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Planning Board Meeting Minutes  
Town of Cumberland  
Cumberland Town Hall - 290 Tuttle Road  
Cumberland, Maine 04021  
Tuesday, March 15, 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, Tom Gruber, Ron Dillon

Absent: John Ferland, Vice-Chair, Bob Couillard

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

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

Mr. Bingham moved to approve the minutes of February 15, 2011.

Mr. Gruber seconded.

VOTE: Unanimous

Mr. Neagle stated for the public record that the Planning Board conducted site walks at the Blackstrap Pit with neighbors and at the Coleman site off Route 100. He stated he had a conversation with Mr. David Chase and his engineer regarding the design of the proposed non-conforming lots. Mr. Chase asked Mr. Neagle to call his attorney and discuss the issue. Mr. Neagle discussed the non-conforming lots with Mr. Chases' legal counsel.

Mr. Bingham disclosed he was an employee of CMP's parent company Iberdrola; he recused himself with agreement of the Planning Board.

**D.     *Consent Calendar / Minor Change Approvals:*** To hear a follow-up report as requested by the Planning Board from Drew McMullin of Burns and McDonnell regarding the necessity for limited weekend hours at CMP's Raven Farm station. This work is required to allow for the switchover of lines as described during site plan review. The weekend work is designed to prevent power outages that would occur if the switch were done during weekdays.

Ms. Nixon presented background information as follows: At the Site Plan Review for the Raven Farm Substation the applicants indicated there might be additional hours of work needed to switch over the lines. Mr. Drew McMullin of Burns & McDonnell is present to explain the request.

Mr. Drew McMullin of Burns & McDonnell reviewed the approved construction hours and limitations which are Monday through Friday from 7:00 a.m. to 7:00 p.m. with no weekend or holiday work without special pre-approval. The Town staff did approve weekend access in March to allow for site inspections during a major rain event. Inspections occurred between 9am and 11am and 1pm and 3pm. These inspections were for compliance with MDEP rules.

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The current weekend work request is to reconstruct existing lines. “Outages” must be planned by CMP, and ISO New England, and major customers (Wyman Gas). Load forecasts must be studied to determine the optimal time to shut off existing transmission lines to lessen danger of system-wide power outages and blackouts due to overloading the active lines. Failure of planned outage system could bring stiff financial penalties to CMP. The existing 345 kV line (Section 385 or 3040) outage for May consists of three weekends; May 14 – 15, May 21 – 22 and a rain date of May 28, 29 and 30. The rain date is only a contingency plan if weather requires additional time. The existing 115kV line work (Sections 164 and 165) is planned for June 2011. We are requesting June 18 as a potential rain date. The total request is for two work weekends with a rain weekend in May, and one rain day in June.

The weekend work will be limited to the stringing of temporary transmission lines. There will be no excavation or blasting. The work will be limited to daylight hours of operation. The staging for the work will occur during the week. Abutters will be notified of work through e-mail system, door-to-door notifications, and telephone calls. Rain dates will be avoided when possible. Road traffic will be limited to only necessary vehicles for the activity, which will include bucket trucks and personal vehicles.

Ms. Caron asked for clarification on the dates and asked about excavation.

Mr. McMullin stated there may be the need for bucket excavators for poles if necessary due to weather delays.

Ms. Caron asked about impact on abutters.

Mr. McMullin stated the only potential noise is excavation equipment if needed.

Mr. Dillon asked if there were future anticipated outages and weekend work.

Mr. McMullin didn’t know the answer.

Mr. Gruber asked for a definition of a rain date.

Mr. William Allard, program manager for the MPRP stated any date where weather affects construction to where it is unsafe to conduct construction activities.

Mr. Gruber asked the duration of the outage, and voiced concern of delays if assistance is needed.

Mr. McMullin stated the outage will be all month.

Mr. Neagle stated he didn’t agree with digging the holes on weekends.

Mr. McMullin stated if weather is optimal they will only be stringing the lines on the weekend.

Mr. Allard stated ISO New England controls the entire grid, most outages are seasonal events.

### **Mr. Neagle opened the public portion of the meeting.**

Mr. Curtis Ingraham of 55 Greely Road stated inspections are going well and he understands there are not enough days in May to accomplish the work. He stated the workdays are 7am to 7pm and asked if they might be different on Saturday and Sunday. He doesn’t have a problem with the request, the sooner the work is completed the better. Mr. Curtis also stated he had given the Board a letter from Mr. Peter Mertz of 15 Stirling Way.

