

**PLANNING BOARD MEETING  
TOWN OF CUMBERLAND  
Cumberland Town Hall  
290 Tuttle Road, Cumberland, Maine 04021  
Tuesday, July 21, 2015  
7:00 p.m.**

**A. Call to Order:** The meeting was called to order at 7:00 p.m.

**B. Roll Call:**

**Present:** Chris Neagle, Chair, Jeff Davis, Teri Maloney-Kelley, Steve Moriarty, Joshua Saunders, Peter Sherr

**Absent:** Gerry Boivin, Vice-Chair,

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

**C. Approval of Minutes of the June 16, 2015 meeting.**

Mr. Moriarty moved to approve the minutes with the amendment to change the wording of Cumberland Mainland and Islands Land Trust to Chebeague Cumberland Land Trust.

Mr. Sherr seconded.

VOTE: Unanimous 4 in favor  
2- abstain (Saunders, Maloney-Kelley)

**D. Staff Site Plan Approvals: None**

**E. Minor Change Approvals: None**

**F. Public Hearings:**

Mr. Neagle announced that Agenda items # 4 and 5 were tabled and would not be heard at this meeting.

**1. Public Hearing§229 - Site Plan Review and § 226-17 - Shoreland Zoning of the Cumberland Code. To review a Municipal Use for Broad Cove Reserve Parking and Access Plan at 179 Foreside Road.** A portion of Tax Assessor Map R01, Lot 2 in the Low Density Residential (LDR) Limited Residential (LR). Town of Cumberland Applicant, Owner. Daniel P. Diffin, P.E., Sevee & Maher Engineers, Representative.

Mr. Moriarty recused himself as his law firm represents the Chebeague Cumberland Land Trust.

Mr. Sherr disclosed that his brother-in-law works at Verrill-Dana; he has had no discussions with him regarding this case and feels it will not affect his ability to review the project.

Mr. Neagle disclosed that he played soccer with Bill Shane, Town Manager in the 1970s and 80s. He gives an annual donation to the CCLT. However, he has no knowledge of the workings of the Chebeague Cumberland Land Trust.

He worked as a member of Verrill Dana for 27 years, and has worked with Scott Anderson previously, but has had no conversations regarding this project.

Mr. Neagle stated at the last meeting there was a discussion on the number of votes required to pass an item. It was suggested by the Town Attorney that we should have four votes. That will be the number of votes required.

The Board and public conducted a site walk on July 8, 2015.

The Planning Board will have an independent attorney to represent the Planning Board; she is Breana Behrens Esq. from Maine Municipal Association (MMA).

There are two legal issues The Payson Heirs lawsuit was dismissed in court. They have appealed to the Maine Supreme Court and the state Attorney General will participate in the case.

The second legal issue is the question by the Payson Heirs attorney of whether the proposed use is appropriate under the Ordinance.

Mr. Neagle stated at this time the Planning Board will enter into Executive Session as allowed in Title 1 § 405. E – Executive Session which allows the Planning Board to enter into Executive Session to consult with its Attorney regarding Payson Heirs regarding right, title and interest of the applicant and proposed use and underlying zone.

Mr. Sherr moved to enter Executive Session as allowed by Title 1 §405.E to meet with the Planning Board's Attorney.

Mr. Saunders seconded.

VOTE: 5-0 Unanimous

The Board entered Executive Session at 7:15 p.m.

Mr. Saunders moved to come out of Executive Session at 7:45 p.m.

Ms. Maloney-Kelley seconded.

VOTE: 5-0 Unanimous

The Board resumed its regular meeting at 7:45 p.m.

Mr. Neagle stated in his opinion the Town owns the land subject to conservation easements administered by Chebeague Cumberland Land Trust (CCLT), the Superior Court dismissed the case on standing. However, I will consider a condition approval contingent upon no permits being issued until such a time as the lawsuit is resolved in such a way the town can develop the project as applied for.

The issue of use from the Payson Heirs stating the proposed use is not allowed in the zone: The Planning Board will not make a determination as it is not part of their purview under the Site Plan Ordinance. The Town's Code Enforcement Officer has written a memo dated July 6, 2015 and in his opinion this is a permitted Municipal Use. If someone disagrees with the Code Officer there is a mechanism in the Ordinance to appeal to the Board of Adjustment and Appeals.

Mr. Sherr, Mr. Saunders, Mr. Davis and Ms. Maloney-Kelley all agreed it is not within the Planning Boards jurisdiction.

Mr. Saunders motioned that the Planning Board will not consider whether the proposed use complies with the zoning ordinance, because it is not within the Planning Board review criteria.

Mr. Sherr seconded.

VOTE: Unanimous 5-0

Mr. Neagle asked that the Town Planner, Ms. Nixon not sit at the dais with the Planning Board as she works for the Town Manager who is the applicant. Ms. Nixon is an indispensable, loyal advisor to the

Board. The Planning Board is independent of the Town. The Planning Board's role is to review the application for conformance with the Site Plan Ordinance and Shoreland Zoning Ordinance requirements.

