

**PLANNING BOARD MEETING MINUTES
TOWN OF CUMBERLAND
Cumberland Town Hall, 290 Tuttle Road, Cumberland, Maine 04021
Tuesday, August 16, 2016 - 7:00 p.m.**

A. Call to Order: Chairman Moriarty called the meeting to order at 7:00 p.m.

B. Roll Call: Present: Steve Moriarty, Chair; John Berrett, Gerry Boivin, Teri Maloney-Kelly & Joshua Saunders

Absent: Jeff Davis & Peter Sherr

Staff: Carla Nixon - Town Planner; Christina Silberman - Administrative Assistant, Bill Shane - Town Manager

C. Approval of Minutes of the July 19, 2016 meeting: Chairman Moriarty pointed out two corrections. The first correction is on page 12, in the first full paragraph, second line, where it says "public road", it should say "private road". The second correction is on the last page, Item G should be titled "Administrative Matters/New Business" (the paragraph above Item G should be moved underneath Item G) and should read "Chairman Moriarty reported that he has been invited by the Town Council to meet with the Council's Ordinance Committee...". Mr. Berrett indicated that a correction is needed under Roll Call to Staff where Mr. Shane is mentioned twice. Ms. Maloney-Kelly moved to accept the minutes as amended, seconded by Mr. Berrett and **VOTED, 3 yeas, 2 abstained (Boivin & Saunders, not present) motion carries.**

D. Staff Site Plan Approvals: None.

E. Minor Change Approvals: None.

F. Hearings and Presentations:

1. Public Hearing: Major Subdivision Preliminary and Final Review and Site Plan Review: Cumberland Foreside Village Apartments, Route 1 in a contract zone. Tax Assessor Map R 01, Lots 11, 12, 12A. David Chase, Cumberland Foreside Village, LLC, Owner/Applicant. Tom Greer, P.E., Pinkham and Greer Civil Engineers, Representative.

Chairman Moriarty stated that he has seen reference to lots 11, 12 and 12A and also to lot 100 on documents related to this application and asked what the right number is. Mr. Greer responded that lot 100 is the lot number on the subdivision plan and lots 11, 12 and 12A are the tax map lot numbers.

Mr. Boivin asked for a summary of the previous meeting for those that were not present. Chairman Moriarty reported that this application has been on the Board's agenda in some form six times. A site walk was held on June 8, 2016. At the meeting on July 19, 2016, the Board granted a six month extension for site preparation. The Board had extensive discussion regarding the apartment project, found the application to be incomplete and voted to table the matter. There was a sketch plan review in January, a recommendation to the Council for changes to the Contract Zone and a sketch plan review in May.

Mr. Saunders disclosed that he was not present at the last meeting but has watched the recording of the meeting on Vimeo and has reviewed the meeting minutes.

Mr. Greer reported that the MDOT (Maine Department of Transportation) permit was received today and has been forwarded to Ms. Nixon. An email arrived today from Bob Green who finalized the DEP (Department of Environmental Protection) permit and has sent it to Augusta to be signed. He asked the Board to have a condition of approval for the DEP permit to come back and have staff review it. Mr. Greer said they hope to work through any conditions and receive approval tonight. The developer would like to move through the utility construction quickly and get the road paved in November. This will allow the building process to go much smoother.

Mr. Greer provided an overview of the project. The project will be on lot 100 of the subdivision map with 8 buildings each containing 12 units for a total of 96 apartments with parking and a community building. There will be at least two parking spaces per unit. Mr. Greer indicated that lot 9 of the subdivision map is intended for future commercial use and will come back to the Board as a separate issue. The entrance to the apartment project will be from Route 1 where there is an existing driveway. Mailboxes for residents of the apartments will be located along the entrance road. This is shown on the plans as Chelsea Way. Access to the residential subdivision portion will be gated for emergency vehicle use only.

There will be public water and sewer. The sewer will be gravity fed and a pump station is not needed. The applicant has been working with Portland Water District. The water line near the community building will not be as deep as shown on the original plans and will be a loop system. Chairman Moriarty asked if the green space shown to the left of the Seafax building on the plan is part of lot 100. Mr. Greer responded that it is part of the open space on the site along with two other open space areas and is not part of lot 100. Lot 100 is approximately 10.5 acres and includes the access road and grassy strips on either side. The only frontage lot 100 has on Route 1 is the right of way. The Route 1 right of way is fairly wide in this location and it is not colored in on the plan. Mr. Greer said the plan shows dimensions from the neighbors across the way. The brook referenced in Ms. Nixon's memo is on the other side of the railroad tracks and is 500' to 700' away and not within the 100' DEP piece.

Mr. Greer reviewed landscaping of the project. Mr. Greer asked the Board to consider a condition of approval for the applicant to work with staff on a satisfactory landscape plan. If the applicant and staff cannot agree, the applicant will come back to the Board. Mr. Greer pointed out the location of the Randall house that showed the wooded area surrounding the project. Mr. Boivin asked if the projection was an old view because the Board has run into an instance where woods shown on a projection were since cut down. Mr. Greer responded that no cutting has occurred in the area indicated and it remains in its natural condition.

Mr. Greer showed a portrayal of what the project will look like as you drive by. He said this is not exactly 100% but gives a good perspective. A sign will be placed in the front. Mr. Boivin noted that as someone drives by on Route 1, the view of the property will be at an angle and people will see mostly the tree line and not directly up the road to the building. Chairman Moriarty said that Chelsea Drive is virtually perpendicular to Route 1 with no driveway on the opposite side. The only way people will see up the road is if they deliberately turn to look.

Mr. Greer showed a site layout drawing depicting how the buildings will be numbered and identified for the Fire Department. Ms. Maloney-Kelly asked if there are 3 or 4 dumpsters.

