

Planning Board Meeting - Minutes
Tuesday, January 17, 2006
Cumberland Town Hall
290 Tuttle Road, Cumberland, Maine
7:00 PM

A. Call to Order

The meeting was called to order at 7:00 p.m.

B. Roll Call

Present: Bill Ward, Vice-Chair, Bill Richards, Chris Neagle, Beth Howe, Bob Couillard, Mark Robinson

Absent: Tom Powers, Board Chair

Staff: Carla Nixon, Town Planner, Pam Bosarge, Board Clerk

C. Approval of Minutes of December 20, 2005

Ms. Howe moved to approve the minutes of November 15, 2005 with minor technical corrections.

Mr. Couillard seconded.

VOTE: Unanimous

D. Consent Calendar / Deminimus Change Approvals: There were no Consent Calendar Items.

E. Hearings and Presentations:

1. Public Hearing - Preliminary Plan Review - Major 17-lot subdivision, Foxes Gore, Goose Pond Road, Tax Assessor Map R07, Lots 58 & 59, Rural Residential 2 (RR2) district; MPG Development Group, LLC, applicant; Goose Pond Development, LLC, Mark Girard, owner; John Riordan, P.E., SGC Engineering, LLC, representative.

Ms. Nixon presented background information as follows: The applicant is Goose Pond Development, LLC. Mark Girard is the owner's representative. John Riordan, P.E. of SGC Engineering is the owner's engineering representative. The property is located on Goose Pond Road, Tax Assessor Map R07, Lots 58, and 59 in the Rural Residential 2 (RR2) zoning district.

This site is an un-restored gravel pit. There is restoration work that will be required to develop this property for its intended use. This work includes the regrading and stabilization of the impacted area of the parcel, the removal of buried waste tires and the construction of an earthen berm that will be created along the east side of the property to screen the auto salvage yard from view.

This review is for Preliminary Plan Approval of a 17 lot major subdivision. The lots will range in size from 1.4 acres to 3.0 acres. The plan has been through Sketch Plan Review and a clustered subdivision plan is being proposed. Approximately 13 acres or 29% of the 46- acre parcel will remain as undeveloped open space. Two thirds of the open space is proposed to be improved as an athletic field suitable for soccer, football, field hockey, etc., with parking and a separate access from Goose Pond Road. The applicants are hoping to receive preliminary approval at this meeting and then send the plans to the Maine DEP for the Site Location of Development and Stormwater approval, then return to the Board to complete items for final review.

Mr. Mike Roy, of SGC Engineering, stated he was accompanied by John Riordan, Director of Engineering and Mark Girard, owner. Mr. Roy highlighted the revisions in the preliminary plan. Mr. Roy stated they have met several times with Mr. Saucier, P.E., the Town's peer review engineer, and reviewed their responses to Mr. Saucier's review comments.

Mr. Roy highlighted comments as follows:

- The hammerhead turn a-round has been approved by the Fire Chief and Public Works Director.
- Side setbacks will be shown on a table on the subdivision plan.
- Lots 13 - 17 water supply easements across the street have been abandoned; there will be a water supply easement along the front of the lots and an area in the rear of the lots.
- Water - As per Mr. Sevee's recommendation, a well will be drilled to bedrock on Lot # 17 to test for contamination.
- The Stormwater Detention Forebay - More details have been provided.
- Culvert - Previous submissions had a culvert to connect wetlands. This will be addressed to meet peer review requirements.
- Recreational field, road, and parking areas - More detail will be provided regarding construction, and field drainage.
- Stormwater - currently surveying to determine watercourses. There will be no increase in discharge.

Mr. Roy stated once the applicant receives Preliminary Plan approval and has addressed all of Mr. Saucier's concerns they will submit for a Site Location of Development permit and subsequent to that approval they will be back before the Board for final approval.

Mr. Neagle asked about the ownership of the open space.

Mr. Girard stated the ball field area would be deeded to the Town after construction, the common area which houses the forebay and drainage area will be retained as part of the homeowners' association until such time if the road were deeded to the Town, this part of the land would be deeded to the Town as it is an integral part of the drainage for the road.

Mr. Neagle asked who would build the ball fields, driveway and parking areas.

Mr. Girard stated they will complete the improvements, and will be petitioning the Town Council to have this work considered as impact fees as per the Ordinance. At completion, the area will be deeded to the Town.

Mr. Neagle asked for clarification on the recreational impact fees.

Mr. Girard stated there is an impact fee for each new dwelling, and the Ordinance also states that improvements or projects of direct benefit to the Town as a whole, and at Town Council direction the fees could be used for the improvements.

Mr. Robinson stated he likes the look of the project and feels it will greatly improve the area. He is very concerned about possible ground water contamination, and asked Ms. Nixon to share records with the Town, so that all Board members could have the background information. Mr. Robinson asked if any volatile organic chemicals (VOC's) were found on the property.

Mr. Girard stated when they started their due diligence they went back to Town records and DEP records. According to the written information, the contamination was assumed to have taken place on the former Hutchins' property. Household chemicals were assumed to be the cause of the contamination. The DEP

established a series of test wells around the perimeter of the property. They very quickly located the source of pollution and given the hydrogeology, water flow, conditions, and the direction of the water flow the contamination was found in that location. The records of the test well have never shown any contamination. SGC's geologist took a sample from that well, tested for VOC's, and none were found. At the last meeting the contamination issue came up again. It was recommended that John Sevee, of Sevee and Maher review the information and to be on the safe side he recommended a well be drilled to bedrock on Lot # 17. This would be the closest point to the original site of contamination. This well will be tested for VOC's.

Mr. Robinson asked Mr. Girard if he has had any discussions with DEP.

Mr. Girard stated they met with DEP for a pre-submission meeting, and discussed the tires and debris. The DEP does not have any jurisdiction in regard to the pit, but they do have jurisdiction on tire removal. They will review stormwater, and seemed pleased to see the area cleaned up with a use change. Their geologist had talked with DEP and received information regarding the water contamination; they did not seem concerned regarding development of the property.

Mr. Richards asked if the previous test site wells were drilled to bedrock.

Mr. Girard stated he didn't know the depth of the existing wells.

Mr. Riordan stated on the basis of our peer review, John Sevee is agreeing with their geologist and water flows, the only issue is that the existing well does not go to bedrock, so due diligence would be to drill a well to bedrock and test the water.

Mr. Richards asked how the new well would be monitored.

Mr. Girard stated the well will be drilled and tested. It will not be a monitoring well. DEP had closed the file, stating there was no reason to test west of the site.

Mr. Richards asked if the hydrogeologist was comfortable that residual contaminants could not flow back towards the subdivision site.

Mr. Girard stated they are very comfortable based on the fact it is over 900' away and the direction of the flow is away from the subdivision. The wells in the area have a flow of 6 to 25 gallons per minute, it doesn't seem reasonable to think there will be any directional change in the water flow.