Breana Behrens, Esq. from Maine Municipal Association will sit as the dais representing the Planning Board.

Mr. Shane, Town Manager stated he was present this evening with Dan Diffin, of Sevee & Maher to answer any technical questions, and Natalie Burns, Town Attorney, who is available to answer questions. Mr. Shane presented an overview as follows:

- September, 2014 - The Town appointed an Ocean Access Committee to draft a Use Plan
- November, 2014 – The Town purchased the property
- June 15, 2015 – The Town Council adopted the Broad Cove Reserve Management Plan

The Town will use the Management Plan as a guiding principle to grow as we go; we don't know what to expect for usage. This will be a passive recreation area. It is a park with a pier and beach with limited beach areas, in watching the tides there are approximately two hours daily that will have limited access between 10am and 2p.m.

Beach road will be 10' wide re-claim surface.

Parking at the turnaround will be limited to handicapped; the Committee has recommended only handicapped traffic drive beyond the hammerhead turnaround that will be staffed and gated. The Ocean Access Committee met with Alpha One and they said the mobility challenged parking sites would need to be a durable surface such as re-claim; Alpha One requires one parking space we are proposing four. The plan is to grow slow and determine the needs.

Dan Diffin, P.E. Sevee & Maher reviewed the revisions to the plan as a result of the completed site walk on Beach Drive and recent coordination with Alpha One regarding accessibility and the Maine Historic Preservation Commission. The changes are generally minor in nature and do not serve to alter the overall intent of the project.

#### Parking Lot Area

- An additional trail connection has been added along the west side of Beach Drive to connect Route 88 to the parking lot.
- The trail around the parking has been shifted to the east between Beach Drive and the edge of gravel.
- A trail legend has been added to Drawing C-101 to help clarify the trails proposed with this project.
- The sight distance exceeds the requirement. There will be curb stops to delineate the parking spaces.
- The parking lot will sheet flow to the wooded buffer between Route 88
- The wetland impact will be 2,350 sq. ft.

#### Beach Access Area

- The 10-foot-wide access drive, turnaround loop and mobility challenged parking have been revised to be reclaim asphalt where shown on the revised drawings.
- The mobility challenged parking has been shifted east and will now be accessed off the turnaround loop.

- The relocated bath house has been shifted south to be adjacent to the turnaround. The re-location will move the boat house out of the resource protection area. The bath house will have two handicap toilets.
- A 5-foot –wide reclaim asphalt walk was added from the turnaround to the bath house.
- The stairs to the beach have been removed from the plans.

Board comments:

- Would the handicapped area accommodate a school bus? –

Mr. Diffin stated yes.

- Signage should be posted giving handicapped vehicles the right of way

Mr. Diffin agreed that would be appropriate.

- Concern of bicycles not riding on the re-claim path but on the road
- The hammerhead turnaround is approximately 800 feet and it would be nice to have a drop off for parents of young children.

### **The public portion of the meeting was opened.**

Ms. Penney Asherman, President of the CCLT. The Town has submitted the same plan to the CCLT for review. The Planning Board and Land Trust both have review requirements some which differ and some which complement each other. Ms. Asherman summarized the CCLT role as follows: The CCLT holds an easement over this entire property; both the Spears Hill Subdivision and the Town’s Broad Cove Reserve. Our mission is to protect the value and the public benefits, and the natural resources entrusted to us and to steward them responsibly for the long term. We take this responsibility seriously we uphold our duties responsibly and professionally. The CCLT is a Nationally Accredited Land Trust, this means we have met the highest standards required by the National Land Trust Accreditation Commission and we are proud to have gained their seal of approval. There are three background points to remember:

1. The Payson easement allows development unlike all of the other easements the CCLT holds this easement allow for development and significant landowner rights. This easement however, is to balance the goals of protecting natural eco-systems and scenic values of the property.
2. The Payson Heirs sold their land to a developer that decision has enabled the development of the Spears Hill Subdivision which will have seven new homes in addition to the existing three homes on the property. Their decision has also brought about expanded public access from the 23 acre purchase of the developer and what is now known as Broad Cove Reserve owned by the town of Cumberland. The property has changed from a one owner estate to multiple owners. Regardless, the easement remains over the entire area of the property in perpetuity.
3. These allowed changes mean increase monitoring and review responsibilities of the Land Trust which we take very seriously. No matter how many owners or how the land use is evolved the CCLT is and will remain the vigilant steward of this entire property. We have hired and are talking with natural resource consultants; we are conducting weekly site visits, and have issued notices of easement violations to the developer and town. We have required a mediation plan and are working with the Citizen Ocean Access Committee on the management of the town land. We will be working with the new