Mr. Greer responded that there will be 3 dumpsters that will be fenced with chain link gates. Ms. Maloney-Kelly asked how the dumpsters will be accessed because she is sensitive to the beeping of trucks backing up. Mr. Greer said this depends on whether it is a rear or front loading truck and he showed examples of how each type of truck could access the dumpster and added that regardless of which type of truck is used, the truck will have to turn around at some point. There will be walkways at each dumpster with ADA compliant ramps. Mr. Greer noted that the applicant has tried to make the entire project ADA compliant. Chairman Moriarty asked if the dumpsters will be secure in the sense that only residents of the apartments can use them. Mr. Greer said that it is not likely that the dumpsters will have restricted access. The dumpsters are intended for resident use only. There will be a management team involved that will follow up with any issues with dumpster use.

Mr. Greer showed a plan of the 3 story apartment buildings with profiles and elevations depicting what the entry ways and windows will look like. The buildings will have asphalt roofs with grey clapboards and white trim and will meet the standards of the ordinance. Mr. Greer also showed a plan of the 1 story community building. The community building will be used as a renting office at first and may also be used for construction office space during the building process. It will then be a community building for apartment residents and will be managed by a professional management company.

Mr. Greer said that Ms. Nixon's notes contained several issues, including landscaping. The DEP application issue has been resolved. The financial capacity is being squared away by the Town Manager with a letter of credit and a performance guarantee.

Mr. Boivin asked Mr. Greer if he had the color version of the landscape plan. Mr. Greer brought up a color version on the display. Mr. Boivin said the color version that the Board has shows a dark green area and a light green area towards I-295 in the Lady Bird Johnson buffer. Mr. Greer said the dark green depicts areas that will remain in their existing condition. The back area does include some of the Lady Bird buffer area. The dark green shows the edge of where they are developing. Mr. Moriarty asked if there is any difference between the dark green and the medium green shown on the west side. Mr. Greer said there is no difference. The medium and dark green areas will not be touched.

Mr. Berrett said that in past meetings they have talked about the berms at the end of the parking lots to prevent vehicle lights from going beyond the property. On C.3.1 and C.3.2, the berms are described as stone and earth berms to protect the easement. Mr. Berrett asked Mr. Greer to describe the berms. Mr. Greer said the berms will block the lights and protect the easement. From the parking lot side, you will see an earthen berm roughly 3 feet tall. From the buffer side, there will be a row of rock wall. The parking lot side will be flat enough so that the grass can be mowed. Mr. Berrett asked how tall the rock wall will be and Mr. Greer replied that it will vary between 4' to 5' tall. Mr. Saunders asked if as a car pulls into one of the parking lots, will the headlights go over the top of berm or is it flat so the lights will go straight into the berm. Mr. Greer said the parking lots are really flat with less than 1' of pitch. There is some slope at the entrances to the parking lots.

Mr. Boivin asked about the details and elevations of the berms. Mr. Greer said the height, grading and contour lines of the berms are shown and the elevations appear on the profile of the sewer line. Mr. Greer displayed where the elevation is shown and said that spot grades can be added for clarification if needed.

Mr. Moriarty asked if the parking spaces will be assigned to particular units. Mr. Greer said he is not exactly sure. Mr. Moriarty asked if the 196 spaces include the parking spaces near the community building and Mr. Greer answered yes. Mr. Moriarty said an apartment resident may conceivably have to park at the community building and walk some distance. Mr. Greer agreed and said there is also parking at the far end of the apartment project and some residents may find it easier to park there.

Mr. Moriarty asked if headlights will be visible from the Middle Road area as cars turn into any of the apartment parking lots. Mr. Greer replied that he does not believe so. It is possible that there may be an extremely small gap where there may be a flash. Mr. Moriarty clarified that the parking lots are sufficiently low so that the headlights will not be visible from Middle Rd. and Mr. Greer agreed.

Chairman Moriarty opened the Public Hearing.

Tom Foley, 29 Granite Ridge Rd., thanked Mr. Greer for providing the schematic he requested. Mr. Foley said that in the meeting packet for the traffic study there was a map. Mr. Foley asked if this map is significant to the study because the map is incomplete and does not show all of the neighborhoods. Mr. Greer said that the analysis is based on actual counts of the vehicles traveling on Route 1 with the turning movements and sight distances at this intersection. The report includes all of the traffic generated there. Mr. Greer said he believes the map is only to show the location and is not relevant to the information in the report.

Mr. Foley asked what the letter that guarantees \$1,250,000 covers. Mr. Moriarty said public improvements are estimated to be just under 1.3 million. Mr. Greer stated the guarantee generally covers the site construction costs which include the landscaping, paving, water, sewer and these types of things. This is to ensure that the Town is not left with buildings without utilities. Mr. Moriarty stated that the cost of construction of the buildings is not included in the Gorham Savings Bank letter and Mr. Greer confirmed this. Chairman Moriarty asked who is responsible for guaranteeing the construction of the buildings. Mr. Greer replied that Loni Graiver will be responsible and this is in process. Ms. Nixon said that typically the Planning Board looks for a performance guarantee to cover the costs of the public improvements such as the road and infrastructure. On this project, because of its large scale and concerns that abutters have had, Ms. Nixon also asked for a letter from Mr. Graiver's lending institution and she received it just prior to this meeting. The letter dated August 11th and addressed to Loni & Denise Graiver states that Farmington Bank has agreed to lend up to \$10,610,000 for the construction of a proposed 96 unit apartment complex.

Chairman Moriarty read the following email from Town Councilor Shirley Storey-King.

Dear Planning Board,

I am unable to attend the public hearing tonight for the Cumberland Foreside Village apartments public hearing. I would like you to share and discuss my concerns at the public hearing.