Ms. Nixon stated back in August there was concern about wells drawing down and changing the direction of the flow. Will they be able to tell the quality of the water with the drilling of just one well, and wouldn't all of the wells need to be drilled?

Mr. Girard stated SGC looked at the re-charge of water into the land area and the differential was 5% maximum household draw, the probability of back flow is very unlikely.

Mr. Robinson stated he would like to have Mr. Sevee come to the Board and review the test results on lot # 17.

Mr. Couillard asked about the culvert connecting the two wet areas.

Mr. Roy, of SGC stated the options are to connect with a culvert or raise the road, there won't be any ponding. There will be a roadside swale.

Mr. Girard stated if the culverts were connected the overflow would go to the wetland area; now the overflow will remain in the ditches on both sides of the road. Tom Saucier expressed concern that this could compromise the stability of the road base.

Mr. Couillard stated originally the old tires were to be used to create a berm on the east side to block the view to the salvage yard.

Mr. Girard stated the berm will be constructed to the same criteria. They had hoped to use the tires as fill however; this type of use does not qualify for a "beneficial use permit" by DEP and so it not permitted.

Mr. Couillard asked if the sidewalk would be separate i.e., paved shoulder.

Mr. Girard stated there will be a free walk.

Mr. Couillard stated he prefers a separate sidewalk, and hopes the sidewalks will connect to Old Colony. He also asked about the trail connecting to the trail in the woods.

Mr. Roy stated trails are shown on Sheet 3.0.

Ms. Nixon stated the trails should be shown on the recording plat.

The public portion of the meeting was opened.

Mr. Mark Kuntz, a Town Councilor who lives at 60 Blackstrap Road, stated he was an abutter to the property. Mr. Kuntz voiced concern of well water and protection of the aquifer. DEP was out last week to check his well. Mr. Kuntz voiced concern of safety for children with the increased traffic. Goose Pond Road is a busy road connecting from Windham. Mr. Kuntz stated he will recuse himself from deliberations at the Council level regarding the open space and road.

Ms. Gwen Frost of 15 Goose Pond Road voiced concern of children waiting for the bus, traffic and the screening plant that is set up in the Town pit. There are a lot of trucks hauling winter sand. Ms. Frost stated she is not against the development, but was concerned about increased traffic and safety.

Mr. Bob Heyner, of 66 Forest Lake Road stated he was representing the Cumberland Conservation Commission and the Forest Lake Association. Mr. Heyner stated stormwater runoff is a very large concern in the protection of Forest Lake. It appears that SGC and the developer have been very attentive to the issue of storm water leaving the site and that is greatly appreciated. Mr. Heyner commented on the following from SGC's document of December 6, 2005.

- A-2 Maintenance Costs - Concern that the Homeowners' Association or the developer creates an easement for the maintenance of all stormwater facilities.
- A-12 - Impervious areas and lawns must be included in report.
- A-17 (Cul-de-Sac vs. Hammerhead) - For best lake protection it is important that a connection between Old Colony and this development never be made. He is not in favor of a hammerhead.

Mr. Heyner's comments were given to the Board for the file.

Mr. Kuntz stated only in the major rain of 1996 had he seen the water run out towards the split in the road at the Windham town line.

Mr. Riordan stated the berm will prevent any water flowing off site, Mr. Riordan defined the berm.

Mr. Neagle asked if the berm would prevent off site flow in a 1996 type rain event.

Mr. Roy stated in their modeling of a 100-year event there would still be 1' to 2' of free board (area near the top of the berm).

Mr. Chris Copp, of 17 Browning Way voiced concern regarding the groundwater supply. His brother owns Cumberland Salvage and his understanding was that the contamination was to the east and none to the west side of the site. He thinks a 4' berm will adequately stop the water from leaving the site, and it will be nice to see the area put to use.

The public portion of the meeting was closed.

Mr. Girard addressed some of the public concerns as follows:

- The DEP SLODA permit process will hold a public hearing.
- Erosion - Mr. Saucier, the Town's peer review engineer is satisfied with the design of the 4' berm; the area is currently a large un-vegetated area, simply vegetating the area will improve stormwater.
- Traffic - Seventeen houses will increase traffic, but the current safety concerns are not a by product of the development.
- Proposed recreation ball fields - driveway area and the playing fields are approximately 30' below the road. There will be a cul-de-sac for easy drop off and pick of children, cars will not park on the road.

Mr. Neagle asked if a traffic study had been done, in accordance with Section 13.2A - Design Standards, to see if the development would reduce the service level of the road.

Ms. Nixon stated the road is a level surface.

Mr. Riordan stated no traffic study had been done, from his observations there appears to be adequate sight distance.

The Board reviewed the Planner's comments as follows:

1. **Subdivision road name: speak to Assessor prior to committing to name.**
2. **Label Berube parcel as Old Colony Subdivision.**
3. **Take language re: open space out of Note #20 and make a separate note with it.**
4. **John Sevee report suggests a monitoring well on Lot 17.**

The Board addressed this as a condition of approval.

5. **Is stone dust used on steps instead of pea stone?** (This will be changed to stone dust.)
6. **Will there be affordable lots?** Ms. Nixon stated this is not a condition of the Ordinance, but was discussed in earlier meetings. This is a respectful request.

Mr. Neagle stated he supported the noble intent, but there was no Ordinance to require affordability.

Mr. Girard stated they hope to have some affordable lots, but their commitment is to re-claim the gravel pit.

Ms. Howe stated it is a very nice project.

7. **ADA requirements for parking area and recreation area? (being researched)**
8. **Need to label 75' buffer on both sides of parcel. (will be done)**
9. **Need landscaping plan at the entrance and common areas. (will be done)**
10. **Needs CMP and Time Warner letters**
11. **Needs MDEP Stormwater and SLODA permits**

Mr. Ward reviewed the Board's concerns:

- Mr. Sevee will share the test well results with the Board at final approval.
- Traffic - A traffic study will be done to show compliance with Section 13.2 at a Level E or below.

Ms. Nixon stated the applicants are hoping to receive preliminary approval at this meeting and send the plans to the Maine DEP for Site Location of Development and Stormwater approval.

Mr. Couillard asked the speed limit of Goose Pond Road.

Mr. Roy stated it is posted at 25 mph.

Mr. Shane, Town Manager stated that DOT had not authorized or certified the 25mph speed limit. The Council will request a reduction to 25 or 30 mph once the project is started.

