

PLANNING BOARD MEETING MINUTES
TOWN OF CUMBERLAND
Cumberland Town Hall, 290 Tuttle Road, Cumberland, Maine 04021
Tuesday, October 18, 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, Jeff Davis, Teri Maloney- Kelly, Joshua Saunders & Peter Sherr

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

C. Approval of Minutes of the August 16, 2016 meeting: Members of the Planning Board noted some typographical errors to be corrected. Mr. Saunders moved to approve the minutes of the August 16, 2016 Planning Board meeting as amended, seconded by Mr. Berrett and **VOTED, 5 yeas, 2 abstained (Mr. Davis & Mr. Sherr, not present at the August meeting) - motion carries.**

D. Staff Site Plan Approvals - Adventure Dogs Amendments: Ms. Nixon reported that Adventure Dogs is a dog daycare business located at 79 Orchard Road. It received site plan approval two years ago. The owners needed to expand the parking area for their personal use but any changes to the site require an amendment to the site plan. The changes include: the paving of a portion of the parking area was paved; 4 fence panels were installed as screening, a port-a-potty was added and a 16' wide lean-to (roof overhang) from the existing storage shed will be constructed.

E. Minor Change Approvals - Cumberland Foreside Village Apartments - Light Fixture Change: Ms. Nixon explained that she received a request for a change in a design type for a light fixture that will not change the intensity of the lighting.

F. Hearings and Presentations:

1. Public Hearing: Major Site Plan Review: Lot 9 of Cumberland Foreside Village Subdivision, to construct 2 commercial buildings on a 1.67 acre parcel as shown on Tax Assessor Map R-01, portion of Lot 12 A in the Office Commercial South zoning district with a contract zone overlay. Cumberland Foreside Village, LLC, Owner and Applicant. Tom Greer, P.E., Pinkham and Greer Civil Engineers, Representative.

This item was **TABLED** prior to the meeting.

2. Public Hearing: Request for One Year Extension of Approved Site Plan: West Cumberland Manufacturing Facility. 197 Gray Road, Grun Development, LLC, Applicant; Alton Palmer, P.E. Gorrill Palmer, Representative.

Christi Holmes of Gorrill Palmer greeted the Board and said that with her tonight is Emily Tynes, also of Gorrill Palmer and Jim Schmidt of Grun Development. Ms. Holmes reported that in December of 2015 the Planning Board approved the site plan application for the West Cumberland Manufacturing Facility. According to the Town of Cumberland's Site Plan Ordinance, Section 11 – Limitation of Approval, construction of the improvements must be

substantially commenced within 12 months. If not, the applicant may request an extension of the approval deadline.

Ms. Nixon stated that there is a copy of an email in the Board's packet that explains the status of the project. Ms. Nixon asked Ms. Holmes if she or Mr. Schmidt would like to speak about what has been transpiring with the project.

Mr. Schmidt, Grun Development, reported that the shoe manufacturing facility has encountered requests from their investors to have some vetting of the technology to be used in the manufacturing process. The shoe manufacturing will be for custom shoes involving laser scans of peoples' feet to use in making shoes. The shoe company has obtained a grant to get the vetting of the technology from the Maine Technology Institute. Mr. Grun stated that the investors do appear to be in support of the project but have asked for this additional level of certainty that the technology will work. Grun Development has obtained a leasing brokerage firm to look for other manufacturing opportunities but they are trying to hang in with the shoe project.

Chairman Moriarty asked about the timeframe for the shoe manufacturing facility. Mr. Schmidt said that the technology review is ongoing and he thinks they will have reports back in early November. Chairman Moriarty asked if Grun has closed on the property. Mr. Schmidt responded that they have not closed on the property and have negotiated extensions for purchase of the land. Grun should close on the property later this month or in early November on most of the parcels.

Chairman Moriarty stated that the project was approved in December of last year and has not yet gotten underway. The ordinance allows for two 1 year extensions and the applicant is here to ask for the first 1 year extension.

Chairman Moriarty opened the Public Hearing.

Rhonda Small, 34 Maurice Way, said that her husband's business, D. J. Small Plumbing & Heating, at 198 Gray Rd. is an abutter to the property. She said she is having a hard time with this project. It seems that the purchase has dragged on and on. Ms. Small asked if there is a letter of intent for financing on the purchase of the land. Chairman Moriarty said there must have been one in order for the project to get approval. Ms. Nixon explained that the way the ordinance reads is that a developer has to provide evidence of financial capacity. The Town Manager works with the applicant's engineer to figure out what the cost of the public improvements are. The Town looks for the developer's ability to construct the public improvement portion of the site. A performance guarantee for the cost of the public improvements is provided to the town prior to a pre-construction conference. A pre-construction conference occurs after the Planning Board approves the project. It is common for a project to have conditions of approval and when the conditions of approval are met, a preconstruction conference is scheduled. In this case, a preconstruction conference has not occurred yet. The applicant showed enough financial capacity for the Board to approve the project. There is no need for the applicant to provide a letter of credit or performance guarantee until the applicant is ready for the pre-construction conference. Providing a letter of credit or performance guarantee is not a requirement to request an extension.

Chairman Moriarty said that in the Planning Board minutes of December last year on this item it states that a term sheet from Machias Savings Bank was included in the meeting packet. The minutes also state that Mr. Schmidt indicated he would use a USDA business

and industry federal guarantee program, which included detail forms from Machias Savings Bank, and the anticipated closing was the end of January, 2016.

Ms. Small said she did some research on the State's website and is disturbed by Mr. Schmidt's background. There is a notice of lien for a property Mr. Schmidt bought at 247 Gray Rd. and within a short amount of time had a lien filed by a builder. The property was purchased in February and the builder was last there March 23, 2016. The lien was paid and discharged in June of this year. There is also a writ of execution against Mr. Schmidt which is a judgement that doesn't go away. The writ was filed on March 18, 2016 for \$65,000 with an interest rate of 6.5% by KBS Builders. Ms. Small stated that every business that operates in the State of Maine has to file an annual report. According to documents on the State's website, as of tonight, Mr. Schmidt has not filed the annual report. Mr. Schmidt is legally not allowed to operate Grun Development, LLC. Mr. Schmidt received a letter from the State in June indicating that the LLC has been administratively dissolved for failure to file the 2016 annual report and to pay the \$85.00 filing fee and a penalty owed. The letter also states that a limited liability company while administratively dissolved may not transact any business in the State of Maine. Ms. Small asked if the Town is still able to do business tonight and does this bother anybody.

Chairman Moriarty invited Mr. Schmidt to respond. Mr. Schmidt said that he does not own Grun Development, he works for them as a consultant to provide financial forecasts and to prepare packages to send to lenders. Issues that relate to Mr. Schmidt personally have nothing to do with Grun Development. Grun Development is owned by Marlene Eaton and she has an exemplary business record. Mr. Schmidt said contractors sometimes have disputes and he had a dispute with a contractor on 247 Gray Rd. Chairman Moriarty asked if Grun is in fact still licensed to business in the state. Mr. Schmidt responded yes. The annual report was filed late but it has been filed. Mr. Schmidt said he assisted in the preparation and mailing of the annual report. There is a penalty fee due if you file late. The report is very pro forma, it is to give the state notice of the ownership and officers of the company periodically. The late fee has been paid and the report was filed in late September.

