

**Land Use Committee
Town of Cumberland
Council Chambers – Town Office
July 10, 2014 – 6:00 p.m.
Minutes**

I. Call to Order: Chairman Moriarty called the meeting to order at 6:00 p.m.

II. Roll Call:

Present: Steve Moriarty, Chair, Beth Fitzgerald, Peter Gagne, Lynda Jensen, Bob Maloney, Jim Orser, Sally Pierce, Bob Waterhouse, Peter Sherr, Chris Neagle, Peter Bingham Council Liaison, Shirley Storey-King, Council Liaison

Absent: Adrienne Brown, Catlin Byers, Tom Foley, Chris Franklin, John Lambert, Jeff Porter, Sally Stockwell

Staff: Carla Nixon, Town Planner, Pam Bosarge, Administrative Assistant

III. Minutes of Previous Meeting – July 3, 2014 – Tabled until the next meeting.

IV. Election of Vice-Chair – Mr. Moriarty stated that Dr. Waterhouse had approached him stating he was willing to be the Vice-Chair of the Committee. He asked if there was anyone else who would like to be considered as Vice Chair. There was no one.

Mr. Sherr moved to nominate Dr. Waterhouse as Vice-Chair of the Committee.

Mr. Orser seconded.

VOTE: 5 in favor

V. Survey Sub-Committee: Mr. Moriarty stated the survey sub-committee met on Monday, July 7th and are planning to meet again on July 31st one hour prior to the Committee's meeting. The subcommittee hopes to have draft questions; understanding the survey will consist of a small number of questions unlike the last survey in 2007. The questions will provide information to educate the reader prior to the questions; a full zoning map will be attached. Questions similar to what zone someone lives in will be asked of the recipient.

VI. To continue and conclude discussion of possible addition of retail and restaurant uses in the Office Commercial North and South zones.

Mr. Moriarty stated at the last meeting the Committee agreed to remove timber harvesting in both OCN and OCS; to keep Hotels and Motels in OCN an OCS and to not add duplex and multiplex dwelling in the OCS zone.

- **Review list of vacant lots:**

The Committee reviewed the map of the Office Commercial North district as follows: following map:



Ms. Nixon reviewed the location of Exactitude which was the lot in the Cumberland Foreside Village which could have allowed retail.

The next four (upper) lots closer to I-295 have been amended to one lot, this lot would allow by Contract Zone multiplex and duplex dwellings.

The four lots that border Route One cannot have residential development.

The lot which states 8.8 acres is the Town lot, which the Town could develop or sell.

The lot north of the Town lot is SeaFax.

Mr. Neagle stated the subdivision approval calls for an internal connector road along the back of those four lots.

Ms. Nixon stated Lot 6 next to SeaFax has a pending Planning Board review for a commercial business (Pack Edge).

Ms. Nixon stated the next 2.8 acre lot is owned by Andrew Bellucci and has been approved for a Contractor's Space building.

Mr. Neagle stated he would not be opposed to a free standing restaurant on the smaller lots in the triangle area between Route One and I-295 north of Ledgeview Assisted Living.

Ms. Nixon stated the lots on the opposite side of Route One where True Spring and Granite Ridge Condominiums are located is the Low Density Residential District.

Ms. Jensen stated this map is very helpful.

The Committee Reviewed the OCN map as follows:

The Committee reviewed the map of the Office Commercial North district as follows:



Ms. Nixon began the review with the Maine Standards building next to King's Highway, stating only half of this lot was developed. The end of the lot that abuts Powell Road could be split or Maine Standards may enlarge their facility.

Ms. Nixon pointed out the location of Lucinda's Day Spa, Dr. Green's Dental Office, and Norton Insurance which owns two lots. The lot to the north of Norton Insurance is for sale. The other possible vacant lot in the OC N zone is the 13.01 acres lot at the end of the map on the side next to I-295 and is owned by the Town. A portion of this lot is leased to the Chebeague Transportation Company; there is the potential to shift the parking area north on the lot and that would open up a parcel for a commercial building.

Mr. Bingham stated there are limited vacant lots for development.

Mr. Neagle stated any currently developed lots could be re-developed with review.

Mr. Bingham asked which lots were most vulnerable for restaurants, and which lots would be suitable for multi-use restaurants.

Mr. Sherr asked if Norton Insurance could divide its lot.

Ms. Nixon stated yes, but she understands their plans are to expand.