The Board reviewed the proposed findings of fact with the following findings:

PROPOSED FINDINGS OF FACT - Subdivision Ordinance, Section 1.1:

The purpose of these standards shall be to assure the comfort, convenience, safety, health, and welfare of the people, to protect the environment and to promote the development of an economically sound and stable community. To this end, in approving subdivisions within the Town of Cumberland, Maine, the Board shall consider the following criteria and before granting approval shall determine that the proposed subdivision:

1. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:

- A. The elevation of the land above sea level and its relation to the flood plains;
- B. The nature of soils and subsoil and their ability to adequately support waste disposal;
- C. The slope of the land and its effect on effluents;
- D. The availability of streams for disposal of effluents; and
- E. The applicable state and local health and water resource rules and regulations;

A high intensity soil survey report by Albert Frick Associates was submitted and reviewed by the Town Engineer and a hydrogeologic study by Albert Frick Associates was submitted and reviewed by John Sevee, P.E., C.G. Mr. Sevee will review results of the well test on Lot # 17 and be present at the final approval. Passing test pit locations have been found and shown on the plan. Based on the information provided the standards of this section have been met.

2. Sufficient Water. The proposed subdivision has sufficient water available for the reasonable foreseeable needs of the subdivision;

The subdivision will utilize individual drilled wells. As an additional precaution, Lots 13 – 17 will have the option of utilizing a common well that can be located within the easement. A letter from Wells Unlimited and a report of bedrock wells in the vicinity made by Dr. Marc Louisell, Hydrogeologist with the Maine Department of Conservation indicated sufficient water is available. Water quality information has been provided by Richard Sweet and a peer review was conducted by John Sevee, P. E., G. C. of Sevee and Maher Engineers. Mr. Sevee will review the well findings on Lot # 17 after the well has been drilled, and he will attend the Planning Board meeting to present his findings.

Based on the information provided the standards of this section have not been met.

3. Municipal Water Supply. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used;

The proposed subdivision will utilize private drilled wells.

Based on the information provided the standards of this section have been met.

4. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

An erosion and sedimentation control plan was prepared by SGC. The plan has been reviewed by The Town Engineer who has made minor comments. This plan also needs to be reviewed and approved by the Cumberland County Soil and Water Conservation District and DEP.

Based on the information provided the standards of this section have not been met.

5. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed;

Based on the fact that the traffic count does not exceed 100 trips per day peak hour, no further analysis is required by MDOT standards. Sight distance at the intersection with Goose Pond Road is 515' to the left and approximately 1200' to the right. Speed limit in this area is 45 mph; required site distance is 450'. Section 13.2A Design Standards will be complied with by final approval.

Based on the information provided the standards of this section have not yet been met.

6. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are utilized;

A high intensity soil survey dated 6/27/06 was conducted by Sweet Associates. This report shows that suitable septic locations exist on each proposed lot. These have been shown on the plan.

Based on the information provided the standards of this section have been met.

7. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

The road is proposed to be a Town road; if accepted by the Town Council, trash collection will be via municipal curbside recycling and collection. Until that point, individual homeowners will retain private contractors.

Based on the information provided the standards of this section have been met.

8. Aesthetic, cultural, and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

Letters from the DIFW and Department of Conservation are outstanding.

The subdivision will require the removal of buried tires and debris. Tires will be chipped and used on site as a berm providing a visual buffer from the automobile salvage operation on the adjacent site. Still need approval from DEP to store tires on site.

The regrading of the parcel will result in a more natural and pleasing topography.

The creation of a recreation field will provide a place for team practices and small scale games as well as a place for informal neighborhood play. This land is proposed to be given to the Town in fee.

Based on the information provided the standards of this section have not yet been met.

9. Conformity with local ordinances and plans. The proposed subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;

The review process is on-going, but adequate progress is being made towards compliance with local ordinances and plans.

Based on the information provided the standards of this section have not yet been met.

10. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section;

Financial capacity needed for final review.

Technical capacity is evidenced by the use of professional engineers, soils scientists, hydrogeologists, and land surveyors.

Based on the information provided the standards of this section have not been met.

11. Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38 chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of the body of water;

Wetlands delineation and high intensity soils mapping has been done by Sweet Associates. There are no surface waters on the site.

Based on the information provided the standards of this section have been met.

12. Ground water. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

A high intensity soils survey was conducted as well as a hydrogeological study. The results of these studies show that the proposed subdivision will not adversely affect the quality or quantity of groundwater.

Based on the information provided the standards of this section have been met.

13. Flood areas. Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation;

According to the National Flood Insurance Program's Flood Insurance Rate Map #230162 0015B, the property is located in Floodplain Overlay C-areas of minimal flooding. No special precautions are necessary in Zone C.

Based on the information provided the standards of this section have been met.

14. Storm water. The proposed subdivision will provide for adequate storm water management;

The applicant has provided a "Stormwater Management Report" that has been reviewed and approved by the Town's consulting engineer, Tom Saucier.

MDEP will review the plan for the issuance of a Stormwater Permit.

Based on the information provided the standards of this section have not yet been met.

15. Freshwater wetlands. All potential freshwater wetlands, as defined in 30-A M.R.S.A. §4401 (2-A), within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

Wetlands delineation and high intensity soils mapping has been done by Albert Frick Associates, Inc; a 25' buffer has been established around the wetland areas.

MDEP SLODA permit is required.

Based on the information provided the standards of this section have been met.

16. River, stream or brook. Any river, stream, or brook within or abutting the proposed subdivision has been identified on any map submitted as a part of the application. For purposes of this section, "river, stream, or brook" has the same meaning as in Title 38, Section 480-B, Subsection 9. [Amended; Effective. 11/27/89]

No rivers, streams, or brooks have been found on the site.

Based on the information provided the standards of this section have been met.

SECTION 300 – AQUIFER PROTECTION (if applicable)

The use is located in the Aquifer Protection district. A positive find by the Board is required.

The site is located within the Town Aquifer Protection Area. However, a high intensity soil survey and a groundwater impact study was conducted and reviewed and approved by the Town Engineer.

The Maine DEP will review the project for SLODA and Stormwater permitting.

Based on the above, the Board finds that the standards of this section have been met.

Mr. Neagle moved to approve the findings of fact as amended.

Mr. Richards seconded.

VOTE: Unanimous

Mr. Neagle moved to grant preliminary plan approval for a major 17-lot subdivision, Foxes Gore, Goose Pond Road, Tax Assessor Map R07, Lot 59, with the standard and proposed conditions of approval to MPG Development Group, LLC, applicant; Goose Pond Development, LLC, Mark Girard, owner: John Riordan, P.E. SGC Engineering, LLC, representative.

Mr. Robinson seconded.

VOTE: Unanimous

STANDARD CONDITIONS OF APPROVAL:

This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents, except de minimus changes as so determined by the Town Planner which do not affect approval standards, is subject to review and approval of the Planning Board prior to implementation.

