

**PLANNING BOARD MEETING
TOWN OF CUMBERLAND
Cumberland Town Hall
290 Tuttle Road, Cumberland, Maine 04021
Tuesday, October 21, 2014
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, John Ferland, Vice-Chair, Gerry Boivin, Jeff Davis,
Teri Maloney-Kelly, Joshua Saunders, Peter Sherr

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

C. *Approval of Minutes of the September 16, 2014 meeting.*

Mr. Saunders moved to approve the minutes of September 16, 2014.

Mr. Ferland seconded.

VOTE: 5 in favor

2 abstain (Sherr, Maloney-Kelly)

D. *Staff Site Plan Approvals: None*

E. *Minor Change Approvals: None*

F. *Hearings and Presentations:*

- 1. *Public Hearing: Major 10-lot subdivision at 179 Foreside Road, a portion of Tax Map R01, Lot 2 in the Low Density Residential (LDR) district; Owner, Spears Hill, LLC, Applicant / Developer 179 Foreside LLC.***

Mr. Ferland stated he is an abutter to this property and asked to be recused as he did at the last meeting.

Mr. Sherr stated his firm has previously worked with members of the applicant's team. He has not worked on this project or had any conversations regarding the application and felt his previous relationship would not affect his ability to review the project.

Ms. Nixon presented background information as follows: This is the first substantive review of this project; as such there are still some outstanding issues prior to final review and approval. The project appears ready for preliminary approval, with action required on the waiver requests. **REQUEST/OVERVIEW:** The applicant is 179 Foreside, LLC. The applicant has a purchase and sale agreement with the owner of the property, Spears Hill, LLC. The applicant is requesting Preliminary Plan Review of a proposed major subdivision. The 102.8 acre parcel is located at 179 Foreside Road as shown on Tax Assessor Map R-01, Lot 2 in the Low Density Residential (LDR) zoning district. Joseph LaVerriere, P.E.' of Fay, Spofford and Thorndike is the design engineer; Nathan Bateman is the representative.

The proposed subdivision must adhere to all pertinent provisions of an existing conservation easement with the Chebeague and Cumberland Land Trust. The purpose of this easement is to protect the significant scenic, natural ecological, wildlife habitat and open space values of the property while permitting a total of 10 residential building lots within designated building areas on the site. Therefore, seven "new" single family house lots and three existing single-family homes will comprise the 10 lot subdivision.

PROJECT HISTORY:

Sketch Plan Review: August 19, 2014. Board requested a copy of the conservation easement with the Chebeague and Cumberland Land Trust be included in the application. (Copy included in application packet).

Site Walk: September 10, 2014

Ms. Nixon stated that Joe LaVerriere, the Project Engineer, and David and Nathan Bateman, developers, are present to answer any questions.

Mr. Neagle asked for clarification on the ownership of the property.

Mr. Nathan Bateman stated the property is currently owned by Spears Hill, LLC and 179 Foreside LLC has a purchase and sale agreement.

Mr. LaVerriere reviewed the aerial sketch plan, and reviewed the proposed project as follows: The property is subject to a conservation easement that has been granted to the Chebeague & Cumberland Land Trust, Inc. (formerly known as Cumberland Mainland and Islands Trust, Inc.) A copy of the Conservation Easement document is contained in Attachment C of the submission. The conservation easement is designed to protect the significant scenic, natural ecological, wildlife habitat and open space values of the property; however, it also establishes provisions for a total of ten residential house lots within designated building areas throughout the site. The existing main house and cottage structures are located on Lots 8 and 9 of the subdivision. One other allowable house has been built on Tax Map R01, Lot 2C. This leaves the seven additional house lots to be developed on the property. The conservation easement also allows for one of the seven remaining residential house lots to be located outside of the designated building areas in what is referred to as a "float" lot.

As shown on the plan all of the seven new residential lots will be accessed from Spears Hill Lane. Six of the seven new lots are located within the designated building areas as defined in the Conservation Easement and the seventh lot is located in the float lot along the edge of an existing open meadow that offers dramatic views to Broad Cove and Casco Bay. All of the new lots will be served by underground utilities (power, telephone, communications, etc.) as well as a new underground potable water and municipal sewer service that will be installed from Foreside Road into the site along Spears Hill Lane. In addition, the underground utilities will be extended from Spears Hill across the open meadow land to Beach Drive to provide utility services (sewer and water) to Lots 8 & 9 as well as stubs to potentially service the remainder of the parcel that may be owned by the town.

The applicant is seeking to maintain the existing character of Spears Hill Lane to the extent permissible by the Planning Board. We recognize the Town's Subdivision Ordinance contains roadway classifications and corresponding minimum geometric design standards. As discussed during the Pre-Application meeting and site walk with the Planning Board, the applicant is requesting several waivers from the Town's standard roadway criteria in an effort to minimize the changes to the existing roadway network throughout the site. The existing road will shift away to allow more buffering along the abutting property.