First, I would like to see you not rushed by the developers through the process. I know they are eager to get started, but it is important the project, if it continues, is done properly. I believe they are pressuring the town staff to get this through in one meeting when our Major Subdivision approval process is two steps for a reason. It is also important that the contract zone agreement be followed. There is a minor technicality that could start the process all over again, I believe. One of the exhibits of the contract zone calls for a path to be built in the buffer along the Interstate; however

that buffer is mandated to be undisturbed. I noticed this in a real estate advertisement, and when I pointed it out to Ms. Nixon and we found it in the contract zone agreement, she contemplated asking town legal counsel for an opinion. Do you know if a change to a CZA exhibit invokes the amendment process? Changes to the contract zone should, legally-I believe, go back through the process. It is a minor detail, but an example of the mistakes that are made when things are rushed.

The developer has not submitted a landscape plan for the required berms. In fact, many of the plans do not even show the berms. As more of the ledge was removed last week, there is more visibility than ever towards my home and headlights and other development lighting is sure to make an impact on Shirley Lane and Middle Road residents. I noticed on document C2.1 that there is a plan for snow storage where there is supposed to be a berm. Document C3.1 shows a berm "to protect the easement." A berm is required by contract zone to protect Shirley Lane and Middle Road neighbors. I ask you to insist on knowing what the berm is, especially since the police chief is recommending more lighting for the development. I am worried about light pollution in my rural neighborhood, and it's obvious as materials are removed that there is less and less buffer between me and this development. The cynic in me wonders if the hurry to obtain approval before leaves fall and the impact is more obvious to even more Middle Road residents.

I have not received a response from the DEP. I received a letter that said they expected to make a decision by today or tomorrow. I urge you not to give approval until all permitting has been obtained. There have been changes to the DEP application since it was originally submitted due to the corrected placement of the community building, and consequently to the access road, that impact water drainage and catch basins on abutting properties. I asked both the DEP and Mr. Greer for copies of these amendments to the application, and I did not receive them. They are supposed to be public documents and available at the Town Office. As of writing this, Monday evening, DEP approval had not been received. It will be difficult for you to review it in one meeting when you do not have the documents ahead of time. The materials that I reviewed for your meeting tonight imply approval when I was told a decision would be made.

Furthermore, I have shared concerns with you and the DEP that the stormwater plan was written for one inch rain events and we have had many storms in the last year alone that have exceeded one inch. Mr. Greer's response addressed pollutants, but I want to know *where is the water is going to go* with so much of the property covered by impervious surfaces? What's not ledge will be virtually buildings or pavement. As asked for at the last meeting, but not apparent in the documents before you, are renderings indicating Chenery Brook. Two documents identify three 24 inch culverts going under Interstate 295, but not the Chenery Brook, a shoreland protected zone, where those culverts direct water. There is significant planning for water on the east side of the project, but virtually none on the west side. Removal of the ledge resulting in a westerly flow of water needs to be addressed.

Most important to the town and its taxpayers is the financial capacity of the developers. In section four of the book in front of you tonight is a letter indicating Mr. Chase's capacity for the project, but nothing for Mr. Graver. Also, the financial estimate for the project at the last meeting was \$10.2 million dollars, but the numbers in tonight's packet are \$1.2 million dollars. Which is it? There's a big difference between one and ten million dollars!

Finally, I noticed in document C4.1 that the developer intends to retain a professional engineer to oversee the installation of stormwater drainage. Given the fact that the developer has contracted with an explosives company that does not follow the rules, even when reminded, to notify abutters when blasting, I am not convinced this project will indeed get the oversight required. We do not have the town staff to oversee a project of this magnitude and a privately retained engineer has his client's

interests in mind. The response, twice, to unannounced blasting has amounted to, "Oops." What will be the supervision and consequences for mistakes made in this project?

As I have done every time I have spoken, I share again my belief that this proposal is too much development for this property. 'Over two hundred people on just over ten acres of land. That's twenty people per acre. That's a lot of impact. Mr. Chase has negotiated every other proposal he has brought to the town. Why not this one? Why not two story buildings? Or four buildings as was originally proposed? I implore you not to give final approval on this proposal with giving it a thorough vetting. My concerns above are enough proof this project is not ready to go forward. I'm sure that if I had more time to examine the documents, and/or received the requested documents, I would find even more inconsistencies. I would like to remind you all that this proposal has been fewer than eight months in process. Most communities give much more time and consideration to projects of this magnitude. As my dad would say, "Anything worth doing is worth doing right." **Please, please, please**, do not be persuaded by the developers' haste!

I thank you for your time and your service. I am sincerely appreciative and very hopeful you will do the right things.

Yours,
Shirley Storey-King

Chairman Moriarty asked Mr. Greer to address some of Ms. Storey-King's questions. Mr. Greer showed the location of Chenery Brook and said it is 600' -700' away from the project. Mr. Greer said all of the drainage from the developed area will go easterly through underdrain soil filters and out to Route 1. The only drainage that will go towards I-295 is what comes from the natural buffer. Mr. Moriarty clarified that drainage from the roofs and parking lots will go out towards Route 1 and not towards I-295 and Mr. Greer agreed. Mr. Greer said the reason they used the 1" rainstorm is because this is what is required under DEP guidelines. The underdrain soil filters will have peak flow controls. Mr. Greer said they looked at 2010 and 2015 storms and the peak flow leaving the site will be the same or less than existing conditions.

Chairman Moriarty said that Ms. Storey-King mentions three 24" culverts going under I-295 and asked if these exist already. Mr. Greer said that they do according to Ms. Storey-King's letter but they are not putting any drainage towards I-295 from the developed portion of this site. Mr. Greer said that north of the project there is a 2nd branch of the brook that crosses I-295. Mr. Boivin asked if they have analyzed this and is there no impact to I-295. Mr. Greer said yes and there should be no impact to the culverts from this project.