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Mr. Neagle stated the letter would be entered into the record as public testimony.

Mr. Neagle asked Mr. Ingraham if he was stating his personal opinion or as a spokesman for the neighborhood.

Mr. Ingraham stated it is his personal opinion.

Mr. Shane, Town Manager stated at the January meeting this item was brought up, with no specific dates. The applicant was told to come back to the Board and give specific additional work dates. That is what they have done this evening.

Ms. Caron asked if the request were delayed, what would happen.

Mr. Allard stated the outage would be delayed and the system would be at risk.

Ms. Caron asked if they could extend the Monday through Friday work hours and accomplish the work without any weekends.

Mr. Allard stated no.

Mr. Gruber stated this is consistent with the process and it seems in the best interest to approve.

Mr. Dillon moved to approve CMP's request for limited work weekends on May 14<sup>th</sup> and 15<sup>th</sup> and May 21<sup>st</sup> and 22<sup>nd</sup> with rain dates of May 28<sup>th</sup>, 29<sup>th</sup>, and 30<sup>th</sup>. The weekend work will be for reconstruction of the existing 345kV line (Section 386 or 3040). The Board also approved Saturday June 18, 2011 as a potential rain date for the existing 115kV lines. The weekend work is to be limited to the hours of 7am to 7pm. Any necessary drilling of holes for the placement of power poles is limited to the hours of 8am to 4pm.

Ms. Caron seconded.

VOTE: Unanimous 5 – In Favor

Mr. Bingham rejoined the Board for deliberations on the remaining agenda items.

***E. Hearings & Presentations:***

**1. Public Hearing: To give an advisory recommendation to the Town of Cumberland for a Contract Zoning Agreement with Bateman Partners, LLC for Phase I of the Doane Property Revitalization Project: Tax Map U10, Lot 7B in the Village Mixed Use Zone (VMU).**

Ms. Nixon presented background as follows: As required by Section 606.3; the Planning Board shall make a recommendation to the Town Council on a (contract zoning proposal) and its conformance with the Town's Comprehensive Plan and land use goals. The memo included in your packets outlines the conformance with the Comprehensive Plan land use goals.

Mr. Nathan Bateman of Bateman Partners stated they have been discussing options with the Town since June 2010. They responded to a Request for Proposal (RFP) for development. The current plan is for Phase I of a Master Plan. The plan reflects changes that have been made as a result of public input.

Phase I consists of the development of 59 housing units. The main access will be through Wyman Way. The connectivity between Tuttle and back to Wyman Way was one of the overwhelming comments. The road works for a practical purpose, they anticipate using Drowne Road as the construction access and Wyman Way as access for all sales clients. We are anticipating starting the project in July assuming all of

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their approvals are in place. They have a second meeting with DEP on the 30<sup>th</sup> of March. This plan was based on comments from DEP, our Engineers Deluca Hoffman, and Town. The reason for this layout is due to natural constraints on the property and to minimize wetland impacts. We are prepared to move forward with Phase I which is what is before you. The master plan consists of three phases, the revitalization of the Town Garage area into a dense Village area and the conversion of the Drowne Road School into a Senior Housing Facility. The Contract Zone request deals with only Phase I.

Mr. Neagle asked Board members for any questions or comments.

Ms. Caron asked for clarification on the changes since workshop.

Mr. Bateman stated the road was changed into the Civic Lot; this change will eliminate headlight impact.

Mr. Neagle stated this is a great project and asked if they are purchasing all of the land or just Phase I land.

Mr. Bateman stated at this time just Phase I, which consists of the Doane lot.

Mr. Neagle stated the Planning Board should understand the requested changes. On the handout Exhibit C is a summary of the zoning amendments. These are changes that need to be made to the existing zoning to make this project work. He asked if we are significantly reducing minimum lot sizes or reducing them at all.

Ms. Nixon stated yes, the VMU is Section 204.13.

The Board reviewed the requested zoning changes as stated in Exhibit C. The side setback reduced to 0' along common sidelines between attached residential structures and garages is to allow for duplexes.

Mr. Dillon asked if the roads were proposed to be private and or public.

Mr. Bateman stated the connector road Wyman Way will be public; the roads inside the development will be private.

Mr. Neagle voiced concern of the straightness of the road and speed of vehicles.

Mr. Bateman stated the sidewalk will be on one side of the road.

Mr. Dillon asked the difference between private drive and private way.

Mr. Bateman stated the private drives will be shared driveways within the project. Private ways are the interconnector roads.