PROPOSED CONDITIONS OF APPROVAL

1. That the vegetated buffer (see Note # 19) on the front and rear of the lots is referenced in the deeds, and that language relating to the enforceability of this perpetual buffer also is in the deeds. The proposed language is to be reviewed and approved by the Town Attorney.
2. That the Town Attorney review and approve the proposed warranty deed and covenants and restrictions.
3. Note # 20 to be re-drafted, stating that the intent is for the Town to own the open space to the east of the road, and the homeowners' association to own the open space to the west of the road.
4. Lot # 17 well will be installed, and Mr. Sevee will present the well results to the Board at final approval.
5. A traffic study will be done to verifying conformance with Section 13.A - Design Standards - (No subdivision shall reduce a street giving access to the subdivision and neighboring streets and intersections to a Level of Service to "E").
6. That the landscaping plan be completed.
7. Stormwater Management Plan to be approved by Cumberland County Soil and Water (CCSWCD)

8. Approval letter from Department of Inland Fisheries and Wildlife (DIFW) and Maine Department of Conservation.
 9. That a letter of financial capacity be provided.
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2. Public Hearing - Minor Site Plan Review, Boarding Kennel at Westside Animal Hospital, 172 Gray Road, Tax Assessor Map U19, Lot 9 in the Highway Commercial District; Chris Copp, CFI Inc., Owner, Charles R. Perkins, VMD, applicant.

Ms. Nixon presented background information as follows: The applicant/owner is C.F.E. Inc., Chris Copp is the owner/representative. This is a minor site plan review for the expansion of the Westside Animal Hospital from a building located at 176 Gray Road to a building located at 172 Gray Rd. (the former Cumberland Café.) The parcel is shown on Tax Assessor Map U19, Lot 9. It is within the Highway Commercial (HC) district. The parcel size is 1 acre.

The Westside Animal Hospital has been in its current location for 11 years. The practice has outgrown its current space and is looking to expand the business into a full service hospital at the 172 Gray Rd. location to include a boarding kennel, primarily for daytime care. The location of the kennel will be in the basement level of the building. There will be an outdoor exercise and rehabilitation area in the rear of the building. The area will be fenced and there will be an attendant with the animals whenever they are in this area. Special exception approval from the Board of Appeals was granted on January 12, 2006.

The footprint of the building will not be changed and there are no changes to the site such as entrance, parking and loading. There will be a 6' high vinyl fence for the outside play area.

Due to the limited nature of the proposal, there are several waivers that have been requested and need to be considered by the Board. Tonight the Planning Board will review the plan and hold a public hearing. The application has been found complete by the Town Planner.

II. PROJECT HISTORY: None

III. DEPARTMENT HEAD REVIEWS: None.

IV. REQUESTED WAIVERS:

- **Section 206.7.3.2: Boundary Survey- partial waiver request: (boundary shown on site plan)**
- **Section 206.7.4.6: Groundwater impact analysis (no changes proposed)**
- **Section 206.7.4.15: Traffic peak hour and generation.**
- **Section 206.7.4.16: Stormwater calcs./erosion control plan (no changes proposed)**

Mr. Robinson, Mr. Couillard, and Mr. Richards all stated they take their dogs to Dr. Perkins. The Board determined they would have no problem participating in the hearing.

Dr. Charles Perkins stated he has had requests from his clients for the past 4 to 5 years for boarding and daycare. This larger space will allow him the opportunity to provide an added service to his patients.

Mr. Richards asked if there would be a limited number of dogs boarded.

Dr. Perkins stated his expectation is 10 - 20 dogs in daycare. The room is large enough for 20 cages.

Mr. Chris Copp stated the dog daycare will be in the basement, the first floor will be the animal hospital. There will be no noise that would disturb the veterinary hospital on the main level of the building.

Mr. Couillard asked about the location of the dumpster.

Mr. Copp stated the dumpster is required to be screened, the dumpster and LPG tank will be fenced separately from the outside fenced exercise area.

Mr. Couillard asked the type of proposed fence.

Mr. Copp stated the fence along the back will be a solid fence to limit interaction with activities on the recreational side. The fence will be dug into the ground a foot to prevent a dog from digging under the fence.

Mr. Couillard asked about the ventilation in the basement.

Mr. Copp stated a new heating and ventilation system to specifically meet the needs of the kennel and animal hospital will be installed.

Mr. Neagle asked about the number of overnight dogs.

Ms. Nixon stated that Mr. Longley, Code Enforcement Officer had shared an enforcement issue with an existing kennel which has 30 dogs and was approved for 6 - 8 dogs. Ms. Nixon encouraged the Board to limit the total number of dogs.

Mr. Copp stated the available space limits Dr. Perkins to 20 overnight cages; daycare could have 10 dogs in the play area and 20 in cages. There would not be more than 30 dogs total in the boarding / daycare area and no more than 20 overnight dogs.

Mr. Richards asked if there were regulations regarding the number of animals per square foot.

Dr. Perkins stated not for daycare, there are regulations for air exchangers to prevent cross contamination of diseases and air pollution.

Mr. Richards asked about those regulations.

Dr. Perkins stated ten air changes per hour.

Mr. Copp stated the number of dogs is limited based on the number of dog runs and cages.

The public portion of the meeting was opened. There were no public comments. The public portion of the meeting was closed.

Mr. Neagle moved to grant the four waivers requested.

Mr. Richards seconded.

VOTE: Unanimous

Waivers granted:

206.7.3.2: Boundary Survey - partial waiver

206.7.4.6: Groundwater impact analysis

206.7.4.15: Traffic peak hour and generation

206.7.4.16: Stormwater calcs. /erosion control plan

The Board reviewed the proposed findings of fact with the following conclusions:

Note: Section 206.7.6 states that the Planning Board may waive any of the submission requirements based upon a written request by the applicant. A waiver may be granted only if the Board finds that the information is not required to determine compliance with the standards and criteria.

Findings of Fact

Note: Section 206.7.6 states that the Planning Board may waive any of the submission requirements based upon a written request by the applicant. A waiver may be granted only if the Board finds that the information is not required to determine compliance with the standards and criteria.

Sec. 206.8 Approval Standards and Criteria

The following criteria shall be used by the Planning Board in reviewing applications for site plan review and shall serve as minimum requirements for approval of the application. The application shall be approved unless the Planning Board determines that the applicant has failed to meet one or more of these standards. In all instances, the burden of proof shall be on the applicant who must produce evidence sufficient to warrant a finding that all applicable criteria have been met.

.1 Utilization of the Site

Utilization of the Site - The plan for the development, including buildings, lots, and support facilities, must reflect the natural capabilities of the site to support development. Environmentally sensitive areas, including but not limited to, wetlands, steep slopes, floodplains, significant wildlife habitats, fisheries, scenic areas, habitat for rare and endangered plants and animals, unique natural communities and natural areas, and sand and gravel aquifers must be maintained and preserved to the maximum extent. The development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

There are no changes proposed that affect this standard.

The Board finds the standards of this section have been met.

