

The County of Cumberland is committed to providing quality services to all citizens equitably, in a responsive and caring manner.

COMMISSIONERS' MEETING

MINUTES

September 14, 2009

The Board of Cumberland County Commissioners Malory O. Shaughnessy, Richard J. Feeney and James F. Cloutier convened a meeting at the Cumberland County Courthouse in the Peter J. Feeney conference room.

Chairperson Shaughnessy called the meeting to order at 5:30 PM. The following business was conducted.

Minutes of the Cumberland County Commissioners regular meeting held on August 24, 2009 were read and approved unanimously.

Comments from the County Manager:

The County Manager reported on the following: 1) The Budget Advisory Committee's Organizational Meeting will take place Wednesday, September 16th at 4:30 PM. 2) The 2009 Annual Conference for Maine Counties took place on September 11th, 12th and 13th at Point Lookout in Northport, Maine. He indicated there were some very positive things that came out of the conference in terms of the organization and structure of the Maine County Commissioners Association. It was a pleasure to have Teresa Altemus, President-elect of the National Association of Counties and Tom Goodman at the convention.

Comments from the Commissioners:

Commissioner Feeney:

Commissioner Feeney read a letter from the Freeport Flag Ladies thanking Assistant County Manager Bill Whitten for keeping his word and for his willingness to help them with their van so they were able to pursue their mission. Commissioner Feeney thanked Mr. Whitten for his instrumental work to have the American flag flown and lit on Fort Gorgeous 24-7, as well as the repair and renovation of the *aft mast* of the USS Portland at the Eastern Promenade.

Commissioner Cloutier:

Commissioner Cloutier reported that at his District 1 Caucus John Anton of the Portland City Council was elected to serve on the County Budget Advisory Committee. There is one more BAC position from District 1 still vacant. If anyone is interested in serving on the Budget Advisory Committee, please contact the Commissioner's Office.

Chairperson Shaughnessy:

Chair Shaughnessy reported: 1) It was a real good turnout for the Maine County Commissioners Association Convention. The MCCA did vote on expanding the Board to include the affiliate members, i.e. Register of Deeds, Register of Probate, Emergency Management, Emergency Communications, County Administrators, etc. will now have voting representatives on the Board to discuss issues and problems with a more unified front. 2) Teresa Altemus, President-elect of the National Association of Counties, spoke about new programs such as a new dental care program to offer to citizens at a really good price, in addition to the prescription card program which has saved our citizens about \$15,000 to date. The prescription drug card program is free to any person who is a resident of Cumberland County. They can get a discount on their prescriptions including their pets. Elizabeth Trice, Grants and Special Projects Coordinator, is the contact person if people have any questions or would like cards. 3) Steve Johnson, Commissioner from Colorado, spoke at the convention regarding TABOR II and how it has affected Colorado. He cautioned the MCCA about passing a TABOR II initiative here in Maine and how it has been so destructive to Colorado governments.

Comments from the Public:

Chair Shaughnessy asked if there were any comments from the public. Hearing none, she asked for the Action Items to be presented.

Chair Shaughnessy asked Aaron Shapiro, Director of the Community Development Block Grant program to present his 2008 HUD Report.

Director Shapiro reported by September 30th each year the Cumberland County Community Development Office is required to submit a Consolidated Annual Performance Evaluation Report (CAPER) to HUD. The CAPER details the expenditure of HUD funds and accomplishments achieved during the program year (July 1 – June 30).

Funds received:

2007 CDBG - \$1,462,123

2008 CDBG - \$1,458,560

Funds expended:

2007 CDBG - \$1,197,556

2008 CDBG - \$1,031,947

2008 Accomplishment Highlights

1) PROP - Housing Rehabilitation

Funded Amount: \$180,000

Funds Expended: \$146,247

Projects Completed: The program completed 6 projects and provided significant funding resources for the replacement of 2 manufactured housing units reported under the Freeport Housing Rehabilitation Program. Three projects in Windham, 2 in Bridgton and 1 in Naples.

2) Alpha One - Critical Access Ramp Program

Funded Amount: \$40,000

Funds Expended: \$38,730.64

Projects Completed: 5 ramp projects have been completed. Ramp components have been constructed and a small amount of installation funds remain to complete one additional project. Two projects were extremely costly and as such the program was unable to fulfill its projected unit goal. The average project cost was \$6,577. All projects benefited income qualified clients that have mobility handicaps. Two of the households had incomes below 30% AMI. Two projects in Scarborough, 2 in Harpswell, 1 in Naples.