Ms. Nixon commented that she has never checked to see if any developer's LLC is licensed by the state and this is not something that the ordinance requires. The Town is concerned with whether a project will be left high and dry with no funds to restore the site to the way it was before or to finish the project. That is what the letter of credit/performance guarantee requires. This information does not sound good but the ordinance does not require the town to ensure an LLC is licensed by the State.

Al Palmer of Gorrill Palmer reiterated that if Gorrill Palmer knew about the question of the LLC status of Grun Development they would have worked to have a certificate of good standing available for the Board. Mr. Palmer can coordinate with Grun to get a letter of good standing for the Board. The DEP does require that an applicant submit a certificate of good standing and this was done for phase one of this project. This will be addressed after the meeting but is not something required by the town ordinance. Mr. Palmer said that liens are more of a contract related issue. It is not uncommon in the development world that liens get filed. In this case it sounds like it was discharged so a solution was worked out. This is not necessarily germane to the Board's review of this project.

Ron Copp of 25 Interurban Dr. stated that he owns 187 and 189 Gray Rd. that directly abuts this project. Mr. Copp said the project property is in foreclosure and has been since December of last year. Mr. Copp asked how an applicant can show right title of interest if the property is in foreclosure. As of December of this year, the Town will own this property. Chairman Moriarty said the closing on the sale of the property has not happened. Mr. Sherr said that it would be a condition of approval that the applicant closes on the property. Mr. Copp said that this has been going on for ten months and it doesn't seem feasible that the applicant needs an extension when they don't own the property. Chairman Moriarty replied that the reason for an extension is because of a lack of substantial progress towards completion within the first year period and Mr. Sherr added even though the conditions of approval haven't been met yet.

Mr. Palmer said he understands that there is a tax lien on the property that has been filed by the Town. The Town files tax liens on all properties that are overdue by a certain amount. The property owner has the opportunity to bring the taxes back to conformance and if this doesn't occur within a certain time frame, the lien goes to foreclosure. Mr. Palmer said that he is not sure, without going through everything, if Mr. Copp's characterization of the property being in the foreclosure process is accurate. If the taxes are paid by a certain date, the lien will be released.

Chairman Moriarty said that the existence of a (property tax) lien does not mean acquisition of ownership by the Town. Town Manager Bill Shane agreed. Mr. Sherr said this will have to be resolved before the property ownership can transfer. Mr. Palmer said that a closing company will require that all liens be released prior to a closing. Mr. Shane said that the process is that after 18 months of the lien, it goes to foreclosure. Foreclosure notices were sent a couple of weeks ago and by early December this property will be in foreclosure if the back taxes have not been paid. Chairman Moriarty clarified that the Town does not yet own the properties. Mr. Shane agreed and added that when the lien ripens, around mid-December, the Town will own these properties. This is by State statute and not by something the Town of Cumberland does.

Ms. Small reiterated that the articles of incorporation for the LLC show the contact person as Mr. Schmidt. The State sent 2 notices, one on June 17th and another one giving a deadline to pay. This is done online and is a two second process. Ms. Small asked what are we getting ourselves into for \$85.00 and now there is a reinstatement fee of \$150.00. Here we are on October 18th and the annual report is still not done. Ms. Small said there is also the writ of execution and a commercial lender will look at that. Chairman Moriarty said that the project can't proceed to fruition until all of these things are taken care of. Technically the applicant does not have to comply with everything they need for a closing to secure approval of the extension.

Chairman Moriarty closed the Public Hearing.

Mr. Sherr said that he doesn't have a problem moving forward with the extension understanding that there are several conditions of approval that have yet to be met from the prior application. Other conditions could be added tonight such as asking that the applicant show proof of being licensed to do business in Maine or a letter of good standing, show that all tax liens have been resolved and that they have proof of ownership. Mr. Sherr said clearly these are inherent to the process but does the Board want to add them as conditions of approval based on the public comments heard tonight.

Chairman Moriarty said another option is to table the item to the next meeting on November 15th and he asked the applicant if that would be a problem. Mr. Sherr asked if coming back in November would alleviate some of these conditions but may not resolve the tax lien issue. The tax liens on the project property are a hurdle for Grun Development to purchase the property. Until Grun has title to the property, they cannot move on the project anyway. Mr. Saunders said he doesn't know if we need this as a condition of approval.

Mr. Palmer said the existing conditions of approval will carry forward with any extension and the project can't move forward until all of the conditions of approval have been met. Even though it is not a condition of approval, the applicant has to own the property before they can get a building permit so the tax liens would have to be addressed. Mr. Palmer said if the Board is more comfortable in saying that the applicant should take care of the certificate of good standing and come back in November for the extension he does not see any issue with it.

Chairman Moriarty said he is uncertain if the Board can legally add a condition of approval tonight. All of the conditions that were approved 11 months ago will still be in effect if the extension is granted. Chairman Moriarty clarified that Mr. Schmidt is an agent for Grun Development and not an officer. If the applicant can come back at the Nov. 15th meeting with proof of Grun's status that will cover that base and the Board would be in a better position to take action.

Mr. Sherr said it is clear that the conditions of approval are there and the project can't move forward until they have right and title to the property. No one will bond the project for a performance guarantee unless the applicant shows they have ownership of the property which has to be done before a preconstruction meeting with the town. Mr. Sherr stated he has no problem moving forward with the extension tonight. All of the issues raised tonight will have to be met before this becomes a viable project.

Mr. Boivin concurred with Mr. Sherr and he thinks the Board can grant the extension tonight. There are already checks and balances in place for this project.

Mr. Davis agreed and said that after December, the project may just go away if the Town owns the land. If the taxes are paid, the project continues. Chairman Moriarty said that the Planning Board approval will lapse on December 15th unless the approval is extended and this is independent of the tax issue. Mr. Saunders added that if the Town becomes the owner, then Grun Development's right, title and interest disappears unless they make an agreement with the Town.

Mr. Shane said that there is very little reason not to go forward with the extension because the project is dead on arrival at the preconstruction meeting if everything is not in place. The letter of credit is typically for landscaping, storm drainage, road construction and utilities so that if someone buys a house in the subdivision they are guaranteed that the road will be built and that there is power, etc. Mr. Shane stated that in this case, for a site plan, the letter of credit is to make sure that the road opening is taken care of, that the Town is protected for the landscaping and that the storm water works properly. These letters of credit are not for the total project cost. When the project is ready, staff will sit down internally and go through a checklist. If the applicant can't show right title and interest to the property by mid-December, we are talking about letting a property tax lien for a fairly small amount ride this project. Mr. Shane said this won't happen and it will get resolved. The

Town has been a cheerleader for this project and wants to see it happen. If the project doesn't happen then everything that will be there today will be there tomorrow.

Mr. Berrett said he agrees that each of the issues will be addressed prior to a preconstruction meeting. Approving a one year extension is part of the process of approving a site plan.

