

Planning Board Meeting Minutes
Town of Cumberland
Cumberland Town Hall - 290 Tuttle Road
Cumberland, Maine 04021
Monday April 18, 2011
7:00 p.m.

A. *Call to Order*

Mr. Neagle called the meeting to order at 7:00 p.m.

B. *Roll Call:*

Present: Chris Neagle, Chair, Peter Bingham, April Caron, Bob Couillard, Tom Gruber, Ron Dillon

Absent: John Ferland, Vice-Chair

Staff: Carla Nixon, Planning Director, Pam Bosarge, Administrative Assistant

C. *Approval of Minutes of March 15, 2011*

Mr. Bingham moved to approve the minutes as amended: to say that any necessary drilling of holes for the placement of power poles is limited to the hours of 8 am to 5 4 pm; on page 3 of the minutes.

Mr. Gruber seconded.

VOTE: Unanimous

D. *Consent Calendar / Minor Change Approvals: None*

E. *Hearings and Presentations:*

1. **Sketch Plan Review: Phase I of Village Green Major Subdivision; Cumberland, for 59 lots as allowed in the Contract Zoning Agreement with Bateman Partners, LLC; at the Doane Property, Tax Map U10, Lot 7B in the Village Mixed Use Zone (VMU). Bateman Partners, LLC, Applicant/Owner; Joseph LaVerrier, P.E., Delucca Hoffman Engineers, Representative.**

This item was tabled as the applicant was not present.

2. **~~TABLED by Applicant~~ Public Hearing: Minor 4-lot subdivision review for Chase Gravel Pit at 77 Blackstrap Road, Tax Assessor Map R07, Lot 53 in the Industrial (I) zone. Applicant/Owner BR Property, LLC; Representative, Jeff Read, P.E., Pinkham Greer Consulting Engineers.**
3. **Public Hearing: Subdivision Amendment for Crystal Lane Subdivision to divide Map U14A, Lot 87 into two lots, Lot 5, and 5A. Randall & Patricia Payson, Owners; Erik Clapp, Ph.D., Sevee & Maher Engineers, Inc., Representative.**

Ms. Nixon presented background information as follows: The applicant is Erik Clapp of P.O. Box 52 Cumberland, Maine. Mr. Clapp has a purchase and sales agreement with Randall and

Patricia Payson, owners of Lot 5 (shown on Tax Assessor's map as Map U14-A, lot 87) in the Crystal Lane subdivision, to purchase a 1.43 acre portion of their lot for the construction of a single family residence labeled on the revised plan as Lot 5A. The parcel is in the Medium Density Residential (MDR) district. In accordance with Section 4.5 of the Subdivision Ordinance, any changes to an approved subdivision plan must be submitted to and approved by the Planning Board.

DESCRIPTION:

Parcel size:	Original parcel: 4 acres. To be split into Lot 5 (2.65 acres; to be retained by owner) and Lot 5A (1.43 acres)
Net Residential Density:	Not applicable as per Town Attorney's opinion.
Number of lots:	6 lots in original subdivision. Adding an additional lot.
Zoning:	MDR
Development Type:	Single family residential
Min. Lot Size:	1 acre with public sewer
Lot frontage:	150'
Setbacks:	Front: 35'; Side 20'; Rear: 50'
Water and Sewer:	Public
Utilities:	Underground connection to transformer servicing Lot 4
Road:	50' wide private right of way with a 12' paved travel way.
Outside Agency Reviews/Approval:	See proposed conditions of approval.

REQUESTED WAIVERS

There are 3 requested waivers:

- 1) Private Drive Construction Standards
- 2) Plans Scale
- 3) Soils Mapping

Attachment H in the application binder explains the reasons for the waiver requests.

DEPARTMENT HEAD REVIEWS:

Chris Bolduc, Public Services Director: No comments

William Longley, CEO: No comments.

Police Chief Charron: No comments

Fire Chief Small, review dated April 4, 2011: The submittal as reviewed by the fire department appears to meet all the ordinances, codes and specifications as required by the fire department.

TOWN PLANNER'S COMMENTS: SEE RESPONSE LETTER DATED APRIL 12, 2011 FROM SME.

TOWN ENGINEER'S COMMENTS: SEE RESPONSE LETTER DATED APRIL 12, 2011 FROM SME.