Mr. Berrett asked what happens to the drainage from the housing project. Mr. Greer said it goes through an underdrain soil filter then out through the buffer and along I-295. They have analyzed this and the peak flow going in that direction will not exceed the existing conditions prior to the project.

Chairman Moriarty said Ms. Storey-King mentions the possibility of a trail through the upper forested area that may be part of the entire contract zone. He asked if Mr. Greer intends to construct a trail. Mr. Greer said they do not plan to construct a trail but they could mark out a path if needed. This area is open space and has a relatively steep slope. Chairman Moriarty said the path is not off limits but Mr. Greer is not proposing any improvements and Mr. Greer agreed.

Ms. Storey-King mentions that drawing C.2.1 shows an area for snow storage where there should be a berm. Mr. Greer outlined the area for snow storage around the parking area and said the berm will be grass so they can put snow on top of it. Ms. Storey-King also mentions light pollution in her letter. Mr. Greer said there is a lighting plan with photometrics and of the parking lot lights are cut off fixtures. These will be roughly 20' high and if you are below them, you will see them. The light intensity is so small that it doesn't register on any of the light meters.

Mr. Saunders asked if there is language in the contract zone about a berm and does the 3' comply with the contract zone language. Mr. Shane replied that if we can see light (outside of the project area), then there has to be a better berm. Any amount of light must be shielded.

Mr. Shane said that this contract zone has been around since 2002. Originally this area was going to be commercial buildings. It was envisioned that a loop trail would enter from Route 1 and go through one of the roads then loop around the site for a place for people to walk. This project is not going in that direction. Mr. Shane said he has talked with Ms. Nixon and the Town Attorney about how to fix the issue of constructing a trail. We really do not want to cut into a buffer that shouldn't be cut into. The proper thing to do is to have Mr. Chase recommend to the Town Council that they revisit the contract zone for an amendment. Mr. Chase has agreed to do this and should be on the Town Council agenda next month to begin the process of amending the contract zone. Mr. Saunders said Mr. Greer explained that they could mark a trail and asked would this meet the letter of the contract zone. Mr. Shane said it is a safety issue and he does not want to encourage a trail to be there.

Chairman Moriarty said Ms. Storey-King raises the point that we have not received a letter from the DEP. Ms. Nixon's summary indicates we are lacking an amended DEP site location of development permit, an amendment to a DEP natural resources protection district for stream crossing and a DEP stormwater permit. Chairman Moriarty said he understands a permit from the DEP is forthcoming and asked if it will cover all three items and Mr. Greer replied that it will.

Chairman Moriarty said Ms. Storey-King's question of financial capacity has been answered.

Ms. Storey-King also mentions the intention of the applicant to hire an engineer to oversee installation of storm water drainage and she comments about the blasters. Mr. Greer said that the site is inspected by Chris Baldwin who is contracted to provide DEP oversight inspections including the drainage structures and erosion control. Mr. Baldwin does an inspection roughly every 2 weeks and after storm events. Mr. Greer said he believes that the Town receives reports from Mr. Baldwin.

Mr. Moriarty said the final paragraph of the email deals with Ms. Storey-King's perception of density and too much development in too little space. Mr. Greer said that they are doing half a dozen projects in Portland that make this development look sparse. Mr. Greer said that as an engineer, he looks at maximizing limited resources and he sees projects like this as a limited resource. This project speaks to the "green mode" in that it is a minimized footprint on the earth.

Chairman Moriarty closed the Public Hearing.

Mr. Boivin said he wants to understand the contract zone vs. this project and the trail system. Mr. Saunders responded that he believes that the trail wouldn't need to be shown on the plan. If in the end the applicant does need a trail, it can be done with the sidewalks as Mr. Shane suggested or, if safe enough, in the non-disturbed buffer. Not as a cut but simply as a marked trail that should not have to be shown on the site plan. Mr. Saunders said he struggles with, are we (the Board) approving a site plan that does not comply with the contract zone. Mr. Saunders thinks right now that we do not have to show it on the site plan.

Mr. Shane said he does not believe the requirement for this walkway is specific to this project. The requirement is specific to the entire parcel which generates the whole contract zone. This walkway wasn't required when Seafax was built or Exactitude, Pack Edge or even the housing project. Mr. Shane said the walkway requirement was discovered when going through the ins and outs of the contract zone to update the language. Mr. Shane said he thought the reference to I-295 (in the contract zone language) was a typo and that it was meant to refer to US Route 1. Mr. Shane said he can't imagine why somebody would want to cut into the buffer. The requirement is for the entire contract zone and not for individual site plans. Seeing that this project approaches the back side of the zone, it is important to clarify the requirement to know going forward what the vision is. Perhaps a trail could be dedicated. Mr. Saunders asked if the contract zone requires that the portion of the parcel the Board is looking at right now have some sort of trail system. Mr. Shane replied technically it does. Mr. Saunders asked if the contract zone requires that this section has a trail system. Mr. Shane said the contract zone requires that the back side and the front side of the entire parcel have a looped trail.

Chairman Moriarty asked if there were any waivers being requested and Ms. Nixon responded that there was one waiver that has been approved.

Chairman Moriarty reviewed Ms. Nixon's summary beginning with comments by the Police Chief and Ms. Storey-King's comment about the Chief suggesting more lighting than planned. The Chief actually says that he could not determine the location of the lighting from his view of the plan. Chairman Moriarty asked Mr. Shane if the Town is satisfied with the lighting. Mr. Shane replied that when the plan was reviewed with the Public Safety Chiefs, they didn't have the photometric plan and wanted to see lighting at the entrance. Ms. Nixon has had subsequent meetings about it and indicated she has not reviewed the photometric plan directly with the Police Chief but the plan has been reviewed by the peer review engineer and she has reviewed it. The plan appears to meet the needs of the Police Chief in that the parking lot areas and the entrances to the buildings are adequately lit without light spilling over property lines. Chairman Moriarty confirmed there is an overriding contract zone lighting provision regarding headlights.