homeowners' as the lots are sold. The Land Trust is now reviewing the parking and access plan. Our review and final decision have been and will continue to be guided by the Marian Payson conservation easement. This is the document that will guide all of our decisions. In contrast the Planning Board review and decisions are guided by the Town's Ordinances. It is the responsibility of the applicant to meet both the requirements of the easement and town ordinances. Some of our requirements overlap as an example stormwater management and erosion control, water quality protection of the wetlands and the waters of Casco Bay. Protection of historic archeological resources and sensitive resource protection and Shoreland zones, proper waste storage, creation and maintenance of roads and creation of parking areas and impacts on significant rare animal and wildlife habitats. Some of our criteria do not overlap such as scenic impacts from public vantage points from Route 88 and low tide line in Casco Bay. We have to consider if the uses of the property would destroy natural habitat or have an adverse impact on wildlife. And any activity or use that may significantly impart the conservation values. The Land Trust is conducting a careful and thorough review of the Town's parking and access plan. We received the updated plan last week. We have begun our review and are taking the time necessary to uphold our responsibilities. For example we are consulting with Environmental and Conservation professionals. We have asked the Town for additional clarification on a number of items and are awaiting the response. We are reviewing the proposed uses and the Management Plan drafted by the Ocean Access Committee and recently adopted by the Town Council. We are weighing input from community members. After we have received all of this information as well as information from tonight's meeting the Land Trust will convene again. We may approve, reject or require revisions based upon adherence to the easement terms. It is most important for the community to understand it is the duty of the CCLT to protect the natural resources of this special property now and over the long term.

Mr. Neagle thanked Ms. Asherman for her presentation and the work of the CCLT. We will add as a condition of approval the approval of the Chebeague Cumberland Land Trust.

Mr. Denny Gallaudet, Chair of the Ocean Access Committee (OAC) briefly described the rationale the Committee used to support the proposal. The OAC has been meeting monthly since October 2014. We have met with several experts; we have a diversity of opinions on the Committee including a number of kayakers. We visualize particularly the 11 acres on the water with 2,000 feet of frontage which offers beautiful views up on the bluff as providing excellent access for the town's residents. The beach access is restricted by a 40 foot drop. The committee envisions sparse vehicular traffic on the road; and the vehicles with handicap stickers few in number. The Committee feels the existing 10' wide road will accommodate any vehicular traffic in the area. As the Town Manager stated we are new at owning a beach and want to be cautious and grow slowly with this natural resource. The plan was approved unanimously at the OAC last meeting.

Mr. Scott Anderson, Esq., Verrill Dana stated he is representing the Payson Heirs. I have a right title and interest question and a request following up to some earlier discussion. To the extent that the Town's proposal has not yet gone through the process with CCLT and received approval. We are concerned with this grow as we go process, and are hoping the Town will present to the

Board their proposal after approval from the CCLT. There might be a question in the absence of the final CCLT process setting apart the law suit whether the Town has right-title and interest.

Mr. Neagle stated that is a good point, the Town can ask us to approve subject to CCLT approval understanding that if some elements change they will need to come back to the Planning Board. Or the town could ask us to table the application until we receive approval.

Mr. Anderson stated he thought there was a third option; many Planning Boards will table an application when waiting outside agency approvals.

The Board discussed these options and the consensus of the Board is to move forward with a proposed condition of approval if CCLT raises an issue the Town must come back to the Planning Board.

Mr. Anderson stated the second point is we believe the town does not have right title and interest due to restrictions in the conservation easement which would prohibit almost everything the town has proposed going forward. I am aware that this is not a review criteria but the Board will be discussing this as a condition of approval. The lawsuit that is currently pending is a significant obstacle to the town going forward. We appreciate the case was dismissed however; There is a significant chance we will meet the merits. We understand the issue of whether the project is a permitted use is a trip to the Board of Adjustment and Appeals. This is a big public project with significant public funding and if it is allowed to go forward the impact to the site will be permanent. We would ask for a condition of approval if we get to that point.

Mr. Shane, Town Manager stated the Town has a very clear understanding of the processes and we understand we are on a parallel path with the CCLT and intend to work with the CCLT. If there are any changes we will come back to the Board to amend the plan. Municipal uses are allowed in every zone and if they weren't we would need to move public works and the fire station.

Ms. Natalie Burns, Esq. Jensen, Baird, Gardner & Henry, stated she is here tonight representing the Town. There are three points I would like to address the first being:

- The Board has discussed a condition of approval concerning the Town's requirement of getting CCLT's approval and if that approval changes the plan in any fashion the need to come back to the Board. This is very similar to what Board's do with DEP approvals. We do not have any objections with this condition.
- To clarify her understanding of the Attorney General's participation, when I spoke with the Attorney General as to whether the Town would agree to the motion to intervene as amicus curiae our understanding was that participation was limited to the very narrow issue of whether the Payson Heirs have standing to challenge under the conservation easement. They would not take any position on merits because they were not reached in the case the only thing reached was standing ripeness. They simply felt there should be broader ability to challenge under conservation easements.
- The final thing to address is there has been very limited discussion regarding limiting the Town to any type of construction until the litigation is resolved. We would ask that the Board not place such a condition. It is unusual for litigation to start prior to the approval

process; it usually starts after an approval and at that point in time a developer has to make a conscious choice as to whether to proceed; proceed in some limited fashion or simply wait until the litigation is over. There is not however a requirement under Maine law to prevent work. It is up to the person who wants to have the development stop to go to court to seek appropriate steps to stop it from happening. That doesn't mean the Town is planning to do anything during the course of litigation, however there is probably going to be a lot of litigation and a lot of steps in this process. We do not want to have a condition of approval that is not required of other applicants simply because there has been litigation prior to the approval process. We ask you do not make this a condition of approval and let the town decide. If you add that condition you tie up the project to litigation which could last a long time.