Mr. Saunders moved to approve the one year extension of the site plan for the West Cumberland Manufacturing Facility, seconded by Mr. Boivin and **VOTED, 7 yeas - unanimous, motion carries.**

Chairman Moriarty asked Mr. Palmer to follow up with the Town as soon as possible on clarification of the LLC status so the Town can share this with those that want to know.

3. Public Hearing: Major Subdivision and Major Site Plan, West Cumberland Multiplex Units. 197 Gray Road, Grun Development, LLC, Applicant; Alton Palmer, P.E. Gorrill Palmer, Representative.

Ms. Nixon noted that this plan is back before the Board tonight for major site plan and subdivision review. These are two separate steps that the ordinance requires for a project such as a multiplex development. The applicant is not ready for final subdivision approval tonight. The application appears to be complete enough for the Board to grant preliminary subdivision approval and that is what the applicant is requesting. If preliminary subdivision approval is not granted tonight, the applicant can come back and ask for preliminary and final approval in one future meeting. The Board has done this many times. The project will not be approved tonight, this is a review of the site plan and a review of the subdivision to determine what is still needed before the project can be formally approved.

Chairman Moriarty stated that the Subdivision Ordinance indicates that the Planning Board must approve or deny a preliminary plan approval request within 30 days of the most recent public hearing so the Board can act tonight or within the following 30 days. This will embrace the next regularly scheduled Planning Board meeting.

Al Palmer of Gorrill Palmer greeted the Board and said with him is Jim Schmidt and Marlene Eaton as well as Christi Holmes and Emily Tynes of Gorrill Palmer. Mr. Palmer displayed a plan of the subdivision/site plan that is in front of the Board tonight. In June the phase 2 portion of the plan for the residential component was submitted. At that time access was proposed coming in from Tammy Lane. Mr. Palmer said when they met with the Planning Board in June, a number of concerns were addressed; the access from Tammy Ln., the orientation of the units to Tammy Ln. and the buffers to abutting property. Mr. Palmer said that between the time of the June Planning Board meeting and the site walk, Gorrill Palmer looked at some alternative concepts.

At the site walk, Gorrill Palmer reviewed a potential reorientation of the plan with the units oriented towards Route 100 with access connected to Route 100 and discontinuing the connection to Tammy Lane. Since then, Gorrill Palmer has refined and modified the plan. Highlights of the changes are that the manufacturing building has a main site entrance coming in and providing access to the residential units. The units have been reoriented due to the change in access.

Mr. Palmer said that when they were in front of the Board in June and at the site walk, a second commercial building was shown on the plan along Route 100. At this point the applicant is not focused on this. The second commercial building may come back as a later

phase but the applicant is not currently looking to market it so they have dropped it off the plan.

Mr. Palmer said they have looked at getting the residential buildings further from the abutters going toward Skillin Rd. and getting greater clearance to Tammy Ln. This caused them to place the buildings closer together but they still meet the building codes. There is now about 85' from the back of the buildings to the right of way for Tammy Ln. The plan includes a landscape berm along the Skillin Road and Tammy Ln. sides of the property. As the Board saw, the property has been cut hard so the landscape architect has developed a plan to provide landscaping to assist in the buffer areas. There is open space clustered along the interior of the development with all of the units focused on this area. A trail system that works with the berm is proposed around the perimeter of the development.

Mr. Palmer reported that each building will have a garage with parking spaces in front and additional overflow parking spaces for visitors distributed throughout the plan as well as areas for turn arounds. One question Ms. Nixon had was how would a fire truck turn around and an area has been created to accommodate this. The utilities will all come in from Route 100 including power and public water. The buildings will be sprinkled. Mr. Palmer added that one of the comments asks if there would be a fire hydrant near where they will tap the water main and a hydrant will be included in the next plan submission.

Mr. Palmer indicated that the stormwater treatment will still be located in the back left corner of the project. Information on wastewater disposal was submitted and Sevee Mahar provided comments on this which are now being reviewed by the project team. Gorriil Palmer will reply to the wastewater disposal comments as part of the final submission.

Mr. Palmer said that regarding Ms. Nixon's comments, maintenance of the aeration tanks would be through the homeowners association with a contract to a maintenance company and Gorriil Palmer can stipulate what the requirements will be in the final submission. They need the amended outstanding agency permits from DOT and DEP prior to final approval as well as the ability to serve letter from Portland Water District. There is a 25' landscaping easement along Route 100 and if the Board would like, they can submit a draft easement with the final package.

Mr. Palmer said another question was if the trail system would be public and he would like feedback from the Board and the public about this. All lighting will be full cut off. The landscape architect will review the comments about plant species requested by the Town. Mr. Palmer said they will work with Mr. Cenci to provide information on the aquifer protection area and meeting those standards. Gorriil Palmer will provide more information on the building elevations and the signage details.

Mr. Boivin asked if this project will affect anything for the manufacturing building plan. Mr. Palmer replied that the entrance road will access the manufacturing building and the apartments and that an additional exit lane has been added to the plan. Mr. Davis asked about the location of the entrance road. Mr. Palmer said that the entrance road is proposed to be shifted over 10' to allow for more landscaping between the entrance road and the manufacturing plant. Ms. Nixon confirmed that the applicant will have to request an amendment to the approval for the manufacturing plant due to the change in the entrance road design.

Chairman Moriarty asked what height the berm will be. Mr. Palmer responded that the berm height varies between 2' and 4' and this info is detailed in the plans. The landscaping plan

shows a mix of evergreen trees and shrubs. One of Ms. Nixon's comments asks to substitute one type of evergreen for another and the landscape architect will review this. Chairman Moriarty asked about any additional tree cutting. Mr. Palmer said that the trees that remain do not have a lot of value and may be subject to blowdown due to the cutting that has already occurred. Mr. Palmer proposes removing the existing trees within the development footprint and replacing them per the landscaping plan. The plan calls for landscaping between the commercial and residential pieces to screen the residential area from Route 100. Chairman Moriarty asked who would maintain the greenspace between the apartment buildings and the manufacturing facility and Mr. Palmer responded that it will be the homeowner's association for the residential piece.

Mr. Sherr extended his appreciation to Mr. Palmer for taking the Board's comments during the site walk about adding some additional setback and buffer around the buildings into consideration and asked about the walkway shown on the plan. Mr. Palmer said that there is a hard surface walkway proposed that will go from the residential area to the manufacturing building area to connect to Route 100. There is a walking trail proposed around the perimeter of the residential buildings. Mr. Sherr noted that regarding the trees in the landscape plan, the Board has discovered that the white pine trees lose their buffering capability as they mature so the Board would like to see other kinds of evergreens in the plan.

Mr. Sherr noted that he likes the idea of public access for the walking trail. Ms. Nixon said that it is always good to have walking trails accessible to the public. A sidewalk is proposed for this side of Route 100. Tammy Lane is private and Ms. Nixon said she doesn't know what that means in terms of someone wanting to walk on Tammy Lane. There could be private property signs posted as part of the signage plan. Mr. Davis wondered where people would park that want to access the walking trail if it is public. Ms. Nixon said that this wouldn't be a place where people want to travel to for a walk. Asking to have it public is really in case there are opportunities to expand in the future. Mr. Palmer added that the trail could be for people that walk along Route 100 also.