Chairman Moriarty said the Fire Chief has made some recommendations which are not requirements. Ms. Nixon has also provided comments. Maine DEP permits are still needed. Ms. Nixon commented on the types of evergreens and addition of more evergreen trees in the landscape plan. Mr. Greer has indicated that he will work with Ms. Nixon on this if the Board wishes. Chairman Moriarty asked if this would include the mailbox area as well and Ms. Nixon and Mr. Greer both agreed it would.

Ms. Maloney-Kelly asked if, as traffic comes up and makes the turn at the first apartment building, will the headlights shine into the apartments. Mr. Greer said large and small trees

will be planted here and the road is actually lower and the apartments sit up a bit higher than the road. The main beam of the headlight will be down lower but you may see the top flash of it as it goes around.

Ms. Nixon said in her comment #11 that there are references to lot 100 being tax map R01, lots 11A, 12 and 12 A and also referenced to as being tax map R01, lots 12A and 12 she asked if it is lots 11A, 12 and 12A or just lots 12 and 12A. Mr. Greer said he will go back and check this and get it straightened out on the plan. Ms. Nixon asked about the stormwater maintenance agreement. Mr. Greer said a second agreement will be needed for Mr. Graiver's company. Ms. Nixon said this should be a condition of approval. Ms. Nixon asked about the trail within the Route 1 buffer strip. Mr. Shane said they asked them not to build the trail because the town was working with DOT to widen the road from 2 lanes to 3 lanes. At that time the town had monies to build a sidewalk inside the tree line instead of out in the wooded area. When this was explored, the town found that the shoulders had no gravel under them. This project had to be redesigned and has been delayed until spring. It is required in the contract zone and can be included in the letter of credit. Ms. Nixon asked if a condition of approval should make reference to this and Mr. Shane said yes.

Chairman Moriarty asked if the color of the fencing for the dumpsters will be grey like the buildings and Mr. Greer replied that it will be white.

Chairman Moriarty said there are comments from the Lands and Conservation Commission. There was a peer engineer review from Dan Diffen of Sevee and Mahar. Chairman Moriarty said he gathers Mr. Diffen has nothing further to add and Ms. Nixon concurred. Mr. Diffen's comments have been taken into consideration.

Chairman Moriarty reviewed the Findings of Fact.

Findings of Fact - Chapter 250, Subdivision Ordinance:

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:

- A. 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;

Parcel is above sea level and not within a floodplain. There is public water and sewer. Based on the information provided, the standards of this section have been met.
- B. Sufficient Water. The proposed subdivision has sufficient water available for the reasonable foreseeable needs of the subdivision;

The subdivision will be served by public water. When completed, it is anticipated to use 19,500 gallons of water per day. Water will be provided by the Portland Water District. There is a letter on file from PWD dated August 2, 2016 indicating that it will be capable of servicing this project. Based on the information provided, the standards of this section have been met.

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

The proposed subdivision will utilize public water; there is a letter on file from PWD dated August 2, 2016 indicating that it will be capable of servicing this project. Based on the information provided, the standards of this section have been met.

- D. 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;

The erosion and sedimentation control plan was reviewed and approved by the Town Engineer. Best Management Practices will be used during construction. There is a condition of approval requiring submission of the MDEP permit prior to the preconstruction conference. Based on the information provided, the standards of this section have been met.

- E. 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;

A traffic study was performed by William Bray, P.E. An application for an amendment to the existing traffic movement permit was applied for and received. The Board finds the standards of this section have been met.

- F. 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 subdivision will be served by public sewer. When completed, the proposed project is anticipated to discharge 19,500 gallons of wastewater per day to the Town of Cumberland's wastewater treatment facility. There is a letter on file from the Town Manager stating there is capacity for this project. Based on the information provided, the standards of this section have been met.

- G. 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;

When completed, the proposed project is anticipated to generate 50 tons of solid waste per year. All general solid wastes will be disposed of at EcoMaine. They anticipate 3,000 cubic yards of construction debris and demolition debris. All stumps and grubblings are will ground on site and used for erosion control. Construction and demolition debris will be disposed of at EcoMaine. There is capacity at EcoMaine to dispose of the household waste and the cost for trash removal will be paid by the residents of the subdivision.

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

- H. 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;

A letter dated 3/16/15 from Maine Historic Preservation Commission states there are no evident historic features is on file. There is a letter from the department of Inland Fisheries and Wildlife stating there is no evidence of Cottontail habitat or other rare or endangered species. There will be a 75' No- Disturb landscape buffer maintained along the Rt. 1 frontage of the parcel. And there is a 100' wide vegetated Beautification Easement required by the State of Maine Highway Commission. Based on the information provided, the Board finds the standards of this section have been met.

- I. 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 by the Town's peer review engineer and town staff. The Route 1 Design Standards have been complied with. Based on the information provided, the Board finds the standards of this section have been met.

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

Technical Capacity: Technical capacity is evidenced by the applicant's use of a professional engineer, surveyor and landscape architect.

Financial Capacity: The public improvements for the project are estimated to cost \$1,292,840. There is a letter dated March 11, 2016 from Gorham Savings Band stating that the applicant and site contractor, David Chase, has the financial capacity and management capability to successfully complete the project. A commitment letter dated August 11, 2016 from Farmington Bank states that the developer, C and A Holdings, LLC, has been approved for the cost of the construction of the buildings (\$10,610,000).

A performance guarantee in an amount acceptable to the Town Manager and Town Engineer will be required prior to beginning of construction.

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

- K. 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;

None of the above features are present on this parcel. Based on the information provided, the standards of this section have been met.

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

The subdivision will be served by public sewer and water. There are no other proposed activities associated with the construction of 96 residential units that would adversely affect the quality or quantity of ground water. Based on the information provided, the standards of this section have been met.