Mr. Dillon asked if there was an intention to have the private roads become public in the future.

Mr. Bateman stated there will be a homeowner's association set up and they might request it, but that is not the developer's intention.

The Board reviewed the design standards and reviewed the photos that Ms. Nixon provided of Dunstan Crossing and Tidewater Farm.

Mr. Dillon clarified that the VMUZ doesn't allow garage doors to face the street and this would allow garage doors to face the street provided the garages are architecturally designed to not be the principal element of the structure.

Mr. Bateman agreed, stating it would be difficult to get the turning radii needed for side garage doors. They are proud of their designs at Tidewater. The company also has its own design review guidelines for the project.

**Mr. Neagle opened the public portion of the meeting.**

Mr. Bill Ward owner of 231 Main Street which that abuts Wyman Way asked about (Section F 1) The portion of public roadway along the existing Wyman Way right-of-way shall conform to the existing right-of-way dimensions and geometry, which shall include the ability of the roadway not to be centered within the existing right-of-way. Mr. Ward asked if that was to minimize impact to existing residences.

Mr. Bateman stated yes, the road would be built to Town standards and respectful of existing neighbors.

Mr. Neagle suggested language such as: "not to be centered to minimize impact to existing residences".

Ms. Christina Burr of 244 Middle Road asked who would be responsible for building the roads and sidewalks.

Mr. Neagle stated it is common for the developer to build the infrastructure; the Town will require a bond to assure the completion of the work.

Mr. Dan Burr of 248 Middle Road stated the plan calls for a six foot esplanade and a six foot sidewalk and trees in the esplanade. He voiced concern of the closeness of the trees to the road.

Mr. Neagle stated that type of issue will be addressed in site plan and or subdivision review.

Mr. Bill Shane, Town Manager stated the Town Council voted to put the Doane Revitalization on the March 28<sup>th</sup> agenda suggesting the following amendments to the contract zone.

1. The through road be constructed and built to Drowne Road.
2. That the most current technology LED street lighting be used on public roads.
3. That the energy standards stated in the current IRC 2009 MUBEC building codes be required.
4. **Amanda's Way: That either there will be public access to Amanda's Way or if that is not possible, signage to prevent public access from the subdivision to Amanda's way.**
5. Impact Fees: If the amenities proposed for Phase II are constructed, then impact fees will be waived. If Phase II does not happen then the infrastructure and sidewalk improvements to Main Street will be considered in lieu of the impact fees.

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

Mr. Bingham thanked Ms. Nixon for the outline as to how the project fit into the Comprehensive Plan. He has been involved in the last three Comprehensive Plans from the mid 1980's to the current one. The Town is good at being able to shift course when economic and social conditions change. In the mid 1980's we encouraged four acre lots which have resulted into the large McMansions. Fast forward ten years later with overcrowded schools and the Town developed a Growth Ordinance that exempted age 55+ developments. Again in 2000 conditions have changed and we have the idea of preserving open space and clustering. Today there is increased sewer capacity to allow dense development. The schools could add 100-200 students without adding more teachers and we are in the process of closing schools. In

the overall view things have evolved and development such as Phase I is very much in agreement with current thinking and goals and from the 10,000 foot level it is in compliant with the current Comprehensive Plan.

Mr. Gruber agreed stating he is impressed how the project meets the Comprehensive Plan. I agree with smart growth and hope there could be an easement with Amanda's Way.

Mr. Dillon stated this is a good project and asked if it is affordable housing.

Mr. Bateman stated the selling prices will be in the price range of \$280,000 to \$350,000 dollars.

Mr. Bingham moved to send a favorable recommendation to the Town Council for approval of the proposed Contract Zoning Agreement with Bateman partners, LLC for Phase I of the Doane Property Revitalization Project; on Tax Map U10, Lot 7B in the Village Mixed Use Zone (VMUZ). And that the Board also affirmatively finds that the proposed Contract Zoning Agreement with the Bateman partners, LLC for Phase I of the Doane Property Revitalization Project is consistent with the Comprehensive Plan and Land Use Goals.

Ms. Caron seconded.

VOTE: Unanimous (6-0)

**2. Public Hearing: To recommend draft zoning amendments to the Town Council to amend Section 204.9 Village Center Commercial district (VCC) of the Zoning Ordinance to add the following uses:**

**204.9.1.28 Aggregate processing, with a 500' setback from Route 100.**

**204.9.1.29 Construction operations with a 500' setback from Route 100.**

Mr. Neagle stated that the Planning Board had visited the property at the site walk on March 2, 2011. All of the Planning Board members were present except Bob Couillard.