Mr. Dillon asked if the driveway would meet the necessary access for fire trucks.

Ms. Caron disclosed that Mr. Clapp is her son's coach, but felt she could be objective in the review of the project.

Mr. Bingham disclosed he has used Terry Snow, Esq. for his own legal work in the past.

Mr. Neagle stated if the neighborhood restrictions prevented further division of the lot it couldn't be done; the Board can proceed on the basis there are no private restrictions.

Erik Clapp, PhD, applicant stated he has been working with Randy Payson to amend the plan to split the 4-acre lot into two lots. The Portland Water District has confirmed that there is adequate water and sewer available for both lots and he believes all issues have been addressed and the application meets the standards of the subdivision ordinance. He has met with Chief Small and the private way will be adequate for fire protection access. A waiver request to allow the road to be built to private way standards in Section 421 of the Ordinance has been requested.

Mr. Bingham stated the Crystal Lane area is wet and it appears most of the water from the new lot will drain into the wetland area designated as conservation area.

Mr. Clapp stated the driveway and roof will not significantly change the water run-off from the property.

Mr. Dillon asked if there would be more than two houses on the two lots.

Mr. Clapp stated he meant no more than two houses using the driveway; he doesn't see a time when he and Mr. Klimaytis would give permission for the driveway to extend to another lot. There is also a 10' pedestrian access that borders the left hand side of the property; his hope is that would prohibit any further development. The way the private way is configured it stops about 50' before the next property to help prohibit potential future development.

Ms. Caron noted that the lots will be 2.6 and 1.43 acres and the documentation presented states 2.5 and 1.5 throughout.

Mr. Clapp stated Lot 5 is proposed to be 2.65 acres and Lots 5A will be 1.43 acres, as shown on the plan. There is also a smaller piece to be dedicated to the private way with is 2,466 sq. ft. The actual size of Mr. Payson's property is larger than 4 acres. The numbers on the plan are correct.

Ms. Nixon stated her review memo would be amended.

Mr. Couillard stated he noticed there is a 10' pedestrian easement on the plan; is there any access from the end of the proposed private way.

Mr. Clapp stated there is currently no proposed access.

Mr. Neagle asked if the pedestrian easement was on the original plan.

Mr. Clapp stated yes.

Mr. Gruber asked if the private way would be paved, and is there any consideration of additional run-off from the area draining onto Crystal Lane.

Mr. Clapp stated the way the road is crowned it drains towards the west and towards the wetland.

Mr. Gruber asked if there were any existing catch basins.

Mr. Clapp stated there is a large catch basin on the east side of the Payson's property and that catches run-off from the cul-de-sac and there is a storm water pipe coming off from Crystal Lane, I believe that

catches some of the water from foundation drains. There are no catch basins along the private way. There are two small culverts that capture some water from the wooded areas that pass under the private way and disburse against Mr. Payson's lot to the wetlands.

Mr. Gruber asked if the catch basin was operational and serviced.

Mr. Neagle opened the public portion of the meeting.

Ms. Sandra Nickerson of 18 Philip Street stated she was involved in the original subdivision discussions. The original proposal was for more houses and a catch basin was required, and there is a conservation easement which abuts my property. The area is a nightmare with water. I pay taxes on a back yard that I mow with water flying. On the opposite side of Crystal Lane is a stream that goes down into the culvert and crosses their street. Several years ago the street was flooded out, and Phil Wentworth (previous Public Works Director) put in two larger culverts. When I left my house yesterday morning about 8:00 am the culverts were running $\frac{3}{4}$ full. It upsets me to think we thought the subdivision was set with no additional homes to be added. Ms. Nickerson voiced concern for potential additional changes to the subdivision in the future. The area is very wet.

The public portion of the meeting was closed.

Mr. Neagle stated with respect to Ms. Nickerson's comments in terms of what will happen next is something we can't address as a Board. We can only address the current proposal in front of the Board. The Board has the authority and obligation to grant the request if the standards have been met.

The Board considered the waiver in regards to the construction of the private way. The Ordinance allows the Board to waive standards where the Board finds the particular standard is inapplicable. As I understand the 12' wide road is going to serve two houses and will essentially be a common driveway.

Mr. Dillon stated he would like to add where it says properly configured to make sure it is configured to accommodate emergency vehicles.

Mr. Neagle stated it would be best to address that concern as a condition of approval.