3) Gorham - Ecumenical Food Pantry

Funded Amount: \$44,000 (2008); \$8,380.61 (2007, reprogrammed funds)

Funds Expended: \$52,380.61

Project completed and being well utilized. Pantry provided food to 492 individuals residing in 247 households. 15% of clients were disabled; 10% elderly; 25% female headed single-parent households.

4) Standish - Steep Falls Village Library

Funded Amount: \$31,000

Funds Expended: \$31,000

CDBG funded project – electrical upgrade, chimney reconstruction, roof repairs completed. Reconstruction of front steps with local funds to be completed.

5) Naples – Singer Community Center

Funded Amount: \$50,000 (2008); \$10,000 (2007, reprogrammed funds)

Funds Expended: \$32,389.73. Final payment to contractor to be made after final punch list inspection approved. Facility is complete.

6) Bridgton – Sewage Treatment, Septic/Leach Field Reconstruction

Funded Amount: \$192,468 (2008)

Funded Amount: \$200,793 (2007)

Funds Expended: \$200,793

Work on the reconstruction of the primary septic & leach field, the “Dodge” Field and the pre-treatment facility began in late fall 2008 and was completed in June 2009. Work on the second septic & leach field area, the “Ball Field” began in July 2009 and will be completed by December 2009. \$171,878 of the \$192,468 funds allocated to the project in 2008 were drawn down in July 2009.

7) Gray – Village Revitalization

Funded Amount: \$155,000

Funds Expended – public construction \$80,050 (July 9, 2009)

Funds Expended – private construction \$33,587

Phase I of the Town of Gray’s village improvement program is nearing completion. Three facades on the “Clark Block” and public improvements to the block (sidewalks, streetlights, park improvements) are 90% completed.

8) PROP – Homeless Case Management Services

Funded Amount: \$115,000

Funds Expended: \$ 72,394.88 - balance of funds to be drawn down in September 2009.

This project has been extremely successful at two tasks: homeless prevention and early intervention for those recently homeless. 180 households with a total of 199 adults and 134 children for a total of 333 individuals have been served by the program.

9) Freeport – Housing Rehabilitation/Housing Replacement

Funded Amount: \$40,000

Funds Expended: \$10,043.75 (2008); \$7,924.25 (2007)

Projects Completed: One mobile home in Wardtown Park and one outside the park were replaced. Two projects funded under the 2007 program were also completed during the past year. All the homes replaced were old, unsafe and decrepit condition and replaced with new manufactured homes. A balance of \$29,956.25 remains to be committed to projects in the coming months.

10) South Portland Activities

South Portland operates its community development program as a special set-aside of the county program. They select projects and manage their program independently. Recent program accomplishments have included the conclusion of the Waterman Drive improvements and the replacement of the Memorial School tennis courts with a roller hockey and basketball court. In 2008 South Portland operated a small housing rehabilitation program, funded 8 social service activities, and completed a variety of public improvements.

Leveraged Resources - \$386,873 total

Regional Housing Rehabilitation Program - \$164,357

Alpha One, Critical Access Ramp Program - \$2,765.62

Freeport Housing Rehabilitation & Replacement Program - \$73,815

Town of Naples – Singer Community Center - \$47,570

Town of Gray – Downtown Revitalization - \$53,568
Town of Gorham – Ecumenical Food Pantry - \$37,047.79
Town of Standish – Steep Falls Village Library - \$7,750

Project Completion

Since its inception the program has funded 48 projects, 26 in South Portland and 19 throughout the County. 8 of the South Portland projects and 3 of the County projects received funding in both 2007 & 2008.

Of the County sponsored or county community based projects, 1 is stalled, 1 was delayed and 1 is behind schedule. All others have progressed as planned. The Lakes Region Transit project funded in 2007 has not yet begun. A Housing Planning study funded in 2008 is just now beginning. The 2008 Freeport Housing Rehabilitation/Replacement program has been somewhat slowed but should be completed by spring 2010.

For the City of South Portland, one project is behind schedule. In several instances projects have been canceled or funded in other ways with funds reprogrammed to new activities. The Mill Creek Park gazebo project funded in 2008 is yet to begin. Overall South Portland is expending funds at a good rate.