Mr. Boivin asked about an issue with an abutter that was raised at the site walk. Mr. Palmer said there may be a greenhouse that is over the property line and he will follow up on this.

Ms. Maloney-Kelly asked if there are any other public trails in private subdivisions. Ms. Nixon replied that there is a trail around the perimeter of Old Colony. Ms. Maloney-Kelly said she is concerned that this is a private piece of property where the homeowners are responsible for maintenance and insurance. This location is not a destination.

Ms. Nixon said she has been thinking of this project in terms of apartment rentals but they could be condominiums. She asked Mr. Palmer how would it work where the whole site is considered condominium units 1, 2 and 3 and then there would be a homeowners association for the condos and would that supersede the project owners? Mr. Palmer said right now, condo unit #3 is the residential piece. The residential homeowners association would be responsible for exterior maintenance within condo unit #3. There would also be an agreement between the 3 condominium unit owners regarding maintenance of the driveway that would be shared. The manufacturing building would have a condo association that would address the stormwater and the entrance drive. Mr. Palmer said the plan will be modified so the trail stays on the residential side.

Mr. Palmer said that the residential piece is being proposed to be rental units. Mr. Moriarty clarified that when Mr. Palmer uses the term condominium, he is referring to 3 parcels of land and not dwelling units and Mr. Palmer agreed. Condominium #3 is the big rear parcel on which will be the buildings with the 20 rental that could be converted to condominiums in the future. Mr. Palmer suggested looking at it as 3 commercial condominium units, one of which has a residential use.

Mr. Davis asked if the trail system could be part of the access road and the storm water system seeing it benefits the whole complex. Mr. Palmer said it could but he thinks it would be easier to keep it as part of condo unit 3.

Chairman Moriarty opened the Public Hearing.

Kathy Allen-Merrill, 17 Tammy Ln. said that as of right now, Dennis Allen owns Tammy Lane and it is her understanding that it is being purchased as part of this project. It was confirmed that Tammy Lane is still part of the sale. It was mentioned that the buildings would be about 85' from Tammy Ln. and Ms. Allen-Merrill asked where this is measured from. Mr. Palmer responded that the 85' measurement is from the edge of the gravel. Mr. Palmer said that under the current plan, Tammy Lane is part of the Allen parcel and will be conveyed to Grun Development and is considered condo unit #4. Tammy Ln. will stay a private way and will not be part of the residential unit and will have its' own maintenance.

Rhonda Small confirmed that these will be rental units and asked if the Town is requiring that a certain number of the units be section 8 (low income). Ms. Nixon replied that the developer has stated previously that these will be market rate rentals. The Town has not put any affordability requirement on the project. Ms. Small questioned the insurance liability if the walking trail is made public.

David Small, 34 Maurice Way, owner of 198 Gray Rd-D J Small Plumbing & Heating, stated that this proposal is for phase 2. He urged the Board not to approve this unless phase 1 proceeds forward first. Mr. Small stated that he invested his future in the Route 100 corridor that the Board agreed to make for commercial property and he feels that if the residential is put in first than phase 1 will never happen. This will take away from Mr. Small's commercial property. Mr. Small said the sidewalks and the apartments don't mix well with commercial properties because kids end up roaming around getting into mischief. The residential aspect with unlit sidewalks is making a place for trouble to happen. He has had mischief and damage to his commercial property. Mr. Small thinks adding the residential and the potential trouble is disrespectful to the people that have invested in the commercial part of the area.

Tammy Merrill, 199 Gray Rd with right of way to Tammy Lane, said there are quite a few things she wants to address. Ms. Merrill's largest concern is the trail system that goes around the apartment complex. There is a large, 4 acre pond near the proposed project. Just a month ago, Ms. Merrill said she noticed a girl playing on the front lawn of her neighbor Chuck Lavigne. At first she thought it was a relative of his and then she noticed the girl walking towards the store so she spoke to her and learned that the girl did not know this was private property and she had lived in the blue house near Allen's Farm on Route 100 for nearly a year. A few weeks later, Kathy Allen Merrill saw the girl walking along Tammy Ln., which is private. Ms. Merrill said a few of the residents have ownership of the pond and are responsible for what goes on. They swim and entertain at the pond and there is wildlife there. Ms. Merrill said that if they already cannot keep the neighbors off this

property, this project will encourage people to go down there even more unless there is a larger grade berm, a stockade fence and a lot of trees. There has been discussion of people walking their dogs and Ms. Merrill says she knows someone's dog will get loose and get down to the pond. She said this project will open up many headaches.

Ms. Merrill said she feels that Grun has no concern about water runoff into their pond. Ms. Merrill reported that she spoke to Robert Green from the Bureau of Land Resources who said we can treat the dirtiest and we can slow down the volume of runoff but we cannot recreate natural undisturbed conditions where infiltrated flow slowly enters into the pond long after any rain event. Ms. Merrill said she needs reassurance that this project isn't going to affect the pond. At the site walk, she asked what would be done if there is runoff into the pond and it is destroyed and the response was "nothing".

Ms. Merrill said she is also concerned with the lighting height, the dumpster plan, snow removal, noise buffer, removal of Allen's Country Store prior to the beginning of construction and the trail around the apartment buildings being a public trail. Mr. Palmer responded that regarding the trail and potential trespass, the trespass issue could happen whether there is a trail system or not. The property owner cannot possibly control trespassing. There could be signage in place to warn people there is public property. Mr. Palmer said they will work with the developer and the abutters on signage. Mr. Palmer said the trail is an amenity that the Town ordinance talks about having. If the Board asks that the trail be eliminated, then it will be eliminated. The stormwater plan will be designed to meet Town and DEP standards. There is a possibility of contamination from an event such as a vehicle leak and the homeowner's association would be responsible for any cleanup costs necessary. Mr. Palmer said the light poles are 14' high on top of a 2' base. The height of the lights will be about 16' and this is in keeping with this style of development.

Ms. Merrill asked if the developer would be willing to change the berm to a higher grade with more trees and a fence. Mr. Palmer asked if there are specific areas of concern. Mr. Palmer said he is happy to meet with Ms. Merrill to get more specifics and they can work with the developer. Ms. Merrill asked when the Allen's store building will be torn down. Mr. Schmidt said that they haven't really discussed the timing for removing the Allen's store building but he doesn't think it will be too far into the future. Mr. Palmer added that if the Board wanted to make it a condition of approval that any certificate of occupancy will not be issued until the Allen's store building is removed that would be acceptable.

Mr. Small asked if Tammy Ln., will be expected to contribute to the rest of the condo association. Mr. Palmer said that Tammy Ln. is part of the Allen parcel and he anticipates that Tammy Ln. will have its' own maintenance and the people that use Tammy Ln. will share in the Tammy Ln. maintenance and not in the maintenance of the rest of the project.