.2 Traffic Access and Parking

Vehicular access to and from the development must be safe and convenient.

.1 Any driveway or proposed street must be designed so as to provide the minimum sight distance according to the Maine Department of Transportation standards, to the maximum extent possible.

.2 Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows.

.3 The grade of any proposed drive or street must be not more than +3% for a minimum of two (2) car lengths, or forty (40) feet, from the intersection.

.4 The intersection of any access/egress drive or proposed street must function: (a) at a Level of Service D, or better, following development if the project will generate one thousand (1,000) or more vehicle trips per twenty-four (24) hour period; or (b) at a level which will allow safe access into and out of the project if less than one thousand (1,000) trips are generated.

.5 Where a lot has frontage on two (2) or more streets, the primary access to and egress from the lot must be provided from the street where there is less potential for traffic congestion and for traffic and pedestrians hazards. Access from other streets may be allowed if it is safe and does not promote short cutting through the site.

.6 Where it is necessary to safeguard against hazards to traffic and pedestrians and/ or to avoid traffic congestion, the applicant shall be responsible for providing turning lanes, traffic directional islands, and traffic controls within public streets.

.7 Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street.

.8 The following criteria must be used to limit the number of driveways serving a proposed project:

- a. No use which generates less than one hundred (100) vehicle trips per day shall have more than one (1) two-way driveway onto a single roadway. Such driveway must be no greater than thirty (30) feet wide.
- b. No use which generates one hundred (100) or more vehicle trips per day shall have more than two (2) points of entry from and two (2) points of egress to a single roadway. The combined width of all accessways must not exceed sixty (60) feet.

The applicant has stated that there should be a net decrease in traffic from the former use which was a restaurant.

The Board finds the standards of this section have been met.

.3 Accessway Location and Spacing

Accessways must meet the following standards:

- .1 Private entrance / exits must be located at least fifty (50) feet from the closest unsignalized intersection and one hundred fifty (150) feet from the closest signalized intersection, as measured from the point of tangency for the corner to the point of tangency for the accessway. This requirement may be reduced if the shape of the site does not allow conformance with this standard.
- .2 Private Accessways in or out of a development must be separated by a minimum of seventy-five (75) feet where possible.

There are no changes to the accessways, location, and spacing.

The Board finds the standards of this section have been met.

.4. Internal Vehicular Circulation

The layout of the site must provide for the safe movement of passenger, service, and emergency vehicles through the site.

- .1 Projects that will be served by delivery vehicles must provide a clear route for such vehicles with appropriate geometric design to allow turning and backing.
- .2 Clear routes of access must be provided and maintained for emergency vehicles to and around buildings and must be posted with appropriate signage (fire lane - no parking).
- .3 The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.
- .4 All roadways must be designed to harmonize with the topographic and natural features of the site insofar as practical by minimizing filling, grading, excavation, or other similar activities which result in unstable soil conditions and soil erosion, by fitting the development to the natural contour of the land and avoiding substantial areas of excessive grade and tree removal, and by retaining existing vegetation during construction. The road network must provide for vehicular, pedestrian, and cyclist safety, all season emergency access, snow storage, and delivery and collection services.

There are no changes being proposed to the parking area.

The Board finds the standards of this section have been met.

.5 Parking Layout and Design

Off street parking must conform to the following standards:

- .1 Parking areas with more than two (2) parking spaces must be arranged so that it is not necessary for vehicles to back into the street.
- .2 All parking spaces, access drives, and impervious surfaces must be located at least fifteen (15) feet from any side or rear lot line, except where standards for buffer yards require a greater distance. No parking spaces or asphalt type surface shall be located within fifteen (15) feet of the front property line. Parking lots on adjoining lots may be connected by accessways not exceeding twenty-four (24) feet in width.
- .3 Parking stalls and aisle layout must conform to the following standards.

Parking Angle	Stall Width	Skew Width	Stall Depth	Aisle Width
90°	9'-0"		18'-0"	24'-0" 2-way
60°	8'-6"	10'-6"	18'-0"	16'-0" 1-way
45°	8'-6"	12'-9"	17'-6"	12'-0" 1-way
30°	8'-6"	17'-0"	17'-0"	12'-0" 1 way

.4 In lots utilizing diagonal parking, the direction of proper traffic flow must be indicated by signs, pavement markings or other permanent indications and maintained as necessary.

.5 Parking areas must be designed to permit each motor vehicle to proceed to and from the parking space provided for it without requiring the moving of any other motor vehicles.

.6 Provisions must be made to restrict the "overhang" of parked vehicles when it might restrict traffic flow on adjacent through roads, restrict pedestrian or bicycle movement on adjacent walkways, or damage landscape materials.

There are no changes being made to the parking area and the current parking area allows for safe circulation on the site.

The Board finds the standards of this section have been met.

.6 Pedestrian Circulation

The site plan must provide for a system of pedestrian ways within the development appropriate to the type and scale of development. This system must connect the major building entrances/ exits with parking areas and with existing sidewalks, if they exist or are planned in the vicinity of the project. The pedestrian network may be located either in the street right-of-way or outside of the right-of-way in open space or recreation areas. The system must be designed to link the project with residential, recreational, and commercial facilities, schools, bus stops, and existing sidewalks in the neighborhood or, when appropriate, to connect the amenities such as parks or open space on or adjacent to the site.

There are no changes proposed.

The Board finds the standards of this section have been met.

.7 Stormwater Management

Adequate provisions must be made for the collection and disposal of all stormwater that runs off proposed streets, parking areas, roofs, and other surfaces, through a stormwater drainage system and maintenance plan, which must not have adverse impacts on abutting or downstream properties.

.1 To the extent possible, the plan must retain stormwater on the site using the natural features of the site.

.2 Unless the discharge is directly to the ocean or major river segment, stormwater runoff systems must detain or retain water such that the rate of flow from the site after development does not exceed the predevelopment rate.

.3 The applicant must demonstrate that on - and off-site downstream channel or system capacity is sufficient to carry the flow without adverse effects, including but not limited to, flooding and erosion of shoreland areas, or that he / she will be responsible for whatever improvements are needed to provide the required increase in capacity and / or mitigation.

.4 All natural drainage ways must be preserved at their natural gradients and must not be filled or converted to a closed system unless approved as part of the site plan review.

.5 The design of the stormwater drainage system must provide for the disposal of stormwater without damage to streets, adjacent properties, downstream properties, soils, and vegetation.

.6 The design of the storm drainage systems must be fully cognizant of upstream runoff which must pass over or through the site to be developed and provide for this movement.

.7 The biological and chemical properties of the receiving waters must not be degraded by the stormwater runoff from the development site. The use of oil and grease traps in manholes, the use of on-site vegetated waterways, and vegetated buffer strips along waterways and drainage swales, and the

reduction in use of deicing salts and fertilizers may be required, especially where the development stormwater discharges into a gravel aquifer area or other water supply source, or a great pond.