Other Activities to Report

1) Homeless Prevention Rapid Re-housing – HPRP Grant

Program will begin this September. Essentially this is a continuation and expansion of the Homeless Case Management program we've funded with CDBG funds in '07 & '08.

2) Neighborhood Stabilization Program – NSP - South Portland & Westbrook

The first project in Westbrook is underway. 917 Main Street has been purchased and will be demolished within two weeks. Construction of 6 new units will take place beginning spring 2010. This will likely utilize all of Westbrook's \$930,000 allocation.

3) HOME Consortium

Just now getting started. Portland has not hired staff as originally agreed. Setting up the PROP managed housing rehabilitation program will take place this month.

4) CDBG – Recovery Funds

Half our projects will be completed this fall, the balance in the spring. Funds are just now in place – not nearly as fast as promised.

Chair Shaughnessy asked Elizabeth Trice, Coordinator of Grants & Special Projects to present her report.

Ms. Trice gave the following EECBG Update

1. EECBG Competitive Grants for Communities and Counties

Efficiency Maine will be giving \$5.6M to Municipalities and Counties not already receiving EECBG funds.

The deadline is around November 1 with the application due out any day.

State plans two tracks:

Template option: easy, non-competitive \$10,000 planning grants for small communities. Custom option: up to \$85,000 per community.

Also funding regional proposals- up to \$500,000 or \$1M.

Contact: John Brautigam, Director, Efficiency Maine John.R.Brautigam@maine.gov

2. Renewable Resources Grant – State Energy Office - Due Sept 30th

Bruce Tarbox is drafting a proposal to install photovoltaics on our Parking Garage or our regional communications center, send electricity into a grid and get an equal amount.

4 or 5 9x12 foot panels produce about 10KW, which is about what the parking garage uses in one year. Mr. Tarbox is getting estimates, but figures it may cost \$40,000 - \$80,000 and save about \$2,000/year, and should last at least 20 years

Grant requires the County to pay 20% of project or about \$16,000, but this match can come from EECBG funds.

3. Regional updates: Mr. Tarbox and I met with other communities to get updates and brainstorm regional projects. The state program allows regional projects, but doesn't create incentives.

South Portland: interested in energy conservation, distribution and production. They will probably hire a part-time coordinator to do that.

Westbrook: has two energy production facilities and wants to leverage those.

Brunswick: focusing on buildings and library with gas conversions.

GPCOG: interested in transportation. Rebecca Schaffner is working on a greenhouse gas inventory through ICLE for Yarmouth, South Portland, and Cape, also working on a regional greenhouse gas inventory.

Portland: Amaresco has completed audits in 55 public facilities. The City plans to put over \$500,000 into buildings and hire a sustainability coordinator, not sure what coordinator will do.

State: Will be spending \$10M for residential efficiency. They want to achieve 24-30% efficiency in 10,000 homes per year for the next 2-3 years. They also have \$15M for commercial audits and incentives for replacement of motors, lights, refrigeration.

They have \$10M in industrial grants with \$100,000 to \$1M for weatherization, energy production. They also have \$11.4M to convert public buildings to wood heat.

4. Regional Projects

Listed below are suggestions for soliciting other ideas?

1. Contribute to GPCOG's ICLEI (Local Governments for Sustainability) effort to measure the baseline level of greenhouse gas emissions in all GPCOG communities. They are currently under-funded, and have a few interns working on a few towns. Estimated cost: \$50,000.