Mr. Neagle stated he has not read the lawsuit only the Forecaster. We have consulted with the Planning Board Attorney Ms. Behrens. I take the Payson Heirs seriously enough to know they have potential to be fatal to the project. I personally do not want any work to be done prior to settling of the litigation. We will talk about it when we get to that condition.

Ms. Burns stated she thinks what will happen if there is an approval tonight we expect the Payson Heirs to file a Rule 80B appeal which is how you would expect a project to be challenged, not with an upfront challenge prior to an application. They chose, as is their right to proceed under the terms of the conservation easement which is the pending litigation. As far as the claim of ripeness I think that will go away, because they will file a Rule 80B.

Mr. Neagle stated he is optimistic no one will appeal our decision because I hope we don't make any findings not supported by evidence or make any errors of law.

Ms. Burns agreed; I am quite certain the Board will not make any errors of law or findings not supported by evidence. I do want to step back on the right title and interest question; I would remind the Board the Law Court's decision in in Southridge Corporation v. Board of Environmental Protection is the leading case on this issue on what constitutes right title and interest. In that case Fun Town had an application pending before the Board of Environmental Protection and the neighbors said you can't pursue this because your septic system is not on your own property, and said you don't have sufficient right title and interest. Fun Town had filed an adverse possession claim as the system had been there for well over twenty years. The Law Court said that is sufficient for purposes of administrative standing. It is not the same bar if you are going to court regarding an ownership interest. You have to show colorable right title or interest; here the Town has shown it owns the land in fee subject to a conservation easement, and is going through an approval process with CCLT the holder of the conservation easement. We believe that is sufficient to show to this Board right title and interest to pursue the application. We do not believe there should be a condition of approval that something else needs to be shown. The reason in the Southridge case is the Law Court said what happens if the applicant is wrong and doesn't have adverse possession they would need to come back before the Board to amend the application.

**The public portion of the meeting was closed.**

Mr. Neagle suggested the Board review Ms. Nixon's memo and discuss the findings on page 3. It will be best if we vote on each of these findings as we proceed.

The Board reviewed the two waiver requests as a result of discussion the following motion was made:

Mr. Saunders moved to grant the waiver for a Hydrogeologic Evaluation based on the special circumstances which make this requirement inapplicable based on no sub-surface wastewater disposal or other groundwater impacts.

Mr. Sherr seconded.

VOTE: Unanimous 5-0

Mr. Saunders moved grant the waiver for Market Study due to special circumstances it is inapplicable to this application.

Mr. Sherr seconded.

VOTE: Unanimous 5-0

Mr. Shane, Town Manager stated he has no objection to the locked gate at turnaround which would be locked similar to Twin Brook.

Ms. Nixon, Town Planner asked Chair Neagle if the Board could table to a date certain the remaining two items as it is apparent the Board will not get to those items this evening.

Mr. Neagle asked for motion to table Broad Cove Reserve Parking and Access Plan application.

Mr. Saunders moved to table the application for the Broad Cove Reserve Parking and Access plan.

Mr. Sherr seconded.

VOTE: Unanimous 5-0

Mr. Saunders moved to table items # 2 & 3 of the agenda to Thursday, July 30<sup>th</sup> at 7:00 p.m.

Mr. Sherr seconded.

VOTE: Unanimous 5-0

Mr. Saunders moved to take off the table the Broad Cove Reserve application for the parking and access plan.

Ms. Maloney-Kelley seconded.

VOTE: Unanimous 5-0

The Board reviewed the proposed findings of fact as follows:

**Findings of Fact – Site Plan Review**

**Sec. 229-10 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.

#### **A. 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.

**The proposed development plan seeks to minimize impacts to the natural features of the site. Appropriate utilization of the site is evidenced in the following ways:**

- 1. The existing bath house will be relocated out of the Resource Protection District.**
- 2. There will be no new buildings or structures constructed on the site.**
- 3. The proposed parking lot is located close to the entrance to the site in a wooded area. The existing vegetation will shield the parking area from sight. If the parking lot were to be placed closer to the shore, it would have an adverse impact on scenic views. Existing trees will shield the view of the parking lot from Route 88.**
- 4. Vehicular traffic along Beach Road will be minimized due to the location of the parking area and restricted access (attendant and gate) to the shore;**
- 5. The park is designed for passive recreational use only so no new facilities will be required; except for new portable toilets in the bathhouse.**
- 6. The site has been found to have historical and archeological significance. An archeological investigation is on-going and the location of this area will be restricted from development.**
- 7. A wetlands survey was conducted and with the exception of a small area (2,350 sf) adjacent to the proposed parking lot, there will be no disturbance of wetlands on the site;**
- 8. Hours of operation are limited to dawn to dusk;**
- 9. There will be no lighting;**
- 10. No utility lines will be brought into the site;**
- 11. There will be no sewer or subsurface waste disposal system on site; two portable toilets will be placed in the existing bath house structure;**
- 12. Road and parking surfaces will be more water permeable than asphalt.**
- 13. Proposed stormwater improvements will protect the environmentally sensitive coastal land and waters.**
- 14. Wetlands boundary information was obtained from a survey performed by Albert Frick Associates, Inc., Environmental Consultants. 2,350 sf of wetlands will be impacted by the project. No vernal pools were found on site.**
- 15. The location of the proposed parking areas and the relocated bath house are within Zone C-Area of Minimal Flooding.**