Ms. Nixon asked now that the developer does not have a need for access from Tammy Ln., is there a need to acquire it? Could the purchase and sale be restructured so Tammy Ln. is not included in the sale? Mr. Palmer said this could be explored but he is not sure that the Allens want to keep Tammy Ln. Chairman Moriarty asked that the inclusion of Tammy Ln. be clarified before final approval. Mr. Palmer said that if the Allens want to keep Tammy Ln. or convey it to someone else, the applicant would probably be amenable to this. Ms. Nixon said that the Town did not require net residential density because of the way the multiplex overlay is written and asked if there is any other reason if the Tammy Ln. area were removed that it would affect the development. Mr. Palmer said it would be no different than

any other net residential density if the conveyance happens after the approvals. Mr. Palmer said he will check with the Allens and see if keeping Tammy Ln. is something they want to do and then he will report to the Board. Mr. Davis said someone is maintaining the road now and a discussion should happen. Ms. Nixon asked if not including Tammy Ln. would affect stormwater calculations and Mr. Palmer said no.

Ron Copp, 25 Interurban Dr., said he is a direct abutter at 187 & 189 Gray Rd. and he is on the Town Council. On February 11th, the Town Council created an overlay district for the VCC with a master plan in good faith to build a manufacturing facility with Grun Development. On February 22nd, the Town issued a credit enhancement agreement on the manufacturing facility, which is a reduction in taxes, but not for the residential piece. Mr. Schmidt has stated that Grun Development will close on most of the property in December and Mr. Copp asked for clarification on which piece of property will be closed on first. Mr. Schmidt replied that there are 2 Allen properties, one with the blue house on a small lot and the other is the larger parcel with the Allen Farm building and the 9 acre tract where the residential will sit. Mr. Schmidt anticipates that the Burgess property and the larger Allen property will close first. The smaller Allen parcel has other issues that Grun Development needs to deal with. Chairman Moriarty asked if the blue house is occupied and Mr. Schmidt replied that he is not sure if it is occupied but someone has a lease on the building. Mr. Schmidt said that the Allens have to show that they can deliver a vacated building and this is part of the issue.

Mr. Copp said this info clarifies that Grun will acquire Allen's store before they acquire the blue house where the manufacturing facility will be located. Mr. Schmidt replied that the blue house is part of the lot for the light industrial building. Mr. Schmidt said he is not trying to say that there will be any separation but there may be a time difference between the small parcel and the other two parcels but it will not be a big time difference.

Mr. Copp said his point is that this whole thing revolves around a master plan which seems to be taking a back seat. The master plan was for a manufacturing facility on this property and now Grun is asking for permission to build residential units where this was proposed for a commercial district. On February 11th, the Town Council created an overlay district for the VCC zone at Grun Development's request so that this whole master plan could take place. Mr. Copp urged the Board not to allow anything to happen on this property until the commercial building is built. This is a commercial highway, not a residential one. The plan is out of whack and is not what came to the Council in February. There is too much smoke and mirrors here. The manufacturing facility was the number 1 priority to the Council.

Chairman Moriarty responded that as he remembers, early this year the Planning Board was asked by the Council for a recommendation on an overlay for multiplex in the VCC for parcels 5 acres or larger in size and the Council did vote to do that and the overlay was created. Chairman Moriarty said the Council must have assumed that multiplexes could be built on these larger parcels. Mr. Copp responded that the Council only wanted the multiples if the commercial building was built. The Council is afraid that the residential complex will be built and the industrial part will never come to fruition. The Council would not have approved this if Grun hadn't come to them with the industrial shoe manufacturing building first.

Mr. Copp noted that they should not think about carving Tammy Lane off from the parcel because then they won't meet the 5 acre requirement to build the residential part. Mr.

Palmer responded that he has not run these calculations because they were not proposing to carve Tammy Ln. off. Mr. Palmer will look into this and he thinks the holdings would still be greater than 5 acres.

Mr. Copp said this plan came to the Town Council as a manufacturing facility first, second they asked for an overlay district to create housing. Mr. Copp said that he is not against this development but he is against the process the plan has taken because it is not coming down the road in the correct order. Mr. Copp said he wants a guarantee that the commercial building will be built before the residential. Mr. Copp asked if Grun Development purchases Tammy Ln., will the houses on Tammy Ln. have legal right of ways and the response was yes.

Mr. Shane said that when this project first came to Ms. Nixon and him, there were 3 buildings shown on the plan and they slowly evaporated to maybe 1. Mr. Shane said this is disappointing because the Town has worked very hard to put commercial properties out there such as David Small's building which is a showpiece. The Town allowed this overlay to allow a master plan build out of 5 acre or greater lots. There were going to be 25-50+ manufacturing jobs here with a retail building across the back and another retail building. The credit enhancement agreement that basically gives a 50% tax break on the manufacturing building to encourage additional growth on Route 100 and to potentially pay for a walkway to connect all of the businesses. When Mr. Shane and Ms. Nixon worked on the master plan for Route 100 it showed turning lanes, sidewalks, esplanades and it showed a very vibrant place. Mr. Shane said he spoke with the Town Attorney about the situation and was told it is now part of the ordinance to allow multiplexes and there isn't anything the Town can do.

Mr. Shane said the Town will look a lot harder at other issues related to this project. He is concerned about wastewater. There are 20 units proposed here and the requirement in the overlay district is 8,000 sq. ft. per bedroom for the wastewater capacity. This is a 5 acre site which includes Tammy Ln. The Town has to look at the wastewater impacts to make sure the nitrate loading on the lot doesn't impact other lots and that there is enough capacity for future retail sites. Mr. Shane said he wants to look at traffic again. The manufacturing facility would trigger getting a traffic signal at the intersection of Skillin Rd. / Blackstrap Rd. and Route 100 with the manufacturing facility and the number of jobs with the retail spaces. Now the Town has to look at whether there is a need for a turning lane into the facility. If the manufacturing facility doesn't happen, the residential units alone may not generate enough peak hour traffic flow to warrant the traffic signal but the business will. This project now is a lot different then what was presented last year. Mr. Shane said the situation is extremely disappointing but it is in conformance with the ordinance.

Ms. Allen-Merrill asked if the residents of Tammy Ln. will have to make a homeowners association to take care of the road. Mr. Palmer said that this is a conversation that they need to have with the family. Creating Tammy Ln. as a separate condominium unit does not necessarily mean that they have to form a homeowner's association to do the maintenance. If Grun Development is not using Tammy Ln., then they would rather not participate in the maintenance of it. Ms. Small asked where the private road maintenance agreement would come into play if the 4 homeowners on Tammy Ln. already have one. Mr. Palmer said that the agreement could work with the condominium structure. If the homeowners on Tammy Ln. have deeded right of way, it will be carried on with the conveyance.

Mr. Schmidt said the original concept plan that was drawn was for a light industrial building, 2 retail buildings and 3 office buildings in the back. Mr. Schmidt said he quickly discovered that the market could possibly support 1 or 2 buildings unless there were considerably large increases in population. It is difficult to attract retail clients when there are no people that live within ¼ to ½ mile of the site. The addition of the residential and the encouragement of residential on the back end of the Route 100 properties will increase the viability of retail space along the corridor. It is one thing to build retail spaces and another to find businesses to locate there and thrive without an appropriate number of families to shop there.