Ms. Caron disclosed she had received telephone calls from Terry Maloney Kelly and Jim Tarbox and advised them to come to the public hearing.

Mr. Shane presented background information as follows: The area being discussed is a spent gravel pit, the owner wants to grade and reclaim the site and move his construction operation to the site. The Construction Operations would be the same type of use as Storey Bros. on Middle Road. There would be a one acre pad for aggregate processing and materials brought to the site, and loam screening. If the zoning is changed the applicant would bring in a grading plan. This is the only parcel within the VCC that would meet the requirements for this use.

Mr. Neagle stated the use would only be allowed on the west side of Route 100 near the turnpike.

Mr. Dillon stated this is a good use of the property. However, voiced concern regarding the Committee's work and could this be an overlay or the lot attached to the Industrial zone.

Mr. Neagle stated zoning by its nature is intended to be flexible.

Ms. Caron read the definitions of "Aggregate Processing" and "Construction Operations" and asked if these were consistent with the vision for Route 100. She asked if we were shifting course because of economic times and not following the vision for Route 100. She applauds Mr. Shane's efforts to bring commercial development, but this goes against citizen opinion and she is not in favor of the uses.

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

Mr. Robin Gauvin of 35 Old Gray Road commented on the notice he received in the mail, stating if he didn't live in Cumberland he wouldn't have know where the map was located.

Mr. Neagle stated these notices are sent to only Cumberland residents.

Mr. Gauvin voiced concern of safety of the road, and the noise of back up alarms on trucks. He asked if there would be crushing re-claim and concrete.

Mr. Neagle stated those are issues that would be addressed at site plan review.

Ms. Terry Maloney Kelly of 29 Maloney's Ridge Way stated she grew up in West Cumberland and in December she could hear pounding of concrete from the Chase Pit which was loud. They can hear the children on the ball fields. It is unrealistic to think this type of activity will not bother neighbors. She asked the Board to consider how this use fits into the comprehensive plan and the possible affect this type of use would have on other potential new businesses. She would not want to locate her business near an aggregate processing plant with trucks hauling in and out all day. She asked the Board to look at the definition carefully to see if the use was compatible with the vision for the Route 100 Corridor.

Mr. Jim Tarbox of 156 Gray Road stated the proposal may be 500' feet from Route 100 but it is 200' from his house. He served on the Route 100 committee and there was a vision for this area and this type of use doesn't fit the vision. He would hate to see us as a Town make an economy based decision and rush into anything that would be shortsighted.

Ms. Tara Tarbox of 156 Gray Road stated when her husband came home from the committee and talked about the vision for the corridor she envisioned an ice cream shop and sidewalks. The Committee spent months of work and these uses were not included in the vision. When previous work was done on the site she could hear back up alarms and tail gates slam from her house it was loud. She also voiced concern of safety with children at the fields and piles of dirt.

Mr. Tarbox stated he had talked with Mr. Coleman a year ago when he was working on the site and he did address it and the noise was better.

Mr. Rob Coleman asked for clarification if this doesn't move forward tonight would this die? He also stated what the abutters heard for noise was when they were fixing the slope next to their house. The proposed location in the pit will be further away.

Mr. Neagle explained the Planning Board would make a recommendation to the Town Council and the Council can approve, deny, or approve with changes. The Town Council makes the policy decision for the town.

Mr. Tarbox stated they have started excavating the pit again and I can hear the backup alarms, it is not a hum off in the distance.

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

Ms. Nixon stated she has been doing research about reclaiming old gravel pits. Initially she thought that was what this proposal was about....to allow Mr. Coleman to come in and operate his business; to allow him to build up the base of the gravel pit to protect the aquifer and allow for future development consistent with uses proposed by the Route 100 Committee. If the purpose is to reclaim the gravel pit,



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there are other ways it could be done. It could have a contract zone on the property and allow for the noisy operations which would be very limited in decibel levels and hours of operation; for a limited period of time until the goal was accomplished. It is a very different thing adding the two uses to the zone verses doing it some other way.

Mr. Neagle thanked Ms. Nixon for her helpful comment. He didn't think anyone would debate the fact that an ideal solution would be to have the pit reclaimed and have an office complex in there. Whether we can limit this type of use for a limited amount of time is an interesting concept. I don't have an answer for that.