**16. It is anticipated that members of the public will utilize this site.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the findings of fact as amended for §A. Utilization of Site.*

*Ms. Maloney-Kelley seconded.*

*VOTE: Unanimous 5-0*

**B. Traffic, Circulation and Parking**

- (1) **Traffic Access and Parking:** Vehicular access to and from the development must be safe and convenient.
  - (a) 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. **The combined entrance and exit drive for the parking lot has a sight distance of 175' to the east, and a much greater distance when looking to the west. Based on the MDOT standards of 10' of sight distance for every mile per hour of the posted speed limit (which will be 15 mph), this standard has been met.**
  - (b) Points of access and egress must be located to avoid hazardous conflicts with existing turning movements and traffic flows. **Directional signage is proposed and adequate sight distances are shown.**
  - (c) 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. **This standard has been met.**
  - (d) 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. **This standard has been met as shown by the Traffic Assessment in Attachment B to the application.**
  - (e) 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. **N/A**
  - (f) 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. **No turning lanes are necessary due to the low traffic volume expected. There are directional signs shown on the plan.**

- (g) Accessways must be designed and have sufficient capacity to avoid queuing of entering vehicles on any public street. **The accessway to the parking lot from Beach Drive is 80' long which is sufficient to avoid queuing on Beach Drive. Should the parking lot be full, a sign will be posted and the drivers will circle through the lot and exit back onto Beach Drive.**
- (h) The following criteria must be used to limit the number of driveways serving a proposed project:  
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.  
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. **Only 1 combined exit/entrance drive is proposed for the parking lot; it is 24' wide.**

### (2) Accessway Location and Spacing

Accessways must meet the following standards:

- a. 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. **N/A**
- b. Private accessways in or out of a development must be separated by a minimum of seventy-five (75) feet where possible. **N/A**

### (3) Internal Vehicular Circulation

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

- a. 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.
- b. 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).
- c. The layout and design of parking areas must provide for safe and convenient circulation of vehicles throughout the lot.
- d. 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.

**Beach Drive will have a 20' wide reclaim asphalt surface with 2' shoulders on each side. Safe pedestrian circulation is provided via 5' wide walking trails that are separate from the roadway. Bicycles will be prohibited from walking trails.**

**Parking Layout and Design**

Off street parking must conform to the following standards:

- a. 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.
- b. 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.
- c. 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

- d. 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.
- e. 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.
- f. 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.

*The driveway and parking areas were located and designed to provide safe circulation to the site while minimizing impacts to the surrounding land. Existing grades and vegetation will be maintained to the extent practicable. The above standards have been met.*

**(5) Building and Parking Placement**

*The site is constrained by a conservation easement which dictates the location of roads, parking and buildings. There are also topographical restraints that limit locations where the parking lot and the four mobility-challenged parking spaces may be placed. The proposed parking lot will be located in an area that is secluded and buffered by existing vegetation. Building and parking placement are located in appropriate areas.*

**(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.

**Safe pedestrian circulation is provided via 5' wide walking trails that are separated from the roadway.**

***Based on the above facts, the Planning Board finds the standards of this section have been met***

*Mr. Sherr moved to adopt the findings of fact as amended for §B. Traffic, Circulation and Parking.*

*Ms. Maloney-Kelley seconded.*

*Vote: Unanimous 5-0*

### **C. Stormwater Management and Erosion Control**

- (1) 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.
  - (a) To the extent possible, the plan must retain stormwater on the site using the natural features of the site.
  - (b) 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.
  - (c) 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.
  - (d) 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.
  - (e) 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.
  - (f) 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.
  - (g) 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.

**The stormwater runoff from the project within the shoreland zone is designed to mitigate existing erosion along the gravel access drive and to minimize any increase in stormwater runoff when compared to pre-developed conditions. The project will not increase impervious area and proposes to spread runoff from the access road through a level spreader as shown on the drawings. The Town Engineer has reviewed the storm water management plan and after recommended changes were made by the applicant, approved the plan.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the findings of fact as written for §C.1 Stormwater Management  
Ms. Maloney-Kelley seconded. Vote: Unanimous 5-0*

2. Erosion Control

- (a) 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.
- (b) 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.