Mr. Neagle stated existing buildings and uses come and go; Exactitude could become a grocery store.

Ms. Storey-King stated her Aunt Eleanor Randall who owns eight acres is waiting for values to increase to sell.

Dr. Waterhouse asked why the four lots on Route One that are part of Cumberland Foreside Village can't be accessed by Route One.

Ms. Nixon stated they can but will have shared driveways to minimize curb cuts; and they will have an internal access road in the back.

Mr. Moriarty agreed that the review of the OCN map have been very helpful.

Mr. Gagne asked if the left hand line at the end of the Chebeague Transportation Lot (CTC) was the town line.

Mr. Moriarty answered yes.

Dr. Waterhouse asked if any existing larger building have restaurants.

Ms. Nixon stated not to our knowledge.

Mr. Moriarty stated tonight's task is to finish discussing uses in the Route One corridor – Retail and Restaurants. The committee discussed stand alone and subordinate uses for restaurants such as the Thai Garden in Falmouth which is part of the Health Center.

Mr. Bingham quoted Mr. Lambert from page 9 of the minutes of June 26th "Mr. Lambert stated he is not opposed to associated restaurants up to 3,500 square feet provided they are in a building with X # of square feet, to allow a very limited area for these types of uses; the bottom line is to achieve the highest tax revenue. A restaurant could be incorporated into a larger commercial business."

Mr. Bingham stated there seemed to be a lot of general agreement.

Mr. Sherr agreed with Mr. Bingham stating the town should maximize tax revenue, but he is not opposed to stand alone restaurants on a smaller lot of perhaps 2.5 acres. He agreed with maximizing tax revenue on the larger lots which could accommodate a larger building but would allow retail and restaurants on smaller lots. An example would be the northern triangle lot in the OCS district; setbacks and building limitations would lend to a small building.

Ms. Pierce asked if there was any difference in tax revenue between a restaurant or retail use.

Ms. Bosarge explained that all property was taxed at the same mil rate; however a high tech medical building such as Maine Standards would have a higher personal property tax value.

Mr. Bingham asked theoretically what size square foot building could fit on a lot.

Mr. Neagle stated it would depend on site conditions, parking needs etc. He stated he thought no one was opposed to associated retail / restaurants such as the Delorme building in Yarmouth.

Ms. Pierce asked what the opposition was.

Mr. Neagle stated tax issue values, etc.

Mr. Moriarty stated his opinion is this is a limited supply of commercial land which should be developed to its maximum value. Restaurants have a lesser value than a medical office, and he voiced concern of restaurant turnovers and vacancies in the industry. Lotus Restaurant in Falmouth is vacant. Manufacturing uses are in business for the long haul. He stated retail also appears to have a large turnover; referencing the Exchange Street area. This is a limited supply of land which should be developed to its maximum highest and best use.

Ms. Pierce stated if a restaurant was placed in a building such as SeaFax it could be returned to a business office if the restaurant failed.

Mr. Neagle stated yes, and he thought a small restaurant in SeaFax would be a good thing. He didn't think there would be a huge demand for a restaurant on Route One as there are several within a short distance in Yarmouth and Falmouth.

Mr. Gagne stated he felt restaurant chains have fewer turnovers than independent operations.

Mr. Neagle stated he had no problem with free standing restaurants on the smaller lots, and wasn't concerned about chains.

Ms. Storey-King stated the Freeport McDonalds was allowed with design standards and no drive-through; but over the years it has evolved and has a drive-through.

Mr. Neagle stated Ordinances can be written to require silverware or linen napkins to keep out chains.

Ms. Nixon stated limited hours of operation deter chain restaurants.

Mr. Bingham stated he was in favor of restaurants as an associated use, but no sure of use on smaller lots.

Mr. Orser asked if the town could dictate the size of lots, can we designate specific locations for a restaurant.

Mr. Neagle stated we could designate a Restaurant Overlay District.

Mr. Moriarty asked if he was suggesting retail and restaurants on the lots north of Ledgeview to the end of the OCS zone.

Mr. Neagle stated yes, the four lots beginning with acreage of 3.16 headed north to the end of the district, to allow restaurants with design standards.

Ms. Pierce stated she didn't think there would be a lot of demand for restaurants in that area.

Ms. Storey-King asked about a café'.

Mr. Bingham clarified this would be an overlay district and restaurants wouldn't be allowed anywhere else except as associated uses.