- M. 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;

Based on a review of the Federal Insurance Rate Maps, the parcel is located in Zone C- Areas of Minimal Flooding.

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

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

A stormwater management report was prepared by Thomas Greer, P.E. It was reviewed and approved by the Town's peer review engineer. There is a condition of approval requiring submission of the MDEP permit prior to the preconstruction conference. Based on the information provided, the standards of this section have been met.

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

Wetlands on the parcel were identified and mapped. There are no natural vernal pools on the site. The applicant has designed the project to minimize the amount of impact to wetland areas. Based on the information provided, the standards of this section have been met.

- P. 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, however there is a small stream that is shown on the plan. Based on the information provided, the standards of this section have been met.

Chapter 315, Aquifer Protection, Article V, Section 34 (if applicable):

The parcel is not located in the Aquifer Protection District.

FINDINGS OF FACT Chapter 229 Site Plan Review, Section 10:

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:

- A. Utilization of the Site. The site has been designed to minimize wetland and environmental impact. It has been reviewed by MDIFW to note there are no rare or endangered plants or animal or unique communities or natural area impacted. This standard has been met.
- B. Traffic, Circulation and Parking. The site has at least 2 parking spaces per unit, a separate access road and parking that allows full circulation. The MDOT has reviewed the Traffic Report and modified the Traffic Movement Permit. This standard has been met.
- C. Stormwater Management and Erosion Control. A stormwater management report was prepared by Thomas Greer, P.E. It was reviewed and approved by the Town's peer review engineer. There is a condition of approval requiring submission of the MDEP permit prior to the preconstruction conference. This standard has been met.
- D. Water, Sewer, and Fire Protection. The project has public water and public sewer. The project has been reviewed by the Town Engineer and found to be adequate. Portland Water District has supplied a letter dated August 2, 2016 noting it has adequate supply for the project. This standard has been met.
- E. Water Protection. The subdivision will be served by public sewer and water. There are no other proposed activities associated with the construction of 96 residential units that would adversely affect the quality or quantity of ground water. This standard has been met.
- F. Floodplain Management. Based on a review of the Federal Insurance Rate Maps, the parcel is located in Zone C- Areas of Minimal Flooding. This standard has been met.
- G. Historic and Archaeological Resources. A letter dated 3/16/15 from Maine Historic Preservation Commission states there are no evident historic features is on file. There is a letter from the department of Inland Fisheries and Wildlife stating there is no evidence of Cottontail habitat or other rare or endangered species. There will be a 75' No- Disturb landscape buffer maintained along the Rt. 1 frontage of the parcel. And there is a 100' wide vegetated Beautification Easement required by the State of Maine Highway Commission. This standard has been met.
- H. Buffering and Landscaping. The plan shows plantings at the entrance, along the access road and around the buildings. Additional plantings at those locations as well as in the parking area, in particular, planting of non-deciduous trees is needed. There is a Condition of Approval that the landscape plan be modified to add evergreen trees and that the revised plan shall be reviewed and approved by the Town Planner. There is a

100 foot buffer along Route 295. This standard has been met.

- I. Storage of Materials. The dumpsters are enclosed. No other storage of materials is noted. This standard has been met.
- J. Financial Capacity. Financial Capacity: The public improvements for the project are estimated to cost \$1,292,840. There is a letter dated March 11, 2016 from Gorham Savings Bank stating that the applicant and site contractor, David Chase, has the financial capacity and management capability to successfully complete the project. A commitment letter dated August 11, 2016 from Farmington Bank states that the developer, C and A Holdings, LLC, has been approved for the cost of the construction of the buildings (\$10,610,000). A performance guarantee in an amount acceptable to the Town Manager and Town Engineer will be required prior to beginning of construction. This standard has been met.
- K. Design and Performance Standards. The applicant has provided floor plans and elevation view of the building and a narrative on the Route One Standards. These buildings meet the Route One standards. This section has been met.

ROUTE 1 DESIGN STANDARDS

Section 100: Policy and Goals

101. Site Plan Review: These design standards shall be used by the Planning Board as part of the site plan review process when evaluating proposed development projects in the U.S. Route 1 Corridor, defined for purposes of these standards as the OC-North (OC-N) and OC South (OC-S) districts, and any lot in the Limited Density Residential (LDR) District with frontage on U.S. Route 1.

102. Goals: Because U.S. Route 1 is a major entry point to the Town of Cumberland, the Town has adopted these standards to ensure that all development within the U.S. Route 1 Corridor meets the following goals:

- 1. To encourage high quality, economically viable development that reinforces Cumberland's sense of place, and that is reflective of and responsive to the Town's unique architectural character.
- 2. To promote uses of the type and density that respond to each site's ability to sustain development, both ecologically and with regard to the efficient provision of adequate public services.
- 3. To preserve, wherever possible, the rural appearance of the Corridor by maintaining or creating a buffer of trees and other vegetation along the highway and preserving open space to reduce the apparent density of development.
- 4. To foster an attractive, functional and safe environment that is conducive to commerce, senior housing, pedestrian and cycling activities and other allowed uses.
- 5. To protect abutting residential properties through sensitive site planning, buffering and building design.

103. Applicability: These standards shall apply to the development and redevelopment of properties located in the U.S. Route 1 Corridor, whether Site Plan Review is required or not.

- The standards are applicable to this project.

Section 200: Master Planning

On properties that are large enough to accommodate more than a single structure, developers shall prepare a conceptual master plan to show the Planning Board the general location of future buildings, parking areas, circulation patterns, open space, utilities, storm water management plan and any other pertinent information.

The plan for Cumberland Foreside Village has been modified over the years. The current project meets the standards set out in the Contract Zone Agreement.