Due to the minimal changes to the site and the fact that no additional impervious surfaces will be created, the runoff characteristics will remain relatively unchanged from current conditions. The site is almost completely flat, though the parking area was constructed so that water flows away from the building and toward the sides of the property. The surface material is gravel so the water will not pond.

The Board finds the standards of this section have been met.

.8 Erosion Control

.1 All building, site, and roadway designs and layouts must harmonize with existing topography and conserve desirable natural surroundings to the fullest extent possible, such that filling, excavation and earth moving activity must be kept to a minimum. Parking lots on sloped sites must be terraced to avoid undue cut and fill, and / or the need for retaining walls. Natural vegetation must be preserved and protected wherever possible.

.2 Soil erosion and sedimentation of watercourses and water bodies must be minimized by an active program meeting the requirements of the Maine Erosion and Sediment Control Handbook for Construction: Best Management Practices, dated March 1991, and as amended from time to time.

Very little construction work will take place on the site; a fenced area will be created on an existing gravel surface.

The Board finds the standards of this section have been met.

.9 Water Supply Provisions

The development must be provided with a system of water supply that provides each use with an adequate supply of water. If the project is to be served by a public water supply, the applicant must secure and submit a written statement from the supplier that the proposed water supply system conforms with its design and construction standards, will not result in an undue burden on the source of distribution system, and will be installed in a manner adequate to provide needed domestic and fire protection flows.

There is no need for additional water for this business and the existing water is sufficient.

The Board finds the standards of this section have been met.

.10 Sewage Disposal Provisions

The development must be provided with a method of disposing of sewage which is in compliance with the State Plumbing Code. If provisions are proposed for on-site waste disposal, all such systems must conform to the Subsurface Wastewater Disposal Rules.

There is no need for additional sewage disposal related for this business and the existing septic system is sufficient.

The Board finds the standards of this section have been met.

.11 Utilities

The development must be provided with electrical, telephone, and telecommunication service adequate to meet the anticipated use of the project. New utility lines and facilities must be screened from view to the extent feasible. If the service in the street or on adjoining lots is underground, the new service must be placed underground.

There is no need for additional utilities.

The Board finds the standards of this section have been met.

.12 Groundwater Protection

The proposed site development and use must not adversely impact either the quality or quantity of groundwater available to abutting properties or to the public water supply systems. Applicants whose projects involve on-site water supply or sewage disposal systems with a capacity of two thousand (2,000) gallons per day or greater must demonstrate that the groundwater at the property line will comply, following development, with the standards for safe drinking water as established by the State of Maine.

Animal wastes will be removed promptly from outdoor areas by the attendant.

The Board finds the standards of this section have been met.

.13 Water Quality Protection

All aspects of the project must be designed so that:

.1 No person shall locate, store, discharge, or permit the discharge of any treated, untreated, or inadequately treated liquid, gaseous, or solid materials of such nature, quantity, obnoxious, toxicity, or temperature that may run off, seep, percolate, or wash into surface or groundwaters so as to contaminate, pollute, or harm such waters or cause nuisances, such as objectionable shore deposits, floating or submerged debris, oil or scum, color, odor, taste, or unsightliness or be harmful to human, animal, plant, or aquatic life.

.2 All storage facilities for fuel, chemicals, chemical or industrial wastes, and biodegradable raw materials, must meet the standards of the Maine Department of Environmental Protection and the State Fire Marshall's Office.

There will be no storage of harmful materials. There is an existing propane tank on the site which is in conformance with regulations.

The Board finds the standards of this section have been met.

.14 Capacity of the Applicant

The applicant must demonstrate that he / she has the financial and technical capacity to carry out the project in accordance with this ordinance and the approved plan.

There are no public improvements being done as part of this project.

The Board finds the standards of this section have been met.

.15 Historic and Archaeological Resources

If any portion of the site has been identified as containing historic or archaeological resources, the development must include appropriate measures for protecting these resources, including but not limited to, modification of the proposed design of the site, timing of construction, and limiting the extent of excavation.

The site is almost entirely developed and/or covered with materials such that there are no evident historic or archaeological resources on site. There will be no excavation on the site beyond the digging for the installation of fence posts.

The Board finds the standards of this section have been met.

.16 Floodplain Management

If any portion of the site is located within a special flood hazard area as identified by the Federal Emergency Management Agency, all use and development of that portion of the site must be consistent with the Town's Floodplain management provisions.

According to Flood Insurance Rate map #230162-0015B as issued by FEMA, the subject property is located in Zone C (area of minimal flooding.)

The Board finds the standards of this section have been met.

.17 Exterior Lighting

The proposed development must have adequate exterior lighting to provide for its safe use during nighttime hours, if such use is contemplated. All exterior lighting must be designed and shielded to avoid undue

glare, adverse impact on neighboring properties and rights - of way, and the unnecessary lighting of the night sky.

There is no additional lighting proposed. Existing lighting consists of three poles with shielded lights. The Board finds the standards of this section have been met.

.18 Buffering of Adjacent Uses

The development must provide for the buffering of adjacent uses where there is a transition from one type of use to another use and for the screening of mechanical equipment and service and storage areas. The buffer may be provided by distance, landscaping, fencing, changes in grade, and / or a combination of these or other techniques.

The building and parking areas are not proposed to have additional landscaping. The site plan for the restaurant required the planting of a row of evergreen and deciduous trees along the rear property line.

The Board finds the standards of this section have been met.

.19 Noise

The development must control noise levels such that it will not create a nuisance for neighboring properties.

Most of the business involves indoor work. The outside fenced play area will be monitored by an attendant at all times.

The Board finds the standards of this section have been met.

.20 Storage of Materials

.1 Exposed nonresidential storage areas, exposed machinery, and areas used for the storage or collection of discarded automobiles, auto parts, metals or other articles of salvage or refuse must have sufficient setbacks and screening (such as a stockade fence or a dense evergreen hedge) to provide a visual buffer sufficient to minimize their impact on abutting residential uses and users of public streets.

.2 All dumpsters or similar large collection receptacles for trash or other wastes must be located on level surfaces which are paved or graveled. Where the dumpster or receptacle is located in a yard which abuts a residential or institutional use or a public street, it must be screened by fencing or landscaping.

.3 Where a potential safety hazard to children is likely to arise, physical screening sufficient to deter small children from entering the premises must be provided and maintained in good condition.

There is a dumpster on site for general waste disposal. It is screened by fencing.

The Board finds the standards of this section have been met.

.21 Landscaping

Landscaping must be provided as part of site design. The landscape plan for the entire site must use landscape materials to integrate the various elements on site, preserve and enhance the particular identity of the site, and create a pleasing site character. The landscaping should define street edges, break up parking areas, soften the appearance of the development, and protect abutting properties.