Ms. Nixon asked why limit what a developer might want to do. As an example on the Town lot, a developer might want a Starbucks, Anne Taylor Loft, and a day spa like Lucinda's; are they objectionable uses? This concept would be similar to the Shops at Falmouth Village which has mixed retail and restaurant uses.

Mr. Neagle agreed with the lower tax base, but was in favor of an area for restaurants.

Ms. Nixon asked the Committee why focus on these proposed uses as associated or subordinate uses? She encouraged the Committee to look at more than dollars and cents, highest tax value, etc...what types of businesses and services do you want to have in your town?

Mr. Gagne asked if the use would be associated in a building with five businesses and not subordinate.

Mr. Sherr suggested on larger lots to allow restaurants as part of a larger single building or several stand-alone buildings with no more than 1/3 of the total square foot developed to maximize tax value.

Mr. Neagle agreed with a maximum percentage of building use to allow restaurants as an associated use similar to the coffee shop in LL Bean.

Mr. Sherr agreed with a proposed overlay on the smaller lots with a percentage of building for retail and restaurant with 75% of the building the primary use.

Mr. Neagle asked if there should be an overlay district for free standing restaurants governed by design standards in the OCN as well.

Dr. Waterhouse asked if we were discussing retail / restaurants or both in the overlay zone.

Mr. Neagle stated retail would be a separate discussion.

Mr. Neagle moved to consider adopting an Overlay Restaurant Zone on the four lots to the North of Ledgeview in the OCS District.

Mr. Orser seconded.

Discussion:

Dr. Waterhouse asked if the size of the restaurant should be included.

Mr. Neagle stated he didn't propose a size; stating he was not worried about size on the smaller lots.

Mr. Neagle amended his motion to include restaurants no larger than 3,500 sq. ft. in the Restaurant Overlay District.

Mr. Orser seconded.

Discussion:

Mr. Moriarty asked the size of the Olive Garden or Macaroni Grill restaurants.

Mr. Sherr stated probably around 5,000 sq. ft. and parking would restrict the size of an establishment.

Ms. Nixon reviewed the Ordinance definition as follows: *Restaurant – An establishment where food and drink are prepared and served to the public for consumption on or off the premises.*

The Committee discussed eat- in only or take out restaurants.

Ms. Nixon stated 233 Grill in Yarmouth is primarily an eat- in establishment, however occasionally someone picks up a take-out order.

Ms. Nixon referenced her Planning Dictionary which used words such as: stating primarily table service, café, restaurant, coffee shop.

Mr. Neagle stated they could use traditional language to restrict uses.

Mr. Moriarty stated the Town Center District has language limiting a Café', maximum 2,500 square feet, with no drive-through and in accordance with §315-018F (3). Square footage shall not include internal storage areas. Square footage shall include bathrooms, prep areas, cooking area and dining area. There are also performance standards in the Town Center District with Café Standards.

Ms. Jensen asked why there was a problem with restaurants and why limit to just that area; local people will support a local business. When the Cumberland Café on Route 100 closed it was changed to the Veterinarian's office.

Mr. Moriarty stated Cumberland has a very limited supply of commercial land available and he is in favor of higher value uses.

***Motion: To create an Overlay Zone on the four lots to the North of Ledgeview Assisted Living in the OCS district to allow restaurant or café uses, not to exceed 3,500 square feet.**

**VOTE: 9 in favor
1 opposed (Jensen)**

Mr. Neagle moved to allow restaurants in the other areas of the OCS and OCN that use 33% or less of available developed commercial space.

Mr. Sherr seconded.

Mr. Sherr stated if there is a 6,000 square foot building, 2,000 square feet could be used for a restaurant, or a 20,000 square foot building would allow 5,000 for a restaurant.

The Committee discussed the language, size, percentage and intent of the motion.

Dr. Waterhouse asked to cease the motion; stating the language was confusing.

Mr. Neagle withdrew the motion.

Mr. Neagle presented a new motion: Restaurants may be allowed in the OCS and OCN district provided they do not exceed 33% of the developed commercial space. Restaurants may not exceed 3,500 sq. ft.

Mr. Sherr seconded.

Discussion:

Mr. Moriarty stated he is not in favor of allowing restaurants and will be voting no.

Mr. Gagne asked for his reason.

Mr. Moriarty stated he did not think restaurants are the highest and best use for the limited commercial resource. The current businesses in the OCS are SeaFax, Exactitude, Maine Standards; a restaurant will not enhance the district in Town.