2. Establish pilot bus service to Windham/Bridgton as recommended by CDBG MOC in 2006. There is \$50,000 still available from CDBG, and the entire program for one year was estimated from \$80,000-\$100,000. After one year, the income from fares would be established, and the route could be maintained, shortened or cancelled. Estimated cost: \$30,000-\$50,000
3. Contribute to Portland's sustainability coordinator position to extend promotional materials and other services to all Cumberland County Communities. Estimate cost: \$10,000/year for 3 years.
4. GPCOG's Steve Linnell would like to see a Natural Gas fueling station near EcoMaine so that garbage trucks could convert to Natural Gas. Cost unknown.
5. Mountain Division Rail Line. Route 113 Corridor Coalition (Portland, Windham, Westbrook, Gorham, Standish, Baldwin Hiram, Brownfield) applying for Tiger Funds to improve rail line. David Knapp, Fryeburg, 890-9222 knapp@fairpoint.net. (Portland has competing application for megaberrth) May ask county to take position. Committee Meeting August 11.
6. Regional Bike safety education program – work with Police, Bikesshops, Bike Coalition of Maine, Municipalities to distribute rules of the road, coupons for helmets and lights.
7. Multiunit weatherization incentive program.
8. Work with CMP to create On-bill Financing of weatherization improvements – reduce residential usage, give savings to industry.
9. Create coordination among individual municipalities “Warm home, cool town” entities.
10. Regional revolving loan fund for businesses to make energy improvements (State has \$2M in fund at 1% interest)
11. Create regional Esco contract for smaller municipalities and/or businesses.
12. Publicize state's weatherization program.
13. Create a competitive process for additional ideas.

A workshop was suggested to discuss these items and prioritize the list.

Action Items:

09 – 099 Approval, Cumberland County Jail – Galvanized Chain Link Fence

Chair Shaughnessy asked Captain Don Goulet to present the report. The County Manager concurs with the recommendation.

Captain Goulet reported the Facilities Manager Bruce Tarbox helped him put the staff report together. He indicated a fenced area is needed to provide a secured place to hold vehicles, etc. The fenced area will be used for accident investigations or impounding of vehicles where no one can enter without authorization. An RFP was developed to obtain bidders for this project. There were two bidders:

- | | |
|-----------------------------|---------|
| ➤ E.A. Burns' Fencing, Inc. | \$7,690 |
| ➤ Pine Tree Fence | \$7,400 |

Both bidders attended the mandatory walk-thru. \$7,400 will be paid for through a JAG grant obtained by the Sheriff's Department. Captain Goulet is recommending Pine Tree Fence in the amount of \$7,400, which will be paid for through the JAG grant. A discussion followed.

Commissioner Cloutier made a Motion to pass the item and authorized the County Manager to sign the contract. Commissioner Feeney seconded the Motion. All voted unanimously.

09 – 100 Approval, Cumberland County Vs. New England Motor Freight, Inc. Lawsuit

Chair Shaughnessy asked for the item to be presented. The County Manager indicated this is an unfortunate but necessary step and concurs with the recommendations.

The County Manager indicated this incident happened in 2006 and there was an Executive Session held on how to proceed with this issue. This has to do with the HazMat Response Teams that we provide annual funding for at approx \$100,000 a year. The incident happened in 2006 and New England Motor Freight, Inc. has failed to pay. Director Jim Budway will present the item.

Director Budway reported on August 7, 2006, a Hydrochloric Acid (HCL) leak was discovered in a tractor trailer box at New England Motor Freight, Inc. (NEMF) in the Town of Scarborough. Hazardous Material (HazMat) Teams from the Towns of Gorham and Scarborough and the Cities of Portland and South Portland responded to the call for assistance. The teams decontaminated NEMF employees exposed to the vapors and transported them to the hospital. They recognized a potential explosive hazard and evacuated personnel from the immediate area. They then conducted a reconnaissance of the site, identified the problem, neutralized the acid and made the area safe for clean-up. On August 9th, Scarborough Fire Chief Mike Thurlow returned to the scene and presented NEMF an invoice covering the reimbursement costs of consumables, apparatus use and manpower to mitigate the HCL spill. NEMF though required to do so by law, has yet to reimburse these teams for services rendered. Over the past three years, at the Municipal and County level, numerous attempts and several contacts were made with NEMF requesting reimbursement, to no avail. As a consequence and as a last resort, a lawsuit has been drafted by the County Attorney to pursue a legal option.

Rarely do HazMat Teams have a problem with reimbursement for services rendered. If reimbursement is not provided, then the responding HazMat Teams are left to absorb the expense thereby rendering them less prepared and less capable of responding to future events. If reimbursement is not sought, a bad precedent is established and reimbursement in future responses is jeopardized.

The financial impact is \$37,034.33 which is sought to cover the unpaid response bill. It is requested that the Commissioners authorize the law firm of Jensen Baird Garner and Henry to file a lawsuit for the County on behalf of the Towns of Gorham and Scarborough and the Cities of Portland and South Portland against New England Motor Freight to recover costs incurred by the Municipalities for their response to a hydrochloric acid spill on August 7, 2006. A discussion followed.