Mr. Couillard asked for clarification on the location of Ms. Nickerson's property.

Ms. Caron stated she would defer to her colleagues on the Board, and agreed it doesn't seem this proposal would affect the water in that area, and asked if she was correct.

Mr. Neagle stated the application has presented stormwater calculations and there doesn't seem to be a problem.

Mr. Couillard stated he wanted to know if Ms. Nickerson's property was along the border of this property.

The Board discussed the road waiver request.

Mr. Gruber stated it is a positive to have a 12' rather than an 18' impervious surface. He would support the waiver.

Mr. Gruber moved to grant a waiver of Section 8 – Street Designs, and to approve the road be built in accordance with the Private Way Standards Section 421 of the Zoning Ordinance.

Mr. Bingham seconded.

VOTE: Unanimous

The Board addressed the two remaining waiver requests as follows:

Mr. Bingham moved to approve the request to waive the Plan Scale requirements and allow the plan scale to be 1" to 50'.

Ms. Caron seconded.

VOTE: Unanimous

Mr. Bingham moved to approve the waiver request of Soils and Boundary mapping.

Ms. Caron seconded.

VOTE: Unanimous

The Board reviewed the findings of fact as presented.

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

Mr. Dillon seconded.

VOTE: Unanimous

FINDINGS OF FACT - Subdivision Ordinance, Section 1.1:

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

1. Pollution. The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:
 - A. The elevation of the land above sea level and its relation to the flood plains;
 - B. The nature of soils and subsoil and their ability to adequately support waste disposal;
 - C. The slope of the land and its effect on effluents;
 - D. The availability of streams for disposal of effluents; and
 - E. The applicable state and local health and water resource rules and regulations;

The new home will utilize public water and sewer. The Town Engineer, Town Planner, and Town Manager have reviewed and approved the plans as being in conformance with this section.

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

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

The applicant will utilize public water. A letter from the Portland Water District is on file indicating capacity to serve Lot 5-A

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

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

The applicant will utilize public water. A letter from Portland Water District is on file indicating there is adequate capacity for the new home.

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

4. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;
An erosion and sedimentation control plan has been reviewed and approved by the Town Engineer.

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

5. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed;
The additional residential lot will not create congestion or unsafe conditions for the public roads in the area.

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

6. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are utilized;
The project will be served by the municipal sewerage system. The applicant has received an email from Bill Shane, Town Manager dated 9/21/10 that states there is adequate capacity for the new home. Obtaining a sewer user permit is a proposed condition of approval.

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

7. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized.
The Town's current municipal waste hauler has capacity for collecting solid waste generated by the new home.

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

8. Aesthetic, cultural, and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;
The location of this new lot will not have an undue adverse affect on the scenic or natural beauty of the area. The lot will be in an area of multiple residential subdivisions. There are no evident historic or wildlife resources on the site.

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

9. Conformity with local ordinances and plans. The proposed subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;
The plans have been reviewed and approved by the Town's peer review engineer, Town Planner and other town staff.

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

10. Financial and technical capacity. The subdivider has adequate financial and technical capacity to meet the standards of this section;
Financial capacity for the construction of the infrastructure will be covered by the construction loan as evidenced by a commitment letter dated 4/8/11 from Norway Savings Bank.
Technical capacity is evidenced by the use of professional land surveyor, engineers, geologists, and attorneys.

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

10. Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or

river as defined in Title 38 chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of the body of water;

This project is not located within the watershed of a lake or great pond.

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

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

Because of the residential nature of this project, combined with the fact that the project will be on public water and sewer, there will be no adverse impact on groundwater.

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

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

The proposed project is located in Zone C (area of minimal flooding) on the FEMA Flood map.

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

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

The construction of a single family home and paved driveway on the 1.43 acre parcel will not result in increased runoff from the perimeter of the site. The applicant has provided a 2' contour sketch plan showing the direction of surface water drainage.

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

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

A copy of a plan showing the wetlands delineation was on file for the Crystal Lane subdivision. A soils report was submitted that indicated there was primarily Hollis (fine, sandy) loam in the area of construction.

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

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

There are no rivers, streams or brooks on or abutting the site.