Mr. Sherr stated the motion is crafted to allow a happy medium, to still maximize potential commercial use.

Ms. Jensen asked if a building with a basement finished the basement area would that increase the square footage and allow the restaurant to enlarge.

Mr. Nixon stated no, square footage below grade is not counted.

Dr. Waterhouse asked if a lot had three buildings with a 3,500 sq. ft. restaurant is it owned by the owner of the development.

Mr. Neagle stated that is determined by the situation, the restaurant could be the owner or a tenant.

Mr. Neagle stated if there is a three unit commercial condominium with 1/3 retail, 1/3 restaurant and 1/3 Doctor's office the viability of the restaurant is dependent upon keeping the remaining 2/3 of the building filled.

Mr. Moriarty stated he is not in favor of a free standing restaurant.

Mr. Neagle stated he respected his opinion; however he doesn't fear a flood of restaurants. I think it would enhance the value of an office to have a small deli.

Mr. Orser stated the area is approximately 1 1/2 miles it is a very small area.

Mr. Moriarty agreed and asked why open the door for restaurants.

Ms. Pierce stated if we are allowing an overlay is the rationale that in the other area there are not enough lots.

Ms. Nixon stated the original point is to allow the developer flexibility in what he develops; when a developer comes into her office they want flexibility for a mixed use.

Ms. Pierce asked if we didn't allow restaurants would that discourage development.

Mr. Nixon stated that more limitations on uses, restricts uses.

Ms. Jensen asked if restaurants needed a certain number of parking spaces per seat are the lots large enough to accommodate the use.

Ms. Nixon stated zoning will deal with parking standards; it is connected to the number of seats.

**VOTE: 8 in favor
2 opposed (Maloney, Moriarty)**

- **RETAIL USES :**

Mr. Neagle moved that Retail may be allowed in the OCS and OCN district provided they do not exceed 33% of the developed commercial space. Retail may not exceed 3,500 sq. ft.

Mr. Sherr seconded.

Discussion:

Mr. Moriarty voiced the same concern that retail has a high turnover and vacancy rate and he doesn't think this is the highest and best use.

Ms. Pierce asked what about associated retail.

Mr. Moriarty stated he is not in favor of free standing, again stating it is not the best use of the limited commercial property located in town.

Mr. Neagle stated Associated Retail would be subordinate to a use such as Planet Dog who proposed a small store for their products.

Dr. Waterhouse asked in a typical commercial zone what percent is retail. Is some retail appropriate?

Ms. Nixon stated if not a stand-alone business park; retail would be in a mixed use corridor. Ms. Nixon stated a building could have three parts, a day spa, a coffee shop and a small retail boutique.

Mr. Moriarty stated the VCC zone on Route 100 allows retail with a maximum foot print of 25,000 square feet, the Town Center District allow retail up to 2,000 square which does not include internal storage areas.

Mr. Neagle stated if retail belongs anywhere it is on Route One.

Mr. Sherr agreed stating the Route One corridor should be a mixed use commercial zone not overwhelmed with limitations.

Mr. Bingham stated he thought the traffic volume was greater on Route One since the new on ramp was built to I-295. Prior to allowing commercial uses on Main Street traffic went out of town for services, the volume of traffic on Route One will increase with a market.

Mr. Moriarty stated the town has a mixed use commercial district in West Cumberland in the Route 100 corridor which allows retail up to 25,000 square feet.

VOTE: 8 in favor
1 opposed (Moriarty)
1 abstain (Gagne)

VII. Next Meeting:

Mr. Moriarty stated the next meeting will be July 31st at 6:00 p.m.
The Committee will review Existing Design Guidelines / Discuss Design Standards options.
The Route 100 Standards are binding, Route One Guidelines are not. If the Committee agrees that Route One should have standards they may need to be refined.
If time allows we will begin the discussion of the RR1 and RR2 zones.

Mr. Neagle stated the Route One Design Guidelines are frustrating to enforce at the Planning Board level, for example the Guidelines state long façade should be broken up, to soften the front of the building; however, there are no guidelines to enforce that recommendation.

Mr. Orser stated at the next meeting we will have two sets of minutes to review: The minutes of June 26th and July 10th.

The meeting was adjourned at 8:00 p.m.

Respectfully submitted,

Pam Bosarge, Administrative Assistant