**Slope and wetland impacts were limited. Erosion control measures in conformance with the Maine Erosion and Sediment Control manual will be applied during construction.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the findings of fact as written for §C.2. Erosion Control.  
Ms. Maloney-Kelley seconded. VOTE: Unanimous 5-0*

D. Water, Sewer and Fire Protection

(1) 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 a water supply. There will be a fire hydrant located on Beach Drive near the hammer-head turn-a-round.**

(2) 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.

**The relocated “bath house” will have two stalls in which portable toilets will be placed. All disposal of sewage waste will be in accordance with State law, and plans will be reviewed and permits will be issued by the Local Plumbing Inspector (LPI) in accordance with those laws.**

(3) 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.

**No utilities are required for this passive recreation area therefore none will be installed as part of this project. There is public water along Beach Road that has been installed by the developer of Spears Hill Subdivision. This water connects to a fire hydrant where the hammer-head and gate are located.**

1. Fire Protection

**The plans have been reviewed and approved by the Fire Chief. There is a hydrant connected to public water located at the hammerhead turnaround near the gate on Beach Drive.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the findings of fact as amended for §D. Water, Sewer and Fire Protection.*

*Ms. Maloney-Kelley seconded.*

*VOTE: Unanimous 5-0*

E. Water Protection

- (1) 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.

**There will be no groundwater or hazardous materials discharged as a result of this project. The property is *not* located within an area designated as an aquifer protection area. There will be no on-site water supply or sewage disposal systems.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the findings of fact as written for §E. (1) Water Protection.*

*Ms. Maloney-Kelley seconded.*

**VOTE: UNANIMOUS 5-0**

(2) Water Quality

All aspects of the project must be designed so that:

- a. 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.
- b. 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.

**No substances described above will be stored or discharged in a way that could contaminate surface or groundwater.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the findings of fact as written for §E. (2) Water Quality.*

*Ms. Maloney-Kelley seconded.*

**VOTE: Unanimous 5-0**

(3) Aquifer Protection (if applicable)

If the site is located within the Town Aquifer Protection Area a positive finding by the board that the proposed plan will not adversely affect the aquifer, is required.

**The parcel is not located in the Aquifer Protection Area.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the findings of fact as written for §E. (3) Aquifer Protection.*

*Ms. Maloney-Kelley seconded.*

**VOTE: Unanimous 5-0**

F. 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.

**The parcel is shown on Federal Floodplain map number 230162 0018C. The location of the proposed parking areas and the relocated bath house are within Zone**

**C-Areas of Minimal Flooding. There are V3 and V2 areas shown along the shoreline, but there is no construction proposed in this area.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the finding of fact as amended for §F. Floodplain Management.*

*Ms. Maloney-Kelley seconded. VOTE: Unanimous 5-0*

**G. 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 entire “Payson Property” site was reviewed by the Maine Historic Preservation Commission (MHPC). A copy of the review letter from the MHPC is included in Attachment E to the application. The applicant has described a significant archaeological resource in the general area of the bath house which will not be disturbed by the development.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the finding of fact as amended for §G. Historic and Archaeological Resources.*

*Ms. Maloney-Kelley seconded. VOTE: Unanimous 5-0*

**H. 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.

**No exterior lighting is proposed.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the finding of fact as written for §E. Exterior Lighting.*

*Ms. Maloney-Kelley seconded. VOTE: Unanimous 5-0*

**I. Buffering and Landscaping**

**(1) 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.

(2) Landscaping:

There are no proposed changes to the landscaping plan due to the minimal change in the amount of pavement.

**Clearing of the property for the parking lot and other improvements will be kept to a minimum while still allowing adequate room to safely construct the components of the project. The existing forested and vegetated land outside of the cleared area will be undisturbed to allow natural buffering to effectively screen the parking lot. No new landscaping is proposed.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the finding of fact as amended for §I. Buffering and Landscaping.  
Ms. Maloney-Kelley seconded. VOTE: Unanimous 5-0*

J. Noise

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

**There is no exterior equipment or operations proposed that will result in noise. Park hours will be limited to dawn to dusk.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the finding of fact as written for §J. Noise.  
Ms. Maloney-Kelley seconded. VOTE: Unanimous 5-0*

K. 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 will be no external storage of material. There will be no dumpster or trash receptacles on site. Visitors will be required to carry out their trash when leaving.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the finding of fact as written for §K. Storage of Materials.*

*Ms. Maloney-Kelley seconded.*

*VOTE: Unanimous – 5-0*

L. 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.

**Technical Capacity: The applicant has retained the services of a professional engineer, wetlands analyst and land surveyor.**

**Financial Capacity: Project improvements will be funded by Town Council approved Reserve Funds. In addition, a grant to assist with the cost of pier improvements (or replacement) has been granted to the Town. The Shore and Harbor Planning Grant was awarded by the State of Maine Department of Agriculture, Conservation and Forestry, Maine Coastal Program.**

***Based on the above facts, the Planning Board finds the standards of this section have been met.***

*Mr. Sherr moved to adopt the finding of fact as amended for §L. Capacity of the Applicant.*

*Ms. Maloney-Kelley seconded.*

*VOTE: Unanimous 5-0*

## **CHAPTER 226 – SHORELAND ZONING**

A portion of the project will occur within the 250' Shoreland Zone setback from the shoreline of the ocean. The following details how the project will comply with the relevant requirements of this zone.