Section 300: Site Development Standards

301. Site Design

Wherever possible, large buildings shall fit into the existing topography and vegetation, and shall not require dramatic grade changes around their perimeter. Landscaping, site walls, pedestrian amenities and existing trees can be utilized to reduce the apparent scale of large buildings.

302. Rt. 1 Buffer Strip

A 75' buffer from the Rt. 1 right-of-way to the buildings is required for all lots with frontage on U.S. Route 1, except for lots located in the U.S. Route 1 Overlay District.

Healthy trees within the 75' buffer shall be maintained in their natural state. Where there are few or no trees within the buffer, the buffer area shall be landscaped with trees or with flowering shrubs, fencing, or architectural features such as stone walls, in accordance with an approved landscape plan. When plantings do not survive or grow to a point where they no longer serve as effective buffers, they shall be replaced or enhanced to meet the intent of the approved plan.

303. Vehicular Access

New driveways and existing driveways for which the use has changed or expanded require a Maine Department of Transportation "Driveway Entrance Permit." Shared entrance locations will be required whenever possible.

The project will have its own entrance from Route 1.

304. Parking:

Parking shall not be the dominant visual element when viewed from US Route 1. Parking shall be located to the side or rear of buildings.

Apartment parking is to the side of the buildings. Community building parking is located in the front. Additional evergreen trees are suggested to further screen the building and parking from Route 1 view.

305. Service Areas:

Exterior dumpsters, recycling facilities, mechanical units, loading docks and other similar uses shall meet the needs of the facility with a minimum of visual, odor or noise impacts. They shall be fully screened from view by plantings or fencing. Service areas are not permitted on any front or side of a building that is visible from US Route 1.

The dumpsters are not visible from Route 1. They will be screened by fence enclosures.

306. Electric, Telephone and Cable:

All wired connections from existing utilities on U.S. Route 1 shall be made to individual lots via underground conduit.

The utilities are underground.

Section 400: Building Standards:

401. Building Design

All structures shall be designed in the traditional New England style of architecture whenever feasible.

402. Facades and Exterior Walls

Unbroken facades in excess of 80 feet are overwhelming whether they are visible from Route 1, other roadways or pedestrian areas, or when they abut residential areas. Breaking up the plane of the wall is required to reduce this sense of overwhelming scale. Where the plane of the wall is broken, the offset shall be proportionate to the building's height and length. A general rule of thumb for such projections or recesses is that their depth shall be at least 3% of the façade's length, and they shall extend for at least 20% of the façade's length.

Other devices to add interest to long walls include strong shadow lines, changes in rooflines, pilasters and similar architectural details, as well as patterns in the surface material and wall openings. All façade elements shall be coordinated with the landscape plan.

Commercial buildings shall include a focal point – such as a raised entranceway or clock tower, or other architectural element – to add visual interest and help reduce the scale of the building.

Facades of commercial buildings that face U.S. Route 1 or other roadways shall have transparent openings along 30% or more of the length of the ground floor.

403. Building Entrances

Large structures shall have clearly defined and highly visible entrances emphasized through such devices as significant variations in rooflines or cornice lines, changes in materials, porticos, landscape treatments, distinctive lighting or other architectural treatments.

The building's main entrance shall be a dominant architectural feature of the building and clearly demarcated by the site design and landscaping. Pedestrian entrances to each business or tenant shall be clearly defined and easily accessible. Where building entrances do not face U.S. Route 1, the U.S. Route 1 façade shall be complimentary to the general style of the building and surrounding buildings.

The entrances to the apartments are on the side of the buildings. The entrance to the community building is on the front of the building.

404. Building Materials

Traditional siding materials common to New England are brick, painted clapboard and either painted or unpainted shingles. Contemporary materials that have the same visual characteristics as traditional materials (e.g., cementitious clapboards or vinyl siding) are acceptable if attention is paid to detailing (e.g., corners, trim at openings, changes in material). Metal cladding is not allowed on any front, rear or side of the building that is visible from Route 1.

Common traditional roofing materials are shingles –, as well as standing seam metal. Where visible, the roofing color shall be selected to complement the color and texture of the building's façade. Roofing colors shall be darker than the color of the façade.

The building siding and trim material is vinyl clapboard and will be gray in color. The roof will have asphalt shingles.

405. Architectural Details

Architectural details, such as colonnades, pilasters, gable ends, awnings, display windows and appropriately positioned light fixtures, shall be used to reduce the scale and uniformity of larger buildings.

406. Roofs

Flat roofs are prohibited, unless the applicant can demonstrate that a flat roof can meet these standards. The buildings have pitched roofs, traditional windows, clapboard siding.

407. Windows

Windows shall reflect a classic New England style by featuring divided lights (window panes) and detailing and trim around them.

Windows are traditional styling with trim detail.

408. Awnings and Canopies

Awnings and canopies can enhance the appearance and function of a building by providing shade, shelter, shadow patterns, and visual interest. Where awnings are used, they shall complement the overall design and color of the building.

Whether fixed or retractable, awnings and canopies shall be an integral element of the architecture. They shall be located directly over windows and doors to provide protection from the elements. Awnings or canopies shall not be used as signage, light sources or advertising features. ***There are no awnings or canopies.***

Section 500: Signage

Commercial and residential signage along the U.S. Route 1 Corridor in Cumberland shall have attractive and legible signs that complement the site and the architecture. Internally illuminated signs and reader boards are not permitted. All signage shall comply with the requirements of the Cumberland Zoning Ordinance.

501 Signage Plan

The Planning Board shall require that a signage plan be submitted as part of the site plan or subdivision plan for the development. The signage plan shall show the location of all signs on a site plan drawing and on building elevations, as well as sign materials, dimensions, elevations, etc.