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

Mr. Bingham moved to approve the subdivision amendment for Crystal Lane Subdivision to divide Map U14A, Lot 87 into two lots, Lot 5 and 5A; Randall & Patricia Payson, Owners; Erik Clapp, Ph.D., Sevee & Maher Engineers, Inc., Representative. This approval is granted based on the standard and proposed eleven conditions of approval.

Mr. Couillard seconded.

VOTE: Unanimous

4. Public Hearing: To recommend draft zoning amendments to the Town Council to amend Section 430 – Water Extraction and Storage in the Zoning Ordinance to abolish the wholesale / commercial extraction and / or bulk storage of water in existing zoning districts to exclude Municipal or Quasi-municipal extraction of water.

Mr. Shane, Town Manager presented background describing what an aquifer is. An aquifer is a massive underground water tank, and is filled by precipitation and snow melt, which is absorbed by the water table and then filters down through the ground. It also supplies lakes and streams. This is a snapshot of how aquifers are filled and operate. In Cumberland we are blessed with an aquifer that has 5 billion gallons of water underground. The aquifers are located around the Main Street area; the Fairgrounds area, Blanchard and Bruce Hill Road, and West Cumberland the area from the Route 100 corridor back towards Falmouth and Windham. These land areas that the aquifers are under only comprise about ten percent of the land area in Cumberland. The maps showing the information are from the USGS maps and not one-hundred percent accurate. The Twin Brook aquifer is approximately 1,000 gallons a minute. These are sand and gravel aquifers, the sand, and gravel allow the water to filter down through the ground and purify the water. These aquifers have the capacity to serve a quarter of a million people for the foreseeable future. If Sebago Lake ran out of water; we have the natural resource to essentially supply all of Cumberland County for the foreseeable future. These aquifers are re-charged through rain water, snow melt, and precipitation. It is a very valuable resource which has been identified through our Comprehensive Plan process as something we should protect. We have asked ourselves why we are subjecting ourselves to potential commercial extraction such as a Poland Spring operation or pool companies to fill pools. Every time you put a hole in the aquifer you add a potential point of contamination and once that resource is gone it is gone. It only takes 1 part per million to contaminate the water. One gallon of gasoline will contaminate 1 million gallons of water. It is a huge dilution factor and it doesn't go away in a short period of time. He stated in West Cumberland in the late 1980s the town as well as DEP started receiving complaints regarding water quality. The DEP got involved and in the early 1990s the chemical PCE (which is typically found in dry cleaner fluids) was in the water table at 50 to 60 parts the permissible exposure limit or above what is considered safe drinking water standards. It is very harmful and very toxic. Since the early 1990s the DEP put together a Well Advisory Zone which is not a prohibition against development but rather a head's up. The Foxes Gore Subdivision off from Goose Pond Road had an additional level of review to show there would be no impact on wells in the Well Advisory Zone. There are currently 19 homes that are being monitored by the DEP with special filter systems that monitor PCE and MBTE levels that showed up in the early 1990s; those levels have dissipated and have not been found in the monitoring wells. It doesn't mean it is gone when you poke a hole into the aquifer you also get another point of least resistance and what will happen is the chemical will move to the area of least resistance. Even if it is stable and floating around under the water table it hasn't shown up in the wells that people use on a daily basis. Many of these homes especially on Upper Methodist Road are fed from a water source closer to Windham because of the water quality issues. During that time there were five possible sources; the construction company off from Upper Methodist Road; the old Blue Rock Gravel Pit; the old gravel pits owned by Blanche Hutchins the location of the current Foxe's Gore Subdivision; and the salvage yard off from Blackstrap Road. It was finally narrowed down to the MDOT gravel pit next to the town gravel pit and a third possibility was oil sprayed on gravel roads as a dust control back in the 1960s and 1970s. The DEP was never able to prove where the contamination materials came from, but those were the sources they indicated. So it makes sense to have more control over the commercial aspect of pumping a well into the aquifers in Cumberland and what would we capture for a taxable business in Cumberland. The risk and reward were so far out of balance when reviewed. John Sevee of Sevee & Maher presented a compelling argument that if we don't need it let's protect the water as a resource for future generations. That is why you see the language that prohibits the commercial extraction and bulk storage of water, but would allow a Yarmouth or Portland Water District which services Cumberland to re-energize the wells. Presently the Yarmouth Water

District is in negotiations with the Portland Water District to buy the wells on Greely Road next to the golf course. Both wells are over 1,000 gallons a minute; the Yarmouth Water District is looking for another source of water for their supply. Part of the agreement would allow an interconnection to the Town of Cumberland if it is ever needed. The only type of connections we would allow into the aquifers would be municipal and quasi-municipal such as water districts. There is a large aquifer under the Town that the Council wants to protect; the Council is looking for your input into the language.

