ...there’s no way you can compensate people, but you can recognize the fact ...that this just isn’t when we’re on TV. There are many, many nights.” The council “should not be embarrassed to do this. The time has come. We’re talking about a raise of \$800 per person. It’s in recognition of the work that people are doing.” She questioned if and to what amount the SAD directors receive compensation. Councilor Damon encouraged residents to express their opinions at or before the next council meeting. Councilor Copp indicated he does “not feel right that I should vote to give myself a raise” after only two weeks on the council. “I have no problem” with the raise for existing councilors. Councilor Turner stated that as a one year councilor he feels that “the people ought to have a right to vote.” He feels an ordinance change would show we have “guts enough” to suggest we’re “worth” the amount being recommended. “So, I’m open to either one of those.” Councilor Stiles expressed his support for action this evening.

Former Councilor Mark Kuntz spoke stating that “Over the last nine years, I do realize the tremendous amount of hours the council puts in on an annual basis. We don’t appreciate how much the council does on a day-to-day basis. This is all time you folks spend away from your families. The public in the town of Cumberland should be able to appreciate the amount of time that their elected officials put in and should compensate them accordingly. You do deserve a raise.” The compensation will increase from \$8,400 to \$14,000. “It is a pittance.”

Councilor Stiles moved; seconded by Councilor Damon, to create the appropriate ordinance to increase the salaries as suggested to \$2,000 and \$2,400 and put that on the docket for proper notice and voting procedure. An amendment was then made by Councilor Stiles, and seconded by Councilor Damon, to set a public hearing date of July 10, 2006.

VOTE: UNANIMOUS PASSAGE 5-0

06 – 109. To hold a public hearing to consider and act on Annual Victualer’s Licenses for the period July 2006-2007.

Councilor Damon requested clarification regarding licensing of non-profits. The clerk explained that all establishments processing, handling or serving food are required to obtain a victualer’s license; however, there is no fee required of the non-profit agencies. A license is required to ensure proper inspections for obvious food safety reasons.

Motion by Councilor Stiles; seconded by Councilor Turner, to approve the roster of Annual Victualer's licenses for the period July 2006-2007.

VOTE: UNANIMOUS 5-0 PASSAGE

06 – 110. To hold a public hearing to consider and act on a Swimming Pool License for the Chebeague Island Recreation Center.

The Health and Code Officers are recommending approval. No public input received.

Motion by Councilor Copp; seconded by Councilor Stiles; to approve a Swimming Pool License for the Chebeague Island Recreation Center for the period July 2006-2007.

VOTE: UNANIMOUS PASSAGE 5-0

06 – 111. To hold a public hearing to consider and act on amendments to the Zoning Ordinance, Section 414, Home Occupations.

Chairman Moriarty stated this is this item deals with the various issues related to the changes with the home occupations language. The council referred draft language to the Planning Board at their June 20th meeting. Two actions are needed; substitute the existing language of Section 414, and add a Home-Based definition.

Alex Lear, Community Leader, asked the difference between a home occupation and a home-based occupation. Home based is a business based out of a home, but the work is done elsewhere, or in some cases a series of different locations.

Councilor Damon questioned what type of business falls within this requirement. She gave the example of a music teacher, dress maker, or a tutor operating from home. Would the business owner be required "to go through these hoops?" Chairman Moriarty responded that the ordinance has been in effect since 1989, and "we have not tried to micromanage people's lives...or intrude into their affairs, so it's hard to know when an occasional lesson becomes a genuine occupation. It almost comes up on a case by case basis." Councilor Turner added "people who come for home occupations do it on a very regular basis. It isn't a question of ... a piano lesson every three months or that kind of thing." Councilor Damon is concerned that there is much discretion given to the Code Enforcement Officer. "It just seems like its overkill. The "real estate offices....are very different than somebody making a dress." Councilor Turner felt the language was originally drafted for the home crafter, etc, and evolved to include businesses like a dentist. The Manager explained the process of determination is usually initiated by a complaint. "When there's a complaint...the Code Officer" addresses it. It's just not gonna happen" where these small home-businesses are actively sought out by the CEO. "It's the guy that has the UPS truck...backing out of his yard four times a day" that will likely result in a complaint to the town. Councilor Turner added that many home-based business owners come forward for tax reasons. The Manager concurred, adding that such a case recently occurred, and "that one piece of paper allowed them to continue to work out of their home." Councilor Stiles thanked Councilors Turner and Moriarty for their time in writing the ordinance to make it clear. "Hopefully, it fits the bill."