Commissioner Cloutier made a Motion to pass the item. Seconded by Commissioner Feeney. All voted unanimously.

**09 – 101 Approval, Cumberland County DHS \$15,000 Grant
Award – 2009 Funds**

Chair Shaughnessy asked Director Budway to present the item. The County Manager concurs with the recommendation.

Director Budway reported the Maine Emergency Management Agency (MEMA) is closing out its Fiscal Year 2006 Department of Homeland Security (DHS) Grant funding line. As such, funds not executed to date have been equally divided up amongst the 16 Maine County Emergency Management Agencies and each is receiving an award of \$15,000 to improve preparedness and response capabilities for Home Land Security related events. Specifically, this money is to be used for the purchase of equipment or services, previously unfunded, to enhance CCEMA operations. Funds must be obligated no later than November 30, 2009. The CCEMA intends to use the funding to purchase equipment items in support of Regional Sheltering, to include our County Animal Response Team (CART) and our fledgling County Incident Management Assistance Team (IMAT). It is requested that the Commissioners approve receipt of Grant funding to purchase CCEMA equipment items. There is no fiscal impact. A discussion followed.

Commissioner Cloutier made a Motion to pass the item. Commissioner Feeney seconded the Motion. All voted unanimously.

**09 – 102 Approval, Cumberland County Public Safety Interoperable
Communication (PSIC) Grant Award**

Chair Shaughnessy asked Director Budway to present the item. The County Manager concurs with the recommendation.

Director Budway reported the Public Safety Interoperable Communication (PSIC) funding was provided to the State of Maine during 2008 by the Department of Homeland Security (DHS) to improve the interoperable communications capabilities of first responders. The Maine Emergency Management Agency (MEMA) dedicated the majority of this funding, through a competitive grant application process, to Counties and Municipalities. The remainder was intended to be executed by MEMA. However, MEMA elected to set aside some additional funding for Counties to address firefighter pager replacement. By 2012, all radio communications systems in the State of Maine are required to be narrowband compliant. Most of the firefighter pagers in the County are not complaint. CCEMA quickly assessed the County pager requirement and submitted it to MEMA. With less than a week's turnaround, MEMA awarded Cumberland County \$32,196.97. This is approximately 10% of the funding required to replace non-narrowband compliant firefighter pagers in our National Incident Management System (NIMS) complaint Municipalities. The eighteen NIMS complian municipalities that are participating are: Baldwin, Brunswick, Chebeague Island, Cumberland, Gorham, Gray, Falmouth, Freeport, New Gloucester, North Yarmouth, Raymond, Scarborough, Sebago, South Portland, Standish, Westbrook, Windham and Yarmouth. It is requested that the Commissioners approve receipt of Grant funding to purchase municipal firefighter pagers. A discussion followed.

Commissioner Feeney made a Motion to pass the item. Commissioner Cloutier seconded the Motion. All voted unanimously.

**09 – 103 Approval, Cumberland County DHS \$40,000 Grant
Award – 2009 Funds**

Chair Shaughnessy asked Director Budway to present the item. The County Manager concurs with the recommendation.

Director Budway reported the Maine Emergency Management Agency (MEMA) has recently initiated the Fiscal Year 2009 Department of Homeland Security (DHS) competitive Grant process. Cumberland County Emergency Management Agency (CCEMA) currently is in the midst of developing grant applications and collecting them from Municipalities and organizations from within Cumberland County. Last year, as MEMA processed FY 2008 Grant Applications, it determined that in future grant years, funding of personnel support (planners) for Counties would be far more efficient than having Counties fund multiple contractors to tackle individual projects. As such, MEMA set aside \$640,000 in FY 2009 grant funding to provide each County \$40,000 to fund (salary and benefits) a planner position. Due to a broader scope of responsibilities and a higher cost of living in Southern Maine, MEMA and CCEMA agreed last year that the planner filling the Cumberland County position would ultimately receive \$55,000. The additional \$15,000 will come from the same \$640,000 funding line as some Counties will only use only a fraction of or none of their allocation. Currently, Ron Jones' position as a Program Coordinator (planner) is being funded through a nearly identical FY 2008 Grant. The \$40,000 in grant funding being awarded today as well as the additional \$15,000 to be awarded at a later date will comprise his annual salary in 2010 (he has indicated a desire to continue in the position and we are fortunate to retain him). Of that funding, approximately 10% will be applied to Social Security and Workers Compensation deductions and approximately 8% will be allocated to administrative, travel and overtime costs. Because Mr. Jones is not a County employee, he receives no benefits. Chair Shaughnessy thanked Director Budway and his staff for all the good work they are doing. A discussion followed.