There are no plans to provide additional landscaping.

The Board finds the standards of this section have been met.

.22 Building and Parking Placement

.1 The site design should avoid creating a building surrounded by a parking lot. Parking should be to the side and preferably in the back. In rural, uncongested areas buildings should be set well back from the road so as to conform with the rural character of the area. If the parking is in front, a generous, landscaped buffer between road and parking lot is to be provided. Unused areas should be kept natural, as field, forest, wetland, etc.

.2 Where two or more buildings are proposed, the buildings should be grouped and linked with sidewalks; tree planting should be used to provide shade and break up the scale of the site. Parking areas

should be separated from the building by a minimum of five (5) to ten (10) feet. Plantings **should be** provided along the building edge, particularly where building facades consist of long or unbroken walls.

There are no changes to the site plan.

The Board finds the standards of this section have been met.

206.9 Limitation of Approval

Construction of the improvements covered by any site plan approval must be substantially commenced within twelve (12) months of the date upon which the approval was granted. If construction has not been substantially commenced and substantially completed within the specified period, the approval shall be null and void. The applicant may request an extension of the approval deadline prior to expiration of the period. Such request must be in writing and must be made to the Planning Board. The Planning Board may grant up to two (2), six (6) month extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.

Mr. Robinson moved to approve the findings of fact as presented.

Mr. Richards seconded.

VOTE: Unanimous

Mr. Neagle moved to grant minor site plan approval with the standard and proposed conditions of approval to Westside Animal Hospital, at 172 Gray Road, Tax Assessor Map U19, Lot 9, in the Highway Commercial (HC) district; Chris Copp, CFI Inc., owner, Charles R. Perkins, VMD, applicant.

Mr. Richards seconded.

VOTE: Unanimous

Standard Conditions of Approval

This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents, except de minimus changes as so determined by the Town Planner which do not affect approval standards, is subject to review and approval of the Planning Board prior to implementation.

Proposed Conditions of Approval

1. That all fees be paid prior to the issuance of a building permit.
2. There will be no more than thirty (30) dogs in the basement boarding / daycare location at any one time. There will be no more than twenty (20) overnight boarding in basement boarding / daycare location.

3. Public Hearing - Re-Approval - Final Plan Review - Major 8-lot subdivision, Apple Grove Estates, 36 Orchard Road, Tax Assessor Map R08, Lot 63 in the Rural Residential 2 district (RR2); Orchard Hill Estates, LLC, applicant; Thomas Terison, owner; Thomas Greer, P.E., Pinkham Greer Consulting Engineers, representative.

Ms. Nixon presented background information as follows: This subdivision received final plan approval on October 11, 2005. The Ordinance allows 90 days for an approved subdivision plan to be recorded in the Cumberland County Registry of Deeds. This plan is not able to be recorded because there are still several outstanding conditions of approval; the major one relating to the pesticide issue. The condition of approval placed on the project by the Board was that the *Applicant provides evidence of approval from MDEP of the proposed remediation plan or that the Department has determined it has no jurisdiction.*

As it turns out, MDEP reviewed the file and determined that it does have jurisdiction and that it does not approve of the proposed remediation plan. Therefore this 90 day extension is needed to allow the applicant to work through the process with DEP.

Mr. Richards asked if there were other conditions that needed to be met.

Ms. Nixon stated this is the main outstanding condition.

Mr. Neagle asked about adding the new conditions of approval.

Ms. Nixon stated she understood Mr. Terison was comfortable with the new conditions.

Mr. Terison stated he had not seen the conditions in writing.

Ms. Nixon reviewed the proposed changes to the conditions:

RECOMMENDED CONDITIONS OF APPROVAL: of October 2005.

1. That a Maine Construction General Permit be received from DEP no later than 30 days from the start of construction. No building permit shall be issued until this is submitted to the Code Officer.
2. That the Town Attorney review and approve the proposed warranty deed, drainage maintenance agreement and covenants and restrictions prior to the preconstruction conference.
3. That all fees be paid as required
4. That the construction hours of operation be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday.
5. That a performance guarantee in a form acceptable to the Town be submitted to cover the cost of any required improvements. This is to be reviewed and approved by the Town Engineer prior to the release of the mylar for recording.
6. That a preconstruction conference be held prior to the issuance of the building permit.
7. That the applicant provides evidence of approval from MDEP of the proposed remediation plan or that the Department has determined it has no jurisdiction.
8. That all general notes on the plan be complied with.

REVISED CONDITIONS OF APPROVAL for January 17th re-approval of subdivision:

New condition # 7 (replaces current # 7: That the applicant provides written approval from the Maine Department of Environmental Protection of the remediation plan prior to the release of the mylar for recording.

Ms. Nixon stated her understanding is the remediation process the applicant has agreed with is the VRAP program (voluntary remediation action plan). This condition clarifies that procedure.

New condition # 8: That the applicant include the cost of the remediation plan in the performance guarantee.

Ms. Nixon stated this condition is to ensure the plan is funded and completed.

New condition # 9: That the applicant completes the remediation work for the entire site as called for in the approved remediation plan prior to the issuance of any building permits for the homes. Evidence of this shall be written notice from the MDEP that the Voluntary Remediation Action Plan (VRAP) has been completed and certified.

This allows the applicant time to work the site and add improvements.

Old condition # 8 becomes new condition # 10.

Mr. Tom Greer, of Pinkham Greer Consulting Engineers stated his applicant is requesting that Condition # 7 be struck completely, they intend to follow the mitigation plan, but feel the request was beyond the scope of the Planning Board's authority to require. During Planning Board review the soils contamination was discussed. The Planning Board stated that the applicant would be held to the same standard as other applicants. At that point the applicant retained R.W. Gillespie Associates to test the soils. Upon review of the Town's files it was determined to keep the soil on site the same as the MSAD. The school has not completed the VRAP program. Apple Grove is in the process of going through with the VRAP program. The MDEP has neither approved nor denied the remediation plan. MDEP will not write a letter stating it does not have jurisdiction. The MDEP has required more testing. There are notes on the plans, the arsenic has been disclosed. They feel the MDEP process should be separate from the Town's process.

Mr. Robinson asked if condition # 7 would add an additional financial burden on the applicant.

Mr. Greer stated they have been asked to add additional bond money to ensure the program is completed.

Mr. Robinson asked if some time the MDEP will provide a letter.

Mr. Greer stated they are unable to get a letter from DEP stating that their program is okay or that they have no jurisdiction. The DEP requested a leaching test to determine how mobile the arsenic was, it has been determined it is not mobile; therefore DEP is suggesting to strip the areas to be developed and spread the dirt on the undeveloped areas of the orchard. This will require additional disturbance to the land and may trigger a storm water permit. A few more trees will be removed to allow the trucks to spread the soil.