### **SS 226-17: Resource Protection District**

The Town proposes to remove the existing bath house in the Resource Protection District (RPD) and relocate it outside of the Resource Protection District adjacent to an existing gravel turn-around. No other development is proposed in the Resource Protection District.

### **SS 226-18: Limited Residential District (LRD)**

The turn-a-round will be paved with reclaim asphalt. This work will include the installation of appropriate erosion control measures and access for equipment to relocate the structure. All work will be done in accordance with the Maine DEP Erosion Control BMP manual.

The work within the LRD includes resurfacing a section of the existing gravel drive with reclaimed asphalt, and construction of a level spreader to distribute stormwater runoff that concentrates along the access drive over a larger area. Regular mowing of the proposed Public Access Walking Trails and four accessible parking spaces will occur in the shoreland zone, but has been minimized to include just 8' wide grass paths. There is no additional clearing or cutting of trees proposed within the Shoreland Zone.

**SS 226-23: Minimum Lot Standards**

The project will comply with the required lot standards because it is 11.8 acres as shown on Drawing C-101.

**SS 226-29: Parking Areas**

The project will include the creation of a 64 foot wide accessible parking area within the shoreland zone. The spaces will be maintained by the Town and signed and enforced as parking only for residents that are mobility-challenged. The spaces will be located greater than 100 feet from the ocean shoreline. There are no other parking spaces proposed within the shoreland zone.

**SS 226-30: Roads and Driveways:**

The existing gravel access drive will be resurfaced with reclaim asphalt pavement. This access drive will not be heavily used as it is to provide access for emergency vehicles and mobility-challenged individuals only. Access will be controlled by the Town through the gate located at the end of Beach Drive and shown on the drawings. The existing road is greater than 75’ from the shoreline as required by this section,

**SS 226-32: Stormwater Runoff**

The stormwater runoff from the project within the shoreland zone is designed to mitigate existing erosion along the gravel access drive and to minimize any increase in stormwater runoff when compared to pre-developed conditions. The project will not increase impervious area and proposes to spread runoff from the access road through a level lip spreader as shown on the drawings.

*Based on the above facts, the Planning Board finds the standards of this section have been met.*

*Mr. Sherr moved to adopt the findings of fact as amended for Shoreland Zoning §226-17 Resource Protection District; §226-18:1 Limited Residential District; §226-23: Minimum Lot Standards; §226-30: Roads and Driveways; §226-32: Stormwater Runoff.*

*Ms. Maloney-Kelley seconded.*

*VOTE: Unanimous 5-0*

The Board reviewed the Proposed Conditions of approval as follows:

**Proposed Conditions of Approval**

1. A preconstruction conference shall be held prior to the start of construction.  
*Mr. Saunders moved to approve the condition # 1 as written.*  
*Mr. Sherr seconded. VOTE: Unanimous 5-0*
2. All clearing limits are to be staked and inspected by the Town Engineer prior to the preconstruction conference.  
*Mr. Saunders moved to approve the condition # 2 as written.*  
*Mr. Sherr seconded. VOTE: Unanimous 5-0*
3. A blasting permit, if needed, shall be obtained from the Town Code Enforcement Officer prior to blasting.  
*Mr. Saunders moved to approve the condition # 3 as written.*  
*Mr. Sherr seconded. VOTE: Unanimous 5-0*
4. Bicycles and similar vehicles are prohibited from the 5’ wide reclaim trails.

*Mr. Sherr moved to approve condition # 4 as written.*

*Mr. Saunders seconded. VOTE: Unanimous 5-0*

5. The gate at the hammerhead at the end of Beach Drive shall be locked when the Reserve is closed.

*Mr. Sherr moved to approve condition # 5 as written.*

*Mr. Saunders seconded. VOTE: Unanimous 5-0*

6. The Chebeague Cumberland Land Trust must approve the project as approved by the Planning Board.

*Mr. Sherr moved to approve condition # 6 as written.*

*Mr. Davis seconded. VOTE: Unanimous 5-0*

7. No development of this project by the Town shall be allowed until the pending lawsuit brought by the Payson Heirs is finally resolved in a manner that allows the project to be developed.

*Mr. Saunders moved to approve condition # 7.*

*Mr. Sherr seconded. The vote did not pass defeated 4-1*

**Discussion on the motion:**

Ms. Behrens, Esq. suggested clarifying the motion as to when finally resolved is.

Mr. Neagle stated the Board would hear comments from the applicant and the representative of the Payson Heirs, at which time the Board will discuss the motion.