Commissioner Cloutier made a Motion to pass the item. Commissioner Feeney seconded the Motion. All voted unanimously.

09 – 104 Approval, Steven Zimmerman – Town of Harpswell Decision Letter

Chair Shaughnessy asked Commissioner Feeney to read the Finds of Fact and Decision of the decision letter into the record. The tax abatement hearing took place on August 31, 2009 at the Cumberland County Courthouse.

Commissioner Feeney read the following:

Findings of Facts:

It is the contention of the appellants that they are being assessed with unfair discrimination, based on two distinct concerns:

One – That the “statistical review of recent real estate market sales” conducted by the Town of Harpswell was arbitrarily conducted being based on an analysis of only a few sales in town and not a full town-wide survey. They contend that it is such a small number of sales, that it is subject that it is “subject statistically to a large standard error”.

The Town of Harpswell contends that the appellants have provided insufficient evidence to meet the legal standard to prove that the assessment is “manifestly wrong”, and show discrimination. The documentation as provided by the assessor shows that the Town of Harpswell indicated that the new values in the area of the subject are within the established assessment ratio as guided by Maine Revenue Services. In fact, they contend that since the recent sales were actually at a very low ratio (60% of market value) based on the previous valuation, this re-assessment simply has brought the area into line with the correct ratio (86%) it is likely that these properties were undervalued in 2005 at the time of the last full town valuation.

Two – That the waterfront code classification changes over-valued certain waterfront property as open water/good tidal that they contend is not. The basis of number two is that the Town now assesses them at Code A (5.4% as open water/good tidal) to calculate assessed value rather than Code B (3.55% as tidal). Their major premise is that full tidal water land has an intrinsically greater value than properties with tidal frontage resulting in mud flats or rocky access twice daily.

The Town of Harpswell claims that the appellants are focused on only one component of the assessed value (the waterfront quality) and not the total assessed value which statute dictates. The Town has stated that water views have overtaken water utility as the primary driver of land marketability. Codes are now geared toward view rather than frontage or deep water. Assessors are valuing the Gun Point Cove properties further in that they have views that look out to open water at the same as those further out and closer to open water, and that sales in the area indicate no difference in price between the two areas other than that of structure.

Decision:

After reviewing all the documentation and testimony it was determined that the Town assessed the property with the same methodology as other assessed property in similar circumstances and condition.

Further, in reviewing legal precedents in Maine, we find that a discrimination claim based on a single component of a total assessment without showing that the total assessment is discriminatory has been struck down by the Maine Supreme Court (Roberts v. Southwest Harbor, 2004). We conclude that although the two codes, as described, are clearly open to misinterpretation, it is the final total assessment value that must be shown to be “manifestly wrong” and that the appellees have failed to meet that standard.

Thus, we find no unfair discrimination in this assessment and therefore deny the appeal.

There being no further business Commissioner Feeney made a Motion to adjourn the meeting at 6:35 PM. Seconded by Commissioner Cloutier. All voted unanimously.

Deputy Clerk

A handwritten signature in black ink, reading "Barbara Mary Buckley". The signature is written in a cursive style with a large, looping initial "B".

Barbara Mary Buckley

The next regular Commissioners meeting will be held at 5:30 PM on Monday, September 28, 2009 in the Peter J. Feeney Conference Room, Cumberland County Courthouse Annex 1.

There being no further business Commissioner Feeney made a Motion to adjourn the meeting at 6:35 PM. Seconded by Commissioner Cloutier. All voted unanimously.

Deputy Clerk

A handwritten signature in cursive script that reads "Barbara Mary Buckley". The signature is written in black ink and is positioned above the printed name.

Barbara Mary Buckley

The next regular Commissioners meeting will be held at 5:30 PM on Monday, September 28, 2009 in the Peter J. Feeney Conference Room, Cumberland County Courthouse Annex 1.