Signs shall be placed in locations that do not interfere with the safe and logical usage of the site. They shall not block motorists' lines of sight or create hazards for pedestrians or bicyclists. Roof mounted signs are not permitted. Signs may be located within the 75' buffer providing there is minimal clearing of vegetation required.

502 Sign Design

The shape, materials, and finish of all proposed signage shall complement the architectural features of the associated building.

503. Sign Colors

Signs shall be limited to three contrasting colors that are complimentary to the colors of the associated building.

504. Sign Content

To ensure a clear and easily readable message, a single sign with a minimum of informational content shall be used.

Lettering on any sign intended to be read by passing motorists needs to be legible at the posted speed limit.

Variable message "reader boards", sponsor logos, slogans or other messages that promote products or services other than the tenants' are not permitted.

Signage for any proposed development should prominently feature its assigned street address to facilitate general way-finding and e-911 emergency response.

505. Building Mounted Signs

Building or façade mounted signs shall be designed as an integral element of the architecture, and shall not obscure any of the architectural details of the building. Signs shall be mounted on vertical surfaces and shall not project past the elevation of the building(s).

Signs shall be located a minimum of 18" from the edge of a vertical wall.

Flush mounted (flat) signs shall be mounted with concealed hardware. Perpendicular hanging signs shall be mounted with hardware designed to complement the building's architecture.

506. Freestanding Signs

Freestanding signs are allowed consistent with the signage plan. They shall be designed to complement the associated building. This will entail similar forms, materials, colors and finishes. Landscaping surrounding the base of such signs shall be consistent with the landscaping of the entire site.

507. Sign Illumination

Only externally lit signs are allowed in the U.S. Route 1 Corridor. Externally illuminated signs are made of an opaque material and shall have a dedicated light fixture or fixtures mounted in close proximity, aimed directly at the sign face. The illumination level on the vertical surface of the sign should create a noticeable contrast with the surrounding building or landscape without causing undue reflection or glare.

Lighting fixtures for signs shall be located, aimed and shielded such that light is only directed onto the surface of the sign. Fixtures shall be mounted above the sign and be aimed downward to prevent illumination of the sky and to avoid blinding passing motorists. Where signage lighting abuts residential areas, lighting shall be substantially reduced in intensity, or turned off, within one hour of the business closing. Signage lighting may not be turned on until within one hour of the business opening. **A signage plan was not submitted, however there is a condition of approval that a sign permit application be submitted to the Town Planner for review and approval.**

Mr. Saunders moved to adopt the subdivision review findings of fact, the site plan review findings of fact and the Route 1 design standards findings of fact as amended, seconded by Mr. Barrett and **VOTED, 5 yeas – unanimous, motion carries.**

Ms. Nixon outlined recommended conditions of approval.

Mr. Berrett indicated that the signage plan was coming back to the Planning Board. Ms. Nixon said that the Board can delegate approval of the signage plan to her if they choose to.

Mr. Saunders said the Board is looking at site plan review, preliminary subdivision review and final subdivision review. He asked Ms. Nixon to explain why preliminary review and final review are often split. Ms. Nixon responded that the ordinance is written that approval is a two-step process. She has spoken many times with the Town Attorney about why this is the case. It seems that it is a distinct step that doesn't really mean a whole lot. At a

preliminary approval, the Board is saying the plan looks generally good but there are key pieces of information missing so it then comes back for a final approval. Ms. Nixon said she has been told by Engineers that they like to have preliminary approval because it shows their clients that the project is on track. There really isn't a need to have the preliminary approval separate from the final. Preliminary and final approval have been combined many times.

Mr. Saunders moved to approve major subdivision preliminary and final review as well as site plan review for Cumberland Foreside Village Apartments, Route 1 in a contract zone, Tax Assessor Map R 01, Lots 11, 12 and 12A subject to the standard condition of approval, the limitation of approval and ten conditions of approval, seconded by Mr. Berrett and **VOTED, 5 yeas – unanimous, motion carries.**

STANDARD CONDITION OF APPROVAL:

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

LIMITATION OF APPROVAL:

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

CONDITIONS OF APPROVAL:

1. All fees shall be paid prior to pre-construction conference.
2. A performance guarantee in an amount acceptable to the Town Manager shall be provided prior to the preconstruction conference.
3. A preconstruction conference shall be held prior to the start of construction.
4. All clearing limits are to be staked and inspected by the Town Engineer prior to the preconstruction conference.
5. A blasting permit, if needed, shall be obtained from the Town Code Enforcement Officer prior to blasting.
6. The applicant shall provide written evidence of approval from the Maine DEP prior to the preconstruction conference.
7. The landscape plan will be modified to show additional evergreen trees. Revised plan to be reviewed and approved by the Town Planner.
8. The final plan submitted for Planning Board signatures and recording will have the correct Cumberland Assessor's tax map and lot numbers.
9. A sign permit application shall be submitted by the applicant and reviewed and approved by the Town Planner.

10. The schedule of values shall be adjusted to include the cost of the construction of the walkway along Route 1 within the Route 1 buffer strip. This amount shall be included in the performance guarantee.

G. Administrative Matters / New Business:

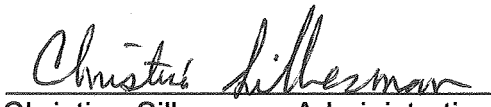
Mr. Moriarty reported that he has written the Planning Board annual report for the Annual Town Report that will be published this fall.

Mr. Moriarty asked if the Board has a workshop with the Town Council coming up. Ms. Nixon said it has not been scheduled yet. Mr. Shane said the workshop will be to discuss amendments to the contract zone language.

H. Adjournment: Mr. Saunders moved to adjourn the meeting at 9 p.m., seconded by Ms. Maloney-Kelly and **VOTED 5 yeas – unanimous, motion carries.**

A TRUE COPY ATTEST:


Stephen Moriarty, Board Chair


Christina Silberman, Administrative Asst.