Mr. Laverriere reviewed the road waiver requests as follows: §250-33 Roadway Construction

Road way Segment 1:

Shoulder width from 4' to 2'

Minimum Pavement Crown – 1/4" per foot – requesting super elevated

Maximum Grade at intersection & within 75' of intersection – 3% to 6%

Roadway Segment 2:

Pavement Width 18' to 15'

Maximum Grade 10% - 11%

Minimum Tangent between curves of reverse alignment - 50' to 15.6'

Minimum Pavement Crown -1/4" per foot – requesting super elevated

Maximum Grade at intersection & within 75' of intersection: 3% to 6%

Roadway Segment 3:

Pavement width 20' to 18'

Shoulder width from 4' to 2'
Minimum Pavement Crown 1/4" requesting super elevated
Maximum Grade at intersection & within 75' of intersection: 3% to 6%
Hot Bituminous Pavement- Gravel requested
Roadway Segment 4:
Pavement Width from 18' to 15'

Mr. Neagle stated his concern was a 15' wide travel way with parking up front on the wooded lot; he wasn't sure 15' travel way was enough to serve the need for the beach property.

Mr. Sherr asked if the road ways would be public or private.

Mr. Laverriere stated they are designed but not known, Spears Hill will be private and the Beach Lane will be private, if the referendum is supported the Town would purchase the 8.8 front parcel with a fifty foot road right of way and the waterfront property.

Mr. Neagle stated regardless of the referendum outcome, the owner is looking to sell the parcel of land and in the future in absence of the town would someone else purchase the property.

Mr. Nathan Bateman stated if the referendum does not go forward the second option is to move the "float" lot closer to the water and that residence, the existing Payson Estate and cottage would have access to the private beach for three residences.

Mr. Neagle asked if the town referendum didn't go forward would the applicant be back for final approval with two road options.

Mr. Bateman stated at final review we will know the answer and have a suitable road design for the proposed use.

Mr. Sherr asked if the grade waiver is granted what would be a safe speed limit, and would the roads be posted.

Mr. Laverriere stated there are adequate site lines and the roads will be posted 15 – 20 mph.

Mr. Davis asked if the grade was 6% out to Route 88.

Mr. Laverriere stated the last fifteen feet flatten out to a 2% grade.

Mr. Boivin asked about the narrow approach of the road and asked if the tree canopy would encroach.

Mr. Laverriere stated it was not likely the trees are already cut back.

Mr. Sherr asked if there would be stop signs.

Mr. Laverriere stated there are two proposed; one at the end of Spears Hill and at Route 88.

Mr. Sherr asked if the canopy grew and decreased the site lines will there be a Homeowners' Association to clear in the future.

Mr. Nathan Bateman stated there will be a Homeowners' Association and we can add that to the documents.

Ms. Maloney-Kelly asked about road maintenance and roads washing out. Ms. Maloney-Kelly stated it is a beautiful piece of property. She stated she thought the site lines were very good; one concern was erosion down towards lot #5.

Mr. Laverriere stated the washouts that were visible at the site walk were after the 6" rain storm.

Mr. Neagle stated he understands the conservation easement requires permeable roads and asked that the Homeowners' documents address road maintenance and tree canopies.

Mr. Sherr asked about the buffer with the abutting property owned by the Ferland's.

Mr. Bateman stated they have a signed agreement with the Ferland's to cut some trees and plant fifteen new trees.

Mr. Sherr asked if there would be detail cut outs on the reduced scale plans.

Mr. Neagle stated the Planning Board would need to review and approve the landscape plan with the Ferland's.

Mr. Bateman stated those specifics would be submitted on the final plan.

Mr. Laverriere reviewed the other two waiver requests:

- To Increase the subdivision plan from 1" = 100' to 1" = 120' in order to show the entire extent of the property on one 23" x 36" plan sheet.
- Section 253-23 – to require showing the location of all trees over 10" diameter on the plan.

The public portion of the meeting was opened.

Mr. Neagle thanked the public for their attendance at the site walk, stating there are a lot of issues associated with this property; some are political; those can't be addressed by the Planning Board.. The Board's task this evening is to review the plan for conformance with the Subdivision Review standards.

Ms. Penny Asherman, President of Chebeague & Cumberland Land Trust stated they are conducting a parallel review process; she highlighted comments of her letter dated October 17, 2014 to David Bateman. The Chebeague & Cumberland Land Trust (CCLT) appreciates the applicant's efforts to incorporate the requirements of the conservation easement to preserve the scenic, natural resource and historic values of this remarkable property.