The Board reviewed the proposed ordinance language.

Ms. Caron asked about pool trucks with hoses over bridges in Cumberland, would that be allowed with the new use.

Mr. Shane stated it would however, we strongly discourage that use and ask them to move along; the streams are usually in areas of fish passage and not good for the fish and is typically prohibited by the DEP as well. If you do see pool trucks taking water please contact me or Bill Longley the Code Enforcement Officer and we would be happy to go out and encourage them to move along. It is not something we encourage or allow.

Mr. Bingham stated as an example in the commercial zone in West Cumberland on a theoretical basis if a Cold Water Vodka company wanted to use the water for manufacturing. How do you define commercial and could a business still utilize water in the normal course of business.

Mr. Shane stated yes, because that would be in the course of their business and not distribution. We have a well at the ball fields in West Cumberland that waters the fields that probably takes 20,000 gallons of water a day. Currently most of the commercial district along Route 100 has public water.

Mr. Bingham asked if we would need a definition on commercial extraction.

Mr. Shane stated in the existing language *wholesale commercial is struck out; that was the primary concern.*

Mr. Neagle stated this language says groundwater may be pumped for municipal and quasi-municipal purposes etc. It doesn't exactly say it can't be pumped for anything else. He asked about writing *no groundwater may be pumped / extracted for distribution except for a municipal or quasi-municipal use.* Isn't that what we are really trying to say; stating this Section 430 is a regulation in the zoning ordinance pertaining to water extraction?

Mr. Shane stated Mr. Moriarty was chair of the Ordinance Committee and the recommendation is also to delete the uses from every zone in Town.

Mr. Neagle stated if it is deleted from everywhere in the Ordinance the Town or Portland Water District couldn't extract water.

Ms. Nixon stated we have a catch-all municipal uses category.

The Board discussed the language of the proposal and some word smithing options.

Ms. Caron asked for clarification on a use such as a Cold Water Vodka.

Mr. Bingham asked about a restaurant with a mini brewery such as Gritty's. They would want to use the water in the process.

The Board discussed the proposed water use, summarizing that it seems the intent is to not allow water to be taken out unless it is for municipal or quasi-municipal uses or to take water out to run a business in which it is not to be bottled. When you bottle and sell water it is sold in large volumes. When selling a product such as vodka it would be less.

Ms. Caron stated a successful brewery or vodka production could use a lot of water.

Mr. Shane stated the volume is the tricky part, and a commercial business that would use 10,000 to 20,000 gallons of water a day was not discussed.

Mr. Dillon asked if the aquifers have increased, decreased, or been stable throughout record keeping data.

Mr. Shane stated according to John Sevee of Sevee & Maher they have been stable and depending on the type of year they could grow in capacity.

Ms. Nixon stated we do have a use called *municipal uses and buildings subject to site plan review*. She stated that she thought there was one for public utilities such as Portland Water District but it is actually *accessory structures of public utilities subject to site plan review*. So if you are going to add a use called *quasi-municipal* we will need to add to the definitions.

The public portion of the meeting was opened.

Mr. Steve Moriarty, Town Councilor and member of the Town's Ordinance committee. I am concerned that something may have been lost in the pass off between the Council and the Board. What they really did was to say that wholesale / commercial extraction and bulk storage of water should be eliminated as a permitted use in the five zones the RR1, RR2, LDR, MDR, and VMDR on the Route 100 Corridor. Although it would be allowed for the municipality or quasi-municipal entity, we voted to massage Section 430 to apply it to municipal or quasi-municipal extraction only and to eliminate commercial wholesale water extraction.

Mr. Neagle stated he hadn't seen anything in writing to remove the use from the zones and simultaneously they should be added as municipal and quasi municipal uses in the zones.

Mr. Moriarty agreed a definition would have to be added to Section 104-Definitions.

Mr. Couillard asked why the use was allowed in the Industrial zone.

Mr. Moriarty stated it is already not an allowed use in Industrial zone.

Ms. Nixon stated we weren't given the language relating to adding or deleting uses to specific zones, we may not have advertised this correctly.