Mr. Schmidt said that he is a believer in the shoe factory. He gave hundreds of hours working with them to get things in order. Mr. Schmidt said that he is not happy that the investors decided they want an additional level of study. Mr. Schmidt does not think that the shoe factory is a dead issue. If people are going to put up \$500,000 in risk capital and they want some assurance then they will get what they ask for. Mr. Schmidt said he has every reason to think that the investors will get that assurance. Aside from this, Grun Development is aggressively pursuing other options but they are not casting the plan off. Grun does not have a devious plan to build the apartments and ignore the Route 100 development and they are doing everything they can to bring this across the finish line.

Mr. Schmidt said the unfortunate reality of financing these projects is that residential property does not require knowledge of who is going to rent the property. With industrial buildings, lenders want to know who the business is and everything about them in detail so it is not the same process to get funding. Mr. Schmidt clarified that Grun is not trying to delay the plan and they are not trying to pull one over on anyone with the residential. Mr. Schmidt stated that if he were the Town, he would be encouraging this type of off Route 100 residential development because it will increase the market for retail and business along the Route 100 corridor.

Jim Farris, 14 Skillin Rd., said when they did the site walk he spoke with Mr. Schmidt and Ms. Holmes. The plan used to allow for 19' from the edge of Mr. Farris's property to the development and Mr. Farris asked what the plan is now. Ms. Holmes said there is about 70' from the property line. Mr. Farris said that surveying was going to be done but he does not find any pins yet on his property line and asked how the developer could get to this point without the survey. Ms. Holmes said the survey will be done if and when the project is approved. Mr. Palmer added that a boundary survey and an existing conditions survey have been done. The pins have not been set on all of the property lines. As part of subdivision approval the Town will require the pins to be set post approval. Mr. Farris asked if the wildlife impact survey was done and what are the results. Ms. Holmes said that a letter from the U. S. Fish and Wildlife is included in the project packet and the conclusion was that there are no critical habitats in the area.

Mr. Farris asked if there is a change in ownership, could the market value rents become section 8. Chairman Moriarty said yes, if there is a change in ownership, the rentals could become condos or go to a different market altogether. Ms. Nixon said they are looking at rents in the \$1,500 to \$1,800 per month range and she doesn't know why anyone would want to go to lower income housing when they can make more money charging the market rent. The Town cannot prevent the owner from selling to someone else. Mr. Farris said that section 8 housing is a concern of his and of his neighbors. Mr. Palmer said that these units

are relatively large and all include a garage. Based on his 32 years of experience, if a developer wanted to build section 8 housing, it would not be buildings of this size and configuration.

Chairman Moriarty closed the Public Hearing and called for a five minute recess.

Chairman Moriarty reconvened the meeting at 9:30 pm.

Chairman Moriarty said this plan is up for preliminary site plan approval and not final approval. The site plan review ordinance indicates that the Planning Board must approve or deny site plan approval within 30 days of the final public hearing. Whether tonight's public hearing is the final one or not is yet to be seen. Preliminary approval should be taken seriously because the ordinance says that preliminary approval is deemed to be an expression of approval of the design submitted.

Ms. Nixon asked if she could provide some background information on how the project came to include a residential component. She explained that as Town Planner, it is customary for a developer to meet with her and perhaps the Code Enforcement Officer to discuss zoning and what can be done with a piece of land. When a project has the potential to create an economic development opportunity for the town, the Town Manager is called in to become part of the process. A meeting was set up with the town manager, planner, code officer, Mr. Palmer, Mr. Schmidt and Ms. Eaton to discuss the redevelopment of the Allen parcel. Mr. Schmidt and Ms. Eaton came to a meeting with a plan that showed no residential development, however, during the course of this meeting, Ms. Nixon asked if they had considered putting some multiplex housing on the site. She cited other projects that utilized residential development to encourage non-residential development... Castle Rock, Morrison's Hill, Village Green and Cumberland Foreside Village were examples of this mixed use approach that has been very successful. They discussed this at the meeting and the developer said they would consider it. The Town staff put together an overlay ordinance that would allow multiplex housing along with commercial uses on sites greater than five acres. This is the recommendation that the Planning Board made to the Town Council and the Council adopted.

Mr. Sherr said that the Board could table preliminary approval tonight and Chairman Moriarty agreed. Mr. Sherr said that as a Board, he does not think it is within their right to require a sequence for the work or phasing such as requiring that they do the commercial before the residential and the Board can only approve or deny the plan before them. Chairman Moriarty agreed.

Mr. Davis said the Village Center Commercial Multiplex Overlay District states that the purpose of the overlay district is to allow high density residential development to occur when part of an overall master plan. Mr. Davis said the key is being part of an overall master plan so by itself, does the multiplex stand alone. Mr. Saunders noted that this project is part of a master plan.

Mr. Saunders said that he thinks that if the applicant came back and wanted to change the site plan for the approved manufacturing facility to more residential than the Board can say no, it doesn't meet the intent of the ordinance but at this point the residential is part of the plan and he thinks it meets the ordinance. Mr. Sherr agreed and said he doesn't think that the Board can have the opportunity to direct which phase comes first.

Mr. Davis said he is still a little confused about what it means for an overall master plan and why is it even stated in the ordinance if there is no relevance. To Mr. Davis, a master plan is a plan that is put together that is your concept and you try to stay within the confines of the master plan in some regards. Ms. Nixon said when you think about a master plan, a good example is Village Green. Village Green was brought forward to the Board in 3 phases. Phase 1 was for the single family homes and that was in fact built out as phase 1. Phase 2 is the Public Works Garage to become a mix of retail uses and apartments. Instead, phase 3 came forward before phase 2... this was for the development of the Drowne Road School Apartments. Ms. Nixon said multi use projects often develop in different sequences than what was originally anticipated. This is because developers are investing money that they hope to see a return on and if that isn't going to happen, they aren't going to go forward with the project. All we can do as a community is to lay out a vision for the type of development desired and hope that there is a market for the plan to be developed.

Mr. Sherr said that like at Village Green, there is no guarantee that the last phase will be done. If additional phases are to be done, they will be done according to the master plan that was approved and if they are not to be done they will sit idle. Mr. Sherr said he thinks the Board can only act on what is before them as opposed to sequencing or phasing. The Board can either table, deny, approve or approve this with conditions.

Mr. Sherr asked Mr. Shane if there are any comments from the Town Attorney that the Board should be aware of. Mr. Shane replied that Ms. Nixon hit it right on the head. What is before the Board now is legal. It is in the ordinance and the Board is obliged to follow the ordinance step by step. If there is something that needs to be rectified the Board can clean it up. The only way to have residential units in the VCC is if they are part of a master plan that is greater than 5 acres. There are only a handful of properties in the VCC that are greater than 5 acres that could even duplicate something like this plan. Mr. Shane said it is disappointing that these other phases aren't under construction and we don't have a real concrete plan for what is going to happen and what is going to go there.

Mr. Shane said he needs to evaluate if there is enough wastewater capacity for additional retail spaces. He will look at this and get back to the Board next month and will work with Mr. Palmer.