Motion by Councilor Stiles; seconded by Councilor Turner, to substitute Section 414, Home Occupations, of the Cumberland Zoning Ordinance, with a revised Section 414, Home Occupations and Home-Based Occupations, which shall include subsections 414.1, 414.2, 414.3 and 414.4

VOTE: UNANIMOUS PASSAGE 5-0

Motion by Councilor Stiles; seconded by Councilor Turner, to amend Section 104, Definitions, of the Cumberland Zoning Ordinance, to add subsection 104.60-A, Home-Based Occupation, as follows: Home-Based Occupation: Accessory use based or located within a dwelling or accessory structure by the residents thereof, but performed at a location or locations remote from the dwelling, which is clearly secondary to the dwelling used for living purposes and does not change the character thereof.

VOTE: UNANIMOUS PASSAGE 5-0

06 – 112. To receive a request by Gene Stratton for a 40 acre zone exemption and to consider referral to the Planning Board for its review and recommendation.

The Manager received a letter from Mr. Gene Stratton indicating his intent to sell approximately fifty (50) acres of land located in West Cumberland. Mr. Stratton is requesting the council consider a change to the Subdivision Ordinance to exempt lots larger than 40 acres in size from the requirement for subdivision review. “He is trying to sell a parcel that’s over 50 acres” explained the Town Manager. “This sale under our ordinance would trigger subdivision review.” The state said last year that “if you want to exempt 40 acre parcels, you have to exempt it specifically in your ordinance. This truly is a hardship case. This is the only way we can make it work for Mr. Stratton. There are no unintended consequences” envisioned at this point.

Councilor Damon moved; seconded by Councilor Turner, to send a request by Gene Stratton for a 40 acre zone exemption to the Planning Board for review and recommendation.

Councilor Turner questioned whether the council should provide guidance/direction to the Planning Board. The Manager indicated he will convey staff support. Councilor Damon asked if the intent this evening is to add the language to the ordinance. It is, and the Manager will convey that as well. Councilor Stiles stated he would prefer to include the clarification in the vote. Councilor Damon amended the motion to include council support of the ordinance amendment.

VOTE: UNANIMOUS PASSAGE 5-0

06 – 113. To set a public hearing date of July 10, 2006 to consider and act on a Tax Anticipation Note.

Motion by Councilor Stiles; seconded by Councilor Turner, to set a public hearing date of July 10, 2006 to consider and act on a Tax Anticipation Note.

VOTE: UNANIMOUS PASSAGE 5-0

06 – 114. To set a public hearing date of July 10, 2006 to consider and act on a Bottle Club Liquor License and Special Amusement permit for the Chebeague Island Hall Community Center for the period August 2006 through August 2007.

Motion by Councilor Stiles; seconded by Councilor Damon, to set a public hearing date of July 10, 2006 to consider and act on a Bottle Club Liquor License and Special Amusement Permit application for the Chebeague Island Hall Community Center for the period August 2006 through August 2007.

VOTE: UNANIMOUS PASSAGE 5-0

06 – 115. To set a public hearing date of July 10, 2006 to consider and act on acceptance of Island Pond Road as a Town Road.

Motion by Councilor Damon; seconded by Councilor Turner, to set a public hearing date of July 10, 2006 to consider and act on acceptance of Island Pond Road as a Town Road.

VOTE: UNANIMOUS PASSAGE 5-0

V. NEW BUSINESS

Councilor Copp – none.

Councilor Damon – read letter from student at GHS re: unit looking at local or environmental issues, who researched the science component. One of the best letters she’s read – student’s name is Juliet Mitchell and letter was re: urban sprawl and the resulting increase in green house gases by the need for automobiles. Manager felt many of these issues will be addressed during the Comprehensive Plan and Chairman will reply to her letter.

Councilor Turner – daughter got married on Chebeague Island this weekend; agreed with Donna re: letter.

Chairman Moriarty – great time on Chebeague; really nice event.

Councilor Stiles – attended the annual GPCOG meeting and town received a recognition award for Best Practice in Management and Collaboration for their work around the secession; town received a fire award for \$1400 safety grant and \$2000 for traffic control devices; notification from Mr. McDonald re: town flag; received a \$100 donation to Twin Brook from a Yarmouth resident.

Town Manager – town flag was an idea of Mr. McDonald; a request for road improvement.

VI. ADJOURNMENT

Motion by Councilor Stiles; seconded by Councilor Damon, to recess to Executive Session pursuant to 1 M.R.S.A., Section 405(6)(c) re: real estate and Section 405 (6)(A) re: personnel matters.

VOTE: UNANIMOUS 5-0 PASSAGE

TIME: 8:07 p.m.

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

VOTE: UNANIMOUS 5-0 PASSAGE

TIME: 9:05 p.m.

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

VOTE: UNANIMOUS 5-0 PASSAGE

TIME: 9:05 p.m.

Respectfully submitted

Nadeen Daniels, CMC
Town Clerk