Mr. Neagle stated he would let Staff deal with procedural issues.

The public portion of the meeting was closed.

Mr. Neagle clarified that as a Board they are asked to give a recommendation that is simply different than the words in Section 430 which is to delete the use of water extraction and storage in the five zones mentioned and to redefine water extraction as listed in the paperwork. Mr. Neagle suggested that the Board look at three different thoughts.

- The first thought being: do we prohibit the extraction of water in all of the listed zones for wholesale and commercial distribution.
- The second thought: to recommend we allow municipal or quasi-municipal extraction.
- The third point being: Do we recommend that we allow uses such as a brewery or vodka distributor. That is an interesting question that the Council hasn't addressed.

Do we as a Board agree as a general premise we should prohibit the wholesale commercial use of water?

Mr. Couillard asked why this was being addressed now, as there was going to be a Town wide vote.

Mr. Shane stated the moratorium is for gravel extraction, which ends on the 29th.

Mr. Bingham stated he would favor the elimination of any extraction for wholesale / or commercial distribution purposes in the areas outlined by Mr. Moriarty.

The Board members agreed.

The second question is would we support similar amendments to allow water districts to extract water.

Ms. Caron moved to recommend to the Town Council that no groundwater or spring water be pumped, extracted or bulk stored except for municipal and quasi-municipal uses in the five zones RR1, RR2, LDR, MDR, and VMDR.

Mr. Dillon seconded.

VOTE: 6 – 0 Unanimous

Discussion on the motion:

Mr. Neagle stated he would like to have a discussion regarding breweries and vodka production, and whether it is appropriate to have businesses that extract water from the aquifer for purposes such as a brewery or a distillery. I do not think it would be appropriate for a water bottling operation.

Mr. Dillon state that is a good point, however if a business is making beer or vodka they could possibly use the same volume of water as a bottled water business.

Ms. Nixon stated when a business comes for site plan review you have to make a finding that it will not adversely impact the water supply for the municipality. At that point it could be limited, based on review and expert advice.

Mr. Bingham motioned to request the Council to review the issue of commercial uses of water in the possible manufacturing or other commercial operations.

Mr. Couillard seconded.

VOTE: 5 in favor (Bingham, Gruber,
Neagle, Couillard, Dillon)
1 abstain (Caron)

5. Public Hearing: To recommend draft zoning amendments to the Town Council to amend Section 410 – Extraction of Earth Materials in the Zoning Ordinance to consider the addition of a contract zone requirement to existing criteria for review and approval.

Mr. Neagle asked if it was correct there is a referendum regarding this proposal. The Council has been working on this proposal and a group of concerned citizens have filed papers for a town vote in June.

Mr. Shane stated that is correct; there will be a public hearing on Monday, April 25th at the Council to set the date for the June 14th election.

Mr. Neagle asked why we are doing this if the referendum makes this issue moot.

Mr. Shane stated that is a great question, it is a question we have struggled with internally as well. The issue is we are currently under a moratorium until June 29th. On June 28th should the referendum fail the Council would like to have in place language that gravel pits in the RR1 and RR2 zones are only allowed by contract zone. If the referendum fails the Town would have the same requirements as today.

Mr. Neagle asked if the referendum passes will this be necessary.

Mr. Shane stated if the referendum passes it will be dead on arrival.

Mr. Neagle asked if the referendum was more restrictive than the Council's proposal.