Mr. Berrett said that because of the open issues such as the wastewater capacity and the issue of the developer planning to meet with the neighbors to discuss the berms is it an option for the Board to do preliminary and final approvals at the same time next month. Chairman Moriarty said this could happen. Mr. Berrett said that the question of the wastewater seems significant to the whole project.

Chairman Moriarty added that there is also the question of the acreage of condominium #3. Mr. Saunders said that the ordinance reads that the development has to be over 5 acres and the development is well over 5 acres. Condo #3 may be at or below 5 acres but Mr. Saunders said he believes it is the development as a whole and not just the residential portion of the development. Mr. Davis said that to him, it doesn't mean that the whole VCC parcel that is being developed can be all multiplexes. Mr. Saunders agreed and added that the minimum lot area per dwelling unit shall be no less than 8,000 sq. ft. per bedroom.

Mr. Palmer said that the 8,000 sq. ft. per bedroom has been factored in to determine confirmation of the number of residential units that could be done. As stated, the overall

parcel has to be 5 acres. Mr. Palmer said they looked at the acreage and the minimum lot size requirements to see what mix of development could be done. While the retail building is off the plan for now, it is still included in the calculations. Mr. Palmer noted that there is a hierarchy in how you do the calculations and he believes the project meets all of them and they will work with the Town to get everyone comfortable.

Mr. Sherr suggested tabling this and asking the applicant to go back and work with the abutters and the town on the issues and decide if they want to come back for preliminary or preliminary and final. Chairman Moriarty stated the Board could table tonight's public hearing until the Board's next meeting on Tuesday, November 15th, which is less than 1 month away, because there are lots of things that need to be clarified, including what will become of Tammy Ln.

Mr. Palmer said they have a pretty good understanding of the open items and will coordinate with Ms. Nixon and staff. Mr. Palmer said he looks at preliminary approval as an expression that the applicant is going in the right direction and they cannot build with preliminary approval. Mr. Palmer said they will come back but he is not sure if they will try to look at everything in one night or if they will come back for two more meetings.

Mr. Sherr moved to table the public hearing for preliminary approval for Major Subdivision and Major Site Plan review for the West Cumberland Multiplex Units until the next meeting, seconded by Mr. Saunders and **VOTED, 7 yeas -unanimous, motion carries.**

4. Public Hearing: Recommendation to Town Council for Amendments to Article 8, Chapter 315-79, (Contract Zoning) of the Cumberland Code - Section 315: Zoning Ordinance. Town of Cumberland, Applicant. This item was **TABLED** and heard after item #7.

5. Public Hearing: To recommend to the Town Council draft zoning map amendments to re-zone property at Tax Assessor Map U07 , Lots 13 and 16 to change zoning designation from Rural Residential 1 (RR 1) to Highway Commercial (HC). Town of Cumberland, Applicant.: This item was **TABLED** until a future meeting.

6. Sketch Plan Review: Solar Way (off Hillside Avenue) Major (5 lot) Subdivision. Patrice Miller, Clean Conscience Construction, Applicant; Tom Greer, P.E., Pinkham and Greer Civil Engineers, Representative.

Tom Greer of Pinkham & Greer introduced himself and said that with him tonight is Patrice Miller, the owner of the property. Mr. Greer gave an overview of the project off Hillside Ave. near Greely Rd. and showed an aerial photograph of the property. The parcel abuts CMP property and is a little less than 25 acres. The property was logged and cut very hard before Ms. Miller purchased it. The site was really a mess and is slowly coming back. Ms. Miller's goal is to make it a much nicer property and more environmentally sensitive. There are 2 existing houses on the property and the applicant is planning to add 3 more houses.

Mr. Greer noted that Ms. Miller builds very environmentally sensitive homes that are super insulated. Ms. Miller's total electric bill, which also heats the building, runs for \$11.00 per month. Her goal is to put in 3 more homes with the same style and character as the homes that are there now. The homes are very energy efficient and as environmentally sound as possible. The proposal is for a cluster subdivision with the homes located near the front and common space in the back preserved as open space.

Mr. Greer showed a schematic with wetlands identified in blue. The water flow goes from the northeast to the southwest. The wetlands are in fairly defined ravines. One of the wetlands is a stream that is mapped out and they will have RPA permits to go through as they cross them and will work with DEP on this. The graphic shows 5 lots and the two highlighted in yellow are the existing homes.

The homes will be accessed with a private road that runs down the middle and that will be maintained as a private way with a gravel surface that is 18' wide. A hammerhead turnaround is planned to give access to the middle lot. The last lot in the back will be roughly 10 acres and Ms. Miller plans to build a homestead there for herself and her children. The 4 homes in front will be in the 60,000 sq. ft. range which meets the criteria under the cluster provisions.

Overall zoning for this area is 4 acres. The applicant is dealing with 25 acres and the remaining portion of these lots is shown on the schematic as the dark green area in the back. Mr. Greer showed the Town zoning map and outlined the area of the proposed project. One side is RR1 and the other is RR2. One side has 2 acre zoning and the other side has 4 acre zoning. Mr. Greer said that they floated the idea of going for a zone change because it feels like the applicant is cheated because one side gets a better deal but they decided not to do this. There are 1 acre house lots on the other side that were previous to the 2 acre zoning and Ms. Miller was hoping to do more on this lot than just the 5.

Mr. Greer said he would like to talk to the Board about the net acreage and he displayed a chart for the plan. Ms. Nixon interjected that the net residential density calculation is based on 15% of the actual amount used for roads and parking. Mr. Greer responded that this was the answer he was looking for. Mr. Greer noted that when you read the ordinance it says 15% for roads and parking as shown on the plans. One interpretation was if you take 15% you would end up with almost 4 acres set aside out of the 25 for roads. If you take the wording where it says "the roads as shown in the plans" you end up with 11,000 sq. ft. so there is a huge difference in how to interpret this. Ms. Nixon explained that in the Zoning Ordinance the definition section has a definition for net residential acreage which lays out how you calculate it. Mr. Greer said he is very happy with this ruling and this allows the applicant to have 5 lots.

Mr. Greer said another question is about the new road standards. This could be an 18' wide gravel road that meets the concept of how Ms. Miller wants to put them into nature and make it feel less like a commercial neighborhood. They plan to bring this plan back over the winter and there will be snow so if the Board would like to do a site walk he asked that they schedule it.

Ms. Nixon asked Mr. Greer if he is asking for a waiver of the road standards. Mr. Greer replied no, he read it that they could go in with an 18' wide road as long as there is a paved apron. Ms. Nixon noted that the road could be unpaved. Mr. Greer said that this is where the plan is headed and there will be a road maintenance agreement in place.

Mr. Greer said that CMP may have some trails on the abutting property that the applicant may be able to connect to. There is a right of way from the end of the applicant's road out to the common area so that the homeowners can access the open space area from the right of way. Currently there are skidder trails on the parcel.

Chairman Moriarty said this item is just sketch plan review so no motions or findings are required. Chairman Moriarty said the project looks impressive and he likes the look of it. Analysis of possible existing trails will be important so an existing trail is not severed.