Role of CCLT

The conservation easement that CCLT holds on the Payson Property requires CCLT to review the proposal to develop portions of the property, make determinations regarding various elements of the proposal and monitor the property for compliance with the easement. In turn, the easement requires 179 Foreside, LLC to comply with the terms of the easement, provide the information necessary for CCLT to make its determinations and to give notice prior to work commencing on the ground.

CCLT also requires that all other pending approvals be met and submitted to the CCLT prior to our final determination. These include Town of Cumberland Planning Board approval, Maine Department of Environmental Protection Stormwater Management permit and Soil Erosion and Sediment Control Plan approval, Maine Department of Inland Fisheries and Wildlife approval and Maine Historic Preservation Commission's approval and Phase I archeological survey.

The CCLT is reviewing two scenarios presented from 179 Foreside, LLC.

- Option # 1 as referred to in this letter is for the proposal for development if the Town of Cumberland approves purchase of 23 acres for public use at its referendum on November 4th.
- Option # 2 is the proposal for development if the town's purchase is not approved and 179 Foreside, LLC retains the entire property for use as a private subdivision.

THE CCLT letter to the Planning Board stated the following will be reviewed by the CCLT.

- Division of Land:
- Building Sites
- Float Lot: Option # 1 and Option # 2
- Scenic qualities
- Habitat

- Water Quality
- Archeological values
- Road Construction
- Conservation values:
- Roads
- Driveways and Parking
- Public Utilities
- View sheds

In conclusion Ms. Asherman thanked the Planning Board for their cooperation in the process. The land trust looks forward to continuing to work with 179 Foreside LLC in carrying out the numerous elements of the conservation easement on the Payson Property. *Please refer to the letter dated October 17, 2014 in the official record.*

Mr. Neagle asked as a matter of process if the Planning Board needs the CCLT approval prior to Planning Board approval.

Mr. Ted Chadbourne of 50 Stockholm Drive, also a member of the Land Trust, presented the Board with a letter dated October 21, 2014. This letter requested the following: "This Subdivision shall include in perpetuity provision for parking near Foreside Road (Rt. 88) with parking spaces acceptable to the Land Trust plus public use of a loop trail from the existing stone wall to a path along the shoreline with access (at least as present) to the tidal area and the pier."

Mr. Neagle stated a condition of approval requiring public access to the property is limited by Maine law and the Subdivision Ordinance. There is nothing in the ordinance that requires the developer to allow public use of the property. This request is not within the power of the Planning Board.

Mr. Chadbourne commended the Planning Board for listening to the CCLT comments for many years.

Mr. Neagle stated the Planning Board has no control over the town's CCLT; if the Conservation Commission is able to convince the applicant it would be welcomed. He thanked Mr. Chadbourne for his comments.

Mr. John Ferland of 2 Birch Lane stated he was an abutter and Planning Board member who asked to be recused. Mr. Ferland thanked the Bateman team for their cooperation to come up with an appropriate buffer plan. Mr. Ferland stated the Planning Board has the correct prospective on road issues. There is still a lot to talk about and the plans continue to evolve; public ownership may not mean increased traffic.

Mr. Neagle stated how and when the town develops the property; it will be the Planning Board's responsibility to require adequate infrastructure for a potential use.

The Public portion of the meeting was closed.

The Planning Board discussed the waivers to reduce the subdivision plan scale from 1"=100' to 1"=120' and to identify all trees on site larger than 10" in diameter.

Mr. Saunders stated Spears Hill Road will not be affected by the referendum.

Mr. Sherr stated the feedback from the Board will be incorporated into the final design; he agreed with the two waiver requests regarding scale of plan and trees over 10" in diameter.

Mr. Saunders moved to grant a waiver to allow the subdivision plan scale to be 1" = 120' reduced from 1" = 100'.

Ms. Maloney-Kelly seconded.

VOTE: Unanimous 6-0

Mr. Saunders moved to grant a waiver to not require the developer to identify all trees on the property over 10” in diameter.

Ms. Maloney-Kelly seconded.

VOTE: Unanimous 6-0

Mr. Boivin stated he doesn’t consider a road re-location a new impervious surface it is a shift.

Mr. Neagle agreed.

Mr. Davis asked if the town acquired the other lot would it be reviewed under subdivision or site plan.

Ms. Nixon stated it would be site plan review if there was development that triggered review.

Mr. Boivin moved to table the application for Major Subdivision Review for a 10-lot subdivision at 179 Foreside Road, a portion of Tax Map R01, Lot 2 in the Low Density Residential District. Owner, Spears Hill, LLC. Applicant, 179 Foreside LLC.

Mr. Saunders seconded.

VOTE: Unanimous 6-0

G. *Administrative Matters:* The Board signed the MYLAR for Old Colony Estates Phase III.

F. *Adjournment:*

The meeting was adjourned at 8:45 p.m.

A TRUE COPY ATTEST:

Christopher S. Neagle, Board Chair

Pam Bosarge, Board Clerk