Mr. Shane stated yes; it would prohibit gravel pits in the residential RR1 and RR2 districts. Mr. Shane stated gravel pits as a use which is basically excavation of lands, extraction of lands; there are various definitions in our zoning ordinance. The use has been around since prior to zoning. In the 1950's is the first time we saw reference to extraction. We did a survey of area towns, gravel is an important piece of our world today we build roads from it, we build concrete with it. We use the aggregates for processing sand and stones. The communities around us do allow it primarily in their rural districts. It is allowed with some varying degree, Freeport is the only Town that doesn't allow gravel pits, and New Gloucester doesn't allow any new gravel pits. This is an issue towns have been wrestling with for a while. The issue becomes with our zoning, what the referendum will entail the RR1 and RR2 areas of town which is about 90% of our land area. The primary areas that are most valuable are around the aquifers and then near the Falmouth border, next to the former Marston pit in Falmouth. The lot that began the moratorium has quite a valuable source of gravel. When the Council began wrestling with this in October the ordinance subcommittee had multiple hearings, met with John Sevee, and has discussed uses in Town and historically what has happened. The Industrial zone contains the old Blue Rock pit and Chase's pit operation, and Storey Bros., the Town and D.O.T. pits. The D.O.T. permit is primarily used for storage, the Town pit has about 300,000 to 400,000 cubic yards of gravel remaining. The Storey pit is virtually depleted as well. The Town is the only pit in Town allowed and operating in the Industrial zone. The Council in discussions with John Sevee (the expert in this area); asked what variables should we look at when reviewing gravel pit applications. Primarily we have the Ordinance and Site Plan Review; but the concern is, is that enough, each gravel extraction is unique with the existing wells in the area. There is about a 125' difference in elevation from the top of Old Colony Subdivision to the stream; there is such variability in the topography in this area. In looking at other sections of Town we found every set of conditions was unique, and determined the best way to deal with that is to be more restrictive. The Town Council unanimously voted to use contract zoning verses eliminating the uses. The Council felt with the additional technical support, well monitoring, and a lot of items used to review and define a contract zone the neighbors and Town could be adequately protected from adverse impact on private wells and water sources. The Ordinance Committee cleaned up the language; previously the use had to go to the Board of Appeals prior to Planning Board for site plan review. The Council suggested removing the the zoning board review and added the review layer of contract zone, to allow more review of technical standards. The current public water system ends at the fire station at Blackstrap Road. The remainder of West Cumberland, south of Castle Rock and north of Skillin's greenhouse are unprotected as far as water supply. If an excavation impacted the water supply we as a Town would need to extend public water. The Council did discuss why not wait until after the referendum to see what happens; and felt this amendment would be a safety net that would be appropriate if the June referendum failed. The cost of

permitting gravel pits is very expensive. Pits over 5 acres requires DEP approval and less than five acres would require local permitting. The cost to permit a gravel permit over 5 acres could easily cost over six figures for permitting, prior to moving any gravel at the site. A review process could include hydrogeological reports and monitoring wells involving a very sophisticated and expensive process. And low cost estimates could be \$50,000 to \$60,000 dollars and high estimates could be as high as \$200,000. Remember every time you take feet of the top of the aquifer the natural filter is removed. The filter helps protect the water supply below. In the past extractions have been allowed to occur within the water table; that is what happened at the Pike Pit in West Cumberland. There is a large exposed body of water; at the Chase review the Board should be aware of types of things that will be stored in these buildings. That location would be safer with forty house lots than a commercial or industrial use. We need to look at what these businesses will store for product; Town staff will be out on a regular basis to meet with the businesses to make sure they understand the importance of protecting this resource. I don't think there will be any issues working with Mr. Chase or future land owners, the Board should make sure no petroleum is allowed on site. There should be off site fueling of vehicles. The Council decided to recommend the contract zone because they didn't feel they could adequately cover every scenario that could occur in a gravel pit extraction operation.

The public portion of the meeting was opened.

Mr. Randy Copp of 144 Gray Road stated this isn't the first time this item has been in front of the Board or the Council. On November 9, 2009 the Council agenda item number 09-188, to forward home occupations and gravel extractions to the Planning Board for a public hearing. I tried to look it up on line, and I wasn't able to read the 2009 archives. It has been to the Planning Board in 2009 and thought it was a unanimous decision from the Planning Board to move the use from a special exception to a permitted use. The Planning Board held a public hearing and voted; with no opposition, to move the use from a special exception to a permitted use. The extraction process has never been a problem in town in regards to contamination. This is not the first time the Council or the Board has voted on this; concerned neighbors are trying to stop the use. It has been an allowed use in Cumberland since 1959 to June 2010; and from June 28, 2010 to today it is a permitted use. We haven't had any problems or issues until last October.

Robert Maloney of Maloney's Ridge Road; there have been a lot of permitted uses within the Town and several that are no longer allowed. Historic zoning allowed free range of turkeys on Main Street and Greely Road, and a slaughter house at the current Food Stop location; times have changed. In this Town there is this very valuable aquifer which is very closely located under this future possible gravel pit. The engineer hired by the Town recommended the gravel not be removed. I hope we do not dig anymore gravel from that end of Town.