Mr. Berrett asked if there is adequate room for a fire engine and Mr. Greer said yes. There are two hammerhead turn arounds proposed which Mr. Greer identified on the plan. Mr. Saunders asked if one of the hammerheads is incorporated into the driveway to one of the lots and asked if that is allowable. Ms. Nixon replied that she does not think this would be allowed but the applicant could ask for a waiver from this standard. Mr. Greer said their feeling is that it is a private road and will be kept a private road.

Mr. Greer said that most of the time with cluster plans the lots are reduced in size. This plan has 4 lots that are reduced in size and one that is bigger and he hopes this does not give the Board any concern.

Mr. Boivin asked if, coming from Yarmouth, there is a bit of a turn there and Mr. Greer responded no, it is fairly straight here. Mr. Greer added that the driveway currently comes in at an angle but this will be straightened. Chairman Moriarty asked if there is a street sign already and Mr. Greer replied yes.

Ms. Nixon said regarding the point Mr. Greer made with lot 5 being 7.8 acres that sometimes the Board will make a note on the plan that a subdivision cannot be further subdivided. Ms. Nixon said she does not know if by keeping the large lot the applicant is thinking that maybe down the road if the zoning changes there could be another lot or 2 so the Board should think about this. Mr. Greer added that the applicant's feeling is that if the zoning changes they would like to add more lots. Ms. Miller would like to keep one lot open for one of her children. Mr. Greer said they would be happy to put a note on the plan indicating that there will be no further development unless they come back to the Planning Board.

Chairman Moriarty asked the Board if they would like to schedule a site walk. Ms. Nixon said that it is basically an open field. Mr. Greer agreed that it is wide open. The large trees are all gone and it has grown in with blackberries and bush/scrub and is extremely difficult to walk upon. There is a logging road that has been maintained where you could walk out to the middle of the parcel. The Board did not schedule a site walk.

Ms. Nixon asked if this project will use private wells and septic. Mr. Greer replied yes it will be private and they have not done those tests yet.

Chairman Moriarty thanked Mr. Greer and Ms. Miller.

7. Amendment to Major Subdivision, Cumberland Foreside Village Ownership Change from Cumberland Foreside Village, LLC to C and A Holdings, LLC (Applicants); Tom Greer, P.E., Pinkham and Greer Civil Engineers, Representative.

Chairman Moriarty said that this item is an amendment to a major subdivision, Cumberland Foreside Village, for an ownership change from Cumberland Foreside Village, LLC to C and A Holdings, LLC.

Mr. Greer said that as they went through this housing project originally it was pretty clear that Loni Graiver would be the owner of the apartments. Mr. Graiver's company could not take ownership until after it was approved. Now that this is in place they are asking to

change the ownership from David Chase's company to Loni Graiver's company. Mr. Greer said everything else stays in place and a new performance bond is in place.

Chairman Moriarty asked if this ownership change is for the entire contract zone and Mr. Greer replied that it is only for the 96 apartments.

Mr. Saunders asked Ms. Nixon if the Town has looked at the value and Ms. Nixon said yes.

Mr. Saunders moved to approve an amendment to major subdivision, Cumberland Foreside Village to effect an ownership change from Cumberland Foreside Village, LLC to C and A Holdings, LLC, seconded by Mr. Sherr and **VOTED, 7 yeas -unanimous, motion carries.**

4. This item was tabled originally and taken up again after Item #7. *Public Hearing: Recommendation to Town Council for Amendments to Article 8, Chapter 315-79, (Contract Zoning) of the Cumberland Code - Section 315: Zoning Ordinance. Town of Cumberland, Applicant.*

Mr. Shane said that there is a flow chart in the Board's packet and he explained that the proposed changes to the Contract Zoning Agreement (CZA) are not technical in nature and are totally about the process. Criticism that the Town Council received from residents in the past was that they didn't understand how the process works, didn't know how they could participate and always had the feeling that the project was a done deal by the time it got to the Planning Board. Residents felt that they had no input and didn't know how things developed and they wanted to more of a part of the evolution of the plan.

Mr. Shane said he has talked with Chairman Moriarty about this and the Town Council has decided to take another look at the process. Mr. Shane reviewed a flow chart for the new process which starts out with a \$2,000 application fee to cover notices and attorney's fees for development. Mr. Shane and Ms. Nixon have always looked at these applications to make sure they are consistent with the Comprehensive Plan. Ms. Nixon will write the Board a memo indicating where in the Comp. Plan it is identified. The application will then go back to the Town Council where the Council will indicate if staff should move forward with the process. Next there will be a Town Council facilitated neighborhood meeting that the Planning Board will be invited to just to listen. The next step is a key step where the Council and the Planning Board hold a joint workshop together to listen to the applicant and ask questions. The public can participate in this workshop. The Town Attorney then reviews the application and prepares the draft CZA document together. The Town Council will then formerly vote to send it to the Planning Board for a public hearing. The Planning Board will hold their public hearing and make recommendations back to the Council for the Council's public hearing and final vote.

Mr. Shane said he feels this is a much better process. The Council and Planning Board discussed it in a workshop over a month ago. Another criticism has been that amendments to the CZA seem perpetual and it didn't seem like there was any opportunity for community input. Any amendment will start the process all over again and this will encourage people to think hard about amendments.

Mr. Davis pointed out a duplicate box in the flow chart and Mr. Saunders said it is duplicated in the description of the steps too.

Mr. Boivin asked Mr. Shane if he feels that the Planning Board will be impartial with the process of workshops between the Planning Board and the Town Council. Mr. Shane said the Town Attorney had some fear about. In developing a CZA, the Board hasn't seen the

site plan or the subdivision plan yet but they will see the new zoning elements. The Town Attorney said that when the Planning Board attends these meetings, they should just listen and not participate.

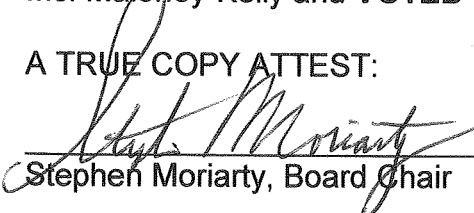
Chairman Moriarty opened the public hearing. There were no comments from the public. Chairman Moriarty closed the public hearing.

Mr. Saunders moved that the Planning Board make a recommendation to the Town Council for amendments to Article 8, Chapter 315-79, (Contract Zoning) of the Cumberland Code - Section 315: Zoning Ordinance as amended tonight (to remove duplicates), seconded by Mr. Davis and **VOTED 7 yeas – unanimous, motion carries.**

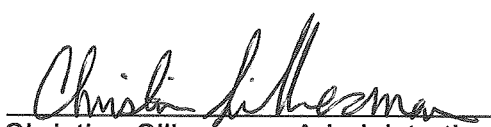
G. Administrative Matters / New Business: None.

H. Adjournment: Mr. Davis moved to adjourn the meeting at 10:27 p.m., seconded by Ms. Maloney-Kelly and **VOTED 7 yeas – unanimous, motion carries.**

A TRUE COPY ATTEST:



Stephen Moriarty, Board Chair



Christina Silberman, Administrative Asst.