Ms. Burns, Esq. representing the Town stated the normal course of appeals is a Rule 80B appeal in Superior Court. If someone wants to ensure no action is taken under the approvals they can seek a declaration from the Court for injunctive release prohibiting the developer from going forward with the development of the project. If the developer does go forward with any action it is entirely at the applicant's own risk. If the applicant loses the appeal there might have to be some type of remedial work done. It is the Town's position that this Board should not tie the approval to any kind condition relating to litigation. The litigation does not have to do with the merits of the application. It does not influence right title and interest any more than the Southridge case that was referenced. The Law Court said the appropriate thing to do is grant the approval. Because all this Board is looking at is whether the Town as applicant has sufficient administrative standing to proceed. It is not a question of what if you lose the litigation; if that happens the applicant would come back and amend the plan. The Town clearly has right title and interest in fee ownership of the property. The question of whether there are restrictions under the conservation easement is something for a court to determine and it does not impact the town's right title and interest to come before this Board to seek approval. We ask that you do not mix these things up and in addition to that an additional concern is timing requirements under the Ordinance. The Town as applicant has to start the project within a certain period of time and can only seek so many amendments before the approval expires. I have been involved in several appeals which as stated by the Chair can take multiple years to resolve. We ask you treat this as any other application and not place a condition of approval on it concerning the expiration of litigation or expiration of appeals period. And that you let the Town as the applicant make its own decisions regarding what work it will or will not do in in light of the pending appeal. And any challenges to the decision do so under the normal process to file an appeal to Superior Court under Rule 80B.

Mr. Sherr asked if this last condition of approval was not added in her opinion would that in anyway preclude the Payson Heirs from taking any other course of action.

Ms. Burns stated not at all; you could not preclude any appeal rights.

Mr. Davis stated based on the testimony from the Town Attorney and discussion he is not in favor of the condition #7.

Mr. Scott Anderson, Esq. Verrill and Dana stated he wished to address a couple of points; the pending law suit is not an 80B appeal. What is different about this case is the issue raised regarding standing right title and interest and the ability of the applicant to come before you were raised before the Town purchased the property. These were issues that were raised prior to the town obtaining the land. This is not a normal situation where you have a permit approval and it is not appropriate to stay it. The timing issue is somewhat speculative; it could be resolved by the Maine Supreme Court next spring and that would be the final determination and it would be over. It could take longer than that to the extent that the town has to come back to the Board for an extension of the permit depending on the status of the law suit the Board can re-visit the issue. To make a decision would allow the town to proceed immediately. Secondly, there is no remedial work to put back cut trees; it is not like moving buildings. You cut the trees and there is a permanent impact to the property. Given the significant issues we think it is appropriate to have those issues resolved. We think the condition is appropriate and ask that the Board add the condition to the approval.

Mr. Neagle stated he is not worried about the town needing more time and reviewed the time of approval; which states the work must substantially commence within 12 months and be completed in 24 months. It would need to start in three years and be complete within four years. He does not want trees cut until lawsuit is over. There is a chance some judge may say you can't build the parking lot.

Mr. Sherr stated the Town owns the property, it is public property is there anything that precludes for some access until this is resolved such as use of the trails, snowshoe and cross country skiing short of parking or park on the edge of the road. This would preclude any clearing and keeps impact minimal.

Mr. Neagle stated any trails approved as part of the subdivision are there; I think it is a common misconception that all property owned by the town has public access. The town can own property; the town can open some of its property to the public as it has done. It is not for us to decide. Again, my concern is the cutting of trees; I don't have a problem with moving the bath house out of the Resource Protection zone.

Mr. Sherr stated the parking area is small and if required remedial steps were needed the town would do what is required. I am comfortable going forward without the condition.

Mr. Davis stated the town has current standing, there is recourse for stopping this process with Rule 80B, and there is still review and approval from the CCLT; he is not in favor of the condition of approval.

Ms. Maloney-Kelley stated she didn't want to tie this up for years she was comfortable with the Town Attorney's opinion and is not in support of the condition.

Mr. Saunders stated he felt the Board would set precedent to allow external factors like lawsuits into our review which are not part of our review criteria. If the applicant is comfortable moving forward knowing the risk it is not up to us. He also was not in support of the condition.

VOTE: ON THE MOTION # 7 - No development of this project by the Town shall be allowed until the pending lawsuit brought by the Payson Heirs is finally resolved in a manner that allows the project to be developed.

VOTE: 1 in favor (Neagle)  
4 opposed (Davis, Saunders,  
Maloney-Kelley, Sherr)

Mr. Sherr moved to approve the Site Plan Review and Shoreland Zoning for a municipal use for Broad Cove Reserve parking and access plan at 179 Foreside Road, A portion of Tax Assessor Map R01, Lot 2 in the Low Density Residential District (LDR). Town of Cumberland Applicant. This approval is subject to the Expiration of Approval, Standard Condition of Approval and the six (6) proposed conditions of approval.

Mr. Davis seconded.

VOTE: Unanimous 5 in favor

**G. Administrative Matters: None**

**H. Adjournment:**

Mr. Saunders moved to adjourn at 10:55 p.m.

Ms. Maloney-Kelley seconded.

VOTE: Unanimous 5 in favor

The meeting was adjourned at 10:55 p.m.

A TRUE COPY ATTEST:

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Christopher S. Neagle, Board Chair

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Pam Bosarge, Clerk to the Board