Mr. Neagle stated he feels this is very much under the Planning Board jurisdiction, he is happy to defer to the MDEP for a remediation plan, and was in favor of extending the approval for 90-days.

Mr. Shane, Town Manager stated this is an example of unintended consequences. Once arsenic was found above the permissible exposure level, it becomes an uncontrolled site under the DEP case laws. The DEP has put together this voluntary program to allow Mr. Terison and Mr. Belluci to break the chain of liability. It is in their best interest to participate in the program. Mr. Hodgkins, Director, said he does not have a problem with the R.W. Gillespie plan, but the applicant has to enroll in the program for review to receive the certification. The school is still under the VRAP program, and has every intention of completing the work and receiving certification. This is a public safety issue; Ms. Nixon's comments are appropriate. The original condition of approval can not be met, as DEP will not write a letter. The mylar could be released upon application of the VRAP process with the DEP.

Mr. Neagle agreed with Mr. Shane's comments, but doesn't think that the new #8 condition is necessary.

Mr. Robinson asked the proposed timeline.

Mr. Greer stated they would like to have a 180-day extension to give time to get the VRAP program in place.

Ms. Nixon stated the Ordinance does not allow 180-days.

Mr. Greer stated it will probably take 30 - 45 days to get the VRAP plan to the DEP for review. He suspects there will be a change in the program and the material won't be stockpiled on one lot, it will be spread out on the remainder of the orchard. This will disturb more soil which may require a stormwater permit.

Ms. Howe asked if the applicant agreed with the revised conditions.

Mr. Greer stated they are intending to comply with the VRAP program.

Mr. Shane asked if the stormwater permit was triggered by the VRAP could they just allow that to go forward, it will be under DEP review, it will have all the erosion sedimentation devices.

Ms. Nixon stated the subdivision plan will need to be revised if the soil is not mounded. This would need to be approved as a revision to the subdivision plan; the condition of receiving a stormwater permit could be added.

The public portion of the meeting was opened.

Mr. Tom Terison of 36 Orchard Road stated he is the owner of the orchard. Mr. Terison presented material to the Board. Mr. Terison stated he is looking for equality, he believes that the SAD 51 has been negligent with the Town of Cumberland.

Mr. Neagle requested that the Chair not take testimony about the MSAD 51 as it is not relevant to the current project. Mr. Neagle asked the Chair to poll the Board members if testimony could be limited.

Mr. Ward, Vice-Chair stated yes the Board could limit testimony.

Mr. Robinson explained to Mr. Terison, the Board is ready to act on his request for an extension. Mr. Robinson stated the Board would be happy to read the information.

Mr. Terison gave his information to the Board members to be reviewed at a later time.

Ms. Sally Stockwell, Co-Chair of the Conservation Committee thanked the Board, Mr. Terison, his developers and Mr. Shane for the addressing the Conservation Committee's concerns regarding potential contamination on the site. Ms. Stockwell asked if a reference could be added to the deed.

Mr. Neagle stated his recollection was that the deed specifically references note #18 on the plan.

Ms. Stockwell stated it references soil; they would like it to include arsenic contaminated soil.

Mr. Neagle stated it has been addressed, the language is above and beyond what was necessary, the plans are clear regarding the arsenic contamination.

Ms. Nixon reviewed the minutes of October 18 which quote “Ms. Asherman asked if they could put contaminated soils conditions, the reference of soils condition is vague. Mr. Powers stated it is unusual for a deed to mention any soils conditions, so the fact that is included in the deed puts one on notice, to refer from the deed to the plan. There is a balance between putting people on notice and creating unwarranted anxiety levels.”

The public portion of the meeting was closed.

Mr. Neagle and Mr. Richards agreed they would like to see the new condition # 8 removed. This would avoid additional cost to the developer. The condition # 9 addresses concerns that the VRAP program is completed.

Mr. Neagle moved to grant the maximum 90-day extension for the major 8-lot subdivision Apple Grove Estates at 36 Orchard Road, Tax Assessor Map R08, Lot 63, in the Rural Residential 2 (RR2) district; Orchard Hill Estates, LLC, applicant; Thomas Terison, owner; Thomas Greer, P.E., Pinkham Greer Consulting Engineers, representative. The Board voted to extend the final approval with the amended conditions of approval.

Mr. Robinson seconded.

VOTE: Unanimous

Standard Conditions of Approval

This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents, except de minimus changes as so determined by the Town Planner which do not affect approval standards, is subject to review and approval of the Planning Board prior to implementation.

Recommended Conditions of Approval:

1. That a Maine Construction General Permit be received from DEP no later than 30 days from the start of construction. No building permit shall be issued until this is submitted to the Code Officer.
2. That the Town Attorney review and approve the proposed warranty deed, drainage maintenance agreement, and covenants and restrictions prior to the preconstruction conference.
3. That all fees be paid as required
4. That the construction hours of operation be limited to 7:00 a.m. to 7:00 p.m., Monday through Saturday.
5. That a performance guarantee in a form acceptable to the Town be submitted to cover the cost of any required improvements. This is to be reviewed and approved by the Town Engineer prior to the release of the mylar for recording.
6. That a preconstruction conference be held prior to the issuance of the building permit.
7. ~~That the applicant provide evidence of approval from MDEP of the proposed remediation plan or that the Department has determined it has no jurisdiction.~~

7. That the applicant provide written approval from the Maine Department of Environmental Protection of the Voluntary Remediation Action Plan (VRAP) prior to the release of the mylar for recording.

8. That all general notes on the plan be complied with.

9. That the applicant completes the remediation work for the entire site as called for in the approved remediation plan prior to the issuance of any building permits for the homes. Evidence of this shall be written notice from the MDEP that the Voluntary Remediation Action Plan (VRAP) has been completed and certified.

F. Administrative Matters -

Mr. Jeff Porter, Town Councilor stated the Town Council would like to have a workshop with the Planning Board to discuss updating the Comprehensive Plan; a date will be set.

1. Adoption of Revised Rules and Procedures

Ms. Nixon stated the revised Rules and Procedures have been drafted as a result of an abutter asking about presenting a power point presentation.

The Board reviewed the proposed Rules and Procedures.

Mr. Neagle asked to have the word *said in # 2 changed to Board of Appeals.*

Mr. Neagle moved to approve the Rules and Procedures as amended.

Mr. Richards seconded.

VOTE: Unanimous

2. March Meeting Date

Ms. Nixon asked if the Board would be able to meet on March 14 instead of March 21.

The Board agreed to move the March meeting to March 14, 2006.

G. Adjournment

Mr. Robinson moved to adjourn at 10:00 p.m.

Mr. Couillard seconded.

VOTE: Unanimous

Adjournment at 10:00 p.m.

A TRUE COPY ATTEST:

William P. Ward, Vice-Chair

Pam Bosarge, Board Clerk