Mr. Neagle stated to the Board that they have been asked to make a recommendation on zoning. He would suggest limiting the use to 500' back from Route 100 and south of Blackstrap Road. He stated Ms. Caron articulately voiced your concerns as a resident of the area and a member of the board.

Ms. Caron added that this Town has put a lot of citizen committees together and often it does come before us to make changes. It isn't just that I was a member of the committee; I think the findings that the Route 100 Committee fit into the Comprehensive Plan. I don't know if the uses presented fits into the Comprehensive Plan. I am not in favor of amending the VCC zoning to accommodate a use that I don't think is beneficial to that part of Town. Unfortunately, it is a business that is a viable business; I don't think this the right place for that business.

Mr. Neagle stated Ms. Caron made some excellent points; procedurally we always need to make our decision on whether a zoning recommendation is consistent with the Comprehensive Plan.

Mr. Bingham stated he is prepared to move the request forward to the Council with the geographic changes of west of Route 100 and south of Blackstrap Road. Once discussion is finished I am ready to make a motion.

Mr. Neagle stated this public hearing has been very helpful, he thanked the neighbors for their input; I am torn as to whether we should consider this going forward; however, if it does go forward the applicant should be aware that his goal will be that the neighbor's lives not be changed significantly. Those details will be reviewed during site plan review.

Mr. Bingham stated we are just moving it forward and there will be many cuts to the apple.

Mr. Neagle stated he doesn't view this as a significant change of the vision for development on Route 100.

Ms. Caron stated it is magnanimous to say we don't want it to affect residents that are close by; we make broader decisions than that. I applaud the neighbors for coming but I disagree wholeheartedly that the use fits with the Village Center Commercial district vision. The use doesn't feel like a use that would be found in a village. I am a proponent of commercial development, I don't believe this fits in the VCC in any way at all.

Mr. Neagle stated anything that happens that far away from Route 100 doesn't offend his personal view of the use of the corridor. One of his concerns will be impact on the road intersection on Route 100 and how that might impact the vision. I agree that Westside Animal Hospital doesn't want ten wheelers going by ten times a day.

Mr. Bingham moved to recommend draft zoning amendments to the Town Council to amend Section 204.9 Village Center Commercial district (VCC) of the Zoning Ordinance to add the following uses:



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204.9.1.28 Aggregate processing on the westerly side of Route 100, and on the southerly side of Blackstrap Road, with a 500' setback from Route 100.

204.9.1.29 Construction Operations on the westerly side of Route 100, and on the southerly side of Blackstrap Road, with a 500' setback from Route 100.

Mr. Gruber seconded.

Discussion:

Mr. Dillon commented he agrees with Ms. Caron that we should not change the VCC it has the proper uses. The question I see is: do we think these two lots 22 and 22A can be used beneficially to meet the Comprehensive Plan and does it make sense to move ahead to the next phase. Currently we have two questions how to do it and do we think it should be done. I am thinking it is two questions; when looking at the Comprehensive Plan are we reclaiming the old gravel pit, creating revenue is another thing the plan supports. Based on what is going to be happening on the lot, it will in some future date be available. I think the restrictions can be made at site plan review. There will be some impact, but long term if we say no we are saying something else will come in and build something that meets the VCC guidelines. That is however unrealistic in the short term, do we want revenue now or take a chance on the future. I have two questions.

1. Do I want to see this happen?
2. How accomplish in the current zone?

Mr. Neagle stated there are lots of different ways to accomplish the same result. I personally am not concerned about the particular tool it will work as well as any. The question arises that the current proposed use will make the land more valuable; and at a time in the future when the economy changes this use may go away. However, this use may last forever. This has been a good discussion.

VOTE: 4 in favor (Bingham, Gruber, Dillon, Neagle) 1 opposed (Caron)

***F. Administrative Matters***

April meeting date will be Monday, April 18<sup>th</sup> instead of Tuesday, April 19<sup>th</sup>.

***G. New Business:*** Discussion regarding ex parte communication with Planning Board members. The website still gives phone numbers and e-mails for the Planning Board members. The phone numbers and e-mail addresses will be removed from the website. Residents should address communication through town staff to be forwarded to the Planning Board members; or to show up and give public comment at the meetings.

***H. Adjournment:***

Ms. Caron moved to adjourn at 9:40 p.m.

Mr. Bingham seconded.

VOTE: Unanimous 5 in favor

The meeting was adjourned at 9:40 p.m.

A TRUE COPY ATTEST:

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Christopher S. Neagle, Board Chair

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Pamela Bosarge, Board Clerk