The public portion of the meeting was closed.

Mr. Couillard stated we are not tasked with closing off any gravel pits, yes it will make the process harder; but will give the Council the ability to allow gravel pits by contract zone.

Mr. Bingham stated Mr. Maloney makes a good point that times have changed in Cumberland. One of the things that came out of the Comprehensive Plan that surprised me and perhaps a lot of people was what a the recognition the value of the aquifers in Cumberland. The Council realized as a result of the request in October that we might not have adequate regulations to prevent a situation that could seriously deplete or cause damage to the groundwater supply. I agree the Town needs to look at changing situations; and agreed with Mr. Couillard we are not going to forbid extraction. My knowledge of contract zones gives me a lot of confidence that we have some of the better hydrological engineers with

Sevee & Maher engineers, and Dick Sweet. I am highly confident this as written will provide protections necessary, but not totally prohibit. I am in favor of the general concept of this proposal.

Ms. Caron asked about timing and the effect of the referendum vote.

Mr. Shane stated the Council will hold a public hearing on June 28th, and the Planning Board's recommendation is to change the ordinance. The Council will hold a public hearing after the referendum to act on that recommendation. If the referendum is successful the language won't be necessary gravel extraction will be prohibited.

Ms. Caron asked if we did nothing tonight and the referendum were to fail what would happen.

Mr. Shane stated there wouldn't be enough time between June 14, 2010 to advertise and get the recommendation to the Town Council prior to the expiration of the moratorium on June 29, 2010.

Ms. Caron asked what could happen in those fifteen days.

Mr. Shane stated we could receive an application under the current zoning language, or the Council could extend the moratorium, which it does not want to do. The Council has requested a recommendation from the Planning Board and why would you delay that recommendation.

Ms. Caron stated because there is a citizen's initiative coming before the Town.

Mr. Shane stated it would be to their benefit and the entire Town to have this safety net in place if the referendum fails.

Ms. Caron stated the people who are in favor of gravel pits have as much right before the vote.

Mr. Shane stated anyone can get 600 signatures within thirty days and send Council's action to referendum in November.

The Board discussed the possibility of hearing an application after the referendum. The timing would most likely not allow such an application.

Mr. Neagle reminded the Board that the Council was looking for a recommendation from the Planning Board. If the Board failed to make a recommendation for whatever reason the Council can hold a public hearing without a recommendation. We are not in the position to control timing; the Council sets its own agenda. The Board has been asked to make a recommendation in favor or opposed to the recommended amendment. At this time as he understands it, gravel pits are allowed in the Industrial zone, and the RR1 & RR2 zones, currently to open a new gravel pit site plan approval would be required from the Planning Board. And the Council is recommending we amend the language that the applicant enters into a contract zone with the Council in addition to Site Plan Review. I personally think gravel pits are fine and necessary, however, protection for the aquifer is necessary; I am in favor of any gravel pit that doesn't harm the aquifer.

Mr. Dillon asked about the new wording regarding an annual permit process and types of issues that might come before the Board.

Mr. Neagle stated for instance if we permitted a gravel permit and the neighbors were complaining about noise, or water changes in their wells. The process would be similar to liquor licenses, if there are complaints the license might not get renewed.

Mr. Bingham moved to recommend to the Town Council draft the proposed zoning amendments as written to Section 410 – Extraction of Earth Materials.

Mr. Dillon seconded.

Discussion:

Ms. Caron stated while she would have personally liked to see the process work differently as to timing; she respects what Mr. Copp presented and one of the sentences used before was the potential for harm which is a term we need to use in regards to the aquifer. Stating allowing this use in a residential zone is more than many of our surrounding neighboring towns, and she is in favor of the proposal.

Mr. Couillard stated he felt the only entrance to the proposed gravel pit location would be Tinker Lane which is a small residential road.

VOTE: 6 – 0 Unanimous

Mr. Neagle stated the only unaddressed item is the Sketch Plan for the Doane property; the applicant is not present so the item will be tabled until next meeting.

F. Administrative Matters – None

G. Adjournment:

Ms. Caron moved to adjourn.

Mr. Couillard seconded.

VOTE: 6 – 0 Unanimous

The meeting was adjourned at 9:10 p.m.

A TRUE COPY ATTEST:

Christopher S. Neagle, Board Chair

Pamela Bosarge, Board Clerk