

PLANNING BOARD MEETING MINUTES
TOWN OF CUMBERLAND
Cumberland Town Hall, 290 Tuttle Road, Cumberland, Maine 04021
Tuesday, November 15, 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, Peter Sherr.

Absent: Joshua Saunders.

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

C. Approval of Minutes of the October 18, 2016 meeting: Members of the Planning Board noted some typographical errors to be corrected. Mr. Sherr moved to approve the minutes of the October 18, 2016 Planning Board meeting as amended, seconded by Ms. Maloney-Kelly and **VOTED, 6 yeas – unanimous, motion carries.**

D. Staff Site Plan Approvals: None.

E. Minor Change Approvals: West Cumberland Manufacturing Facility - Site Plan De Minimis Change 1) To shift access drive 10' to the north and, 2) modifying the exit drive to have a separate left and right turn lane: Ms. Nixon explained the change request for the West Cumberland Manufacturing Facility to shift the access drive 10' to the north and to modify the exit drive to have separate left and right turn lanes. Ms. Nixon said that Mr. Palmer submitted this as a de minimis change, however, if the Board is not comfortable with that, this change request can be heard at a future meeting as an amendment. Ms. Nixon reported that she has confirmed that the DOT entrance permit reflects these changes. The Board indicated there was no concern with the de minimis change.

F. Hearings and Presentations:

1. 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.

Chairman Moriarty explained that this item was on the Board's agenda last month with a lengthy public hearing and Board discussion and was tabled until tonight's meeting. One of the issues raised at the last meeting has been resolved regarding whether Grun, LLC is appropriately licensed to do business with the proper filing with the Secretary of State's office. Secretary of State Matt Dunlap has certified that Grun, LLC is properly licensed and situated to do business.

Chairman Moriarty said another matter is that we are dealing with the Village Center Commercial district, a new provision of the Zoning Ordinance which provides that when part of an overall master plan for a particular parcel, multiplex units may be included if the parcel is 5 acres or larger in size. Chairman Moriarty said this raised the question of what is the master plan because there have been several plans for this project. Mr. Palmer has provided an updated master plan dated November 14, 2016. Ms. Nixon added that the plan that was in the

Board's meeting packet is not the current master plan. Each Board member was provided a copy of the current master plan this evening. Mr. Palmer noted that Condo Unit #2 is shown on the master plan, but is not part of the site plan application for phase 2 which is the residential units. Condo Unit #2 will be considered as a "Phase 3" and tenants for that building have not yet been identified so the configuration of the building shown on the master plan may change.

Chairman Moriarty noted that there are 4 condominium units on the parcel that are not dwellings but rather parcels of land. Mr. Palmer said that they are land condominiums for commercial purposes establishing the ability to have separate ownership and financing for each condominium unit that then share common areas. Chairman Moriarty clarified that condominium unit #1 is shown on the lower right corner of the plan and the structure shown is the proposed shoe manufacturing building. Mr. Palmer said this was approved in December last year and extended at the last Board meeting. Chairman Moriarty said condominium unit #2 is to the left of condo #1 and will be the second conceptual commercial building. Mr. Palmer said this is currently labeled as condo unit #2 but when they come back next month, they are relabeling it as condo unit #3 so the phasing will match the condo unit number. Chairman Moriarty indicated that for the time being it will be referred to it as condo unit #2. Condo unit #3 is the largest of all and will be the 5 multiplex housing buildings. Condo unit #4 is Tammy Lane. The entire project consists of 4 land condominium units with two common areas, the entrance drive and the stormwater area.

Chairman Moriarty asked for an update on the tax lien status. Mr. Palmer said it is his understanding that Grun, LLC is working with the Allens to address the tax lien issue by the end of this month. Prior to any final approval, the applicant will need to have this addressed. Chairman Moriarty noted that the tax lien is against the Allen family and not against Grun, LLC. Chairman Moriarty asked if the closing on the sale of the property has occurred and Mr. Palmer responded that a closing has not occurred. All of the parcels have an extended purchase and sale agreement through December. Grun is working with the Allens to look at how the parcels may be obtained, including phasing the closing. It is possible that there will be a closing this year and one next year.

Chairman Moriarty indicated that the Board's materials include a number of references to peer engineer review. He asked Ms. Nixon if the Peer Review Engineer has reviewed the revised master plan that was submitted yesterday for septic and related issues. Ms. Nixon replied that the revised master plan was sent to Peer Review Engineer Dan Diffin and she has not received any comment from Mr. Diffin.

Chairman Moriarty said that on the agenda tonight is preliminary subdivision review. The Town Ordinance sets forth that this requires a public hearing and specifies that within 30 days of the conclusion of the public hearing, the Board must either approve, approve with conditions or deny the preliminary plan. The next Planning Board meeting occurs more than 30 days from tonight so the Board either has to vote tonight or have a special meeting between now and the next regular meeting. Chairman Moriarty noted that although preliminary plan approval is preliminary, it is to be taken seriously because it is deemed to be an expression of approval of the design submitted and a guide to the preparation of the final plan.

Mr. Palmer said that with him tonight is Jim Schmidt of Grun, LLC and Christi Holmes from Gorrill Palmer. Mr. Palmer stated that at the conclusion of the last meeting, there were a

number of items that he needed to respond to. Some of these things were responded to in the time period between the last meeting and the submission deadline for tonight's meeting. On October 25th, a package was submitted to Ms. Nixon that addressed the non-wastewater comments from Sevee and Mahar. Mark Cenci, sub consultant for wastewater, is working on a response to the wastewater comments and will have these before the final approval. All other engineering comments from Sevee and Mahar were addressed. Sevee and Mahar reviewed the information and responded with one minor comment about the cover over a storm drain pipe and this will be addressed as part of the final design by revising the grading in that area.

Mr. Palmer said a majority of the comments by the Town Engineer have been responded to. The ability to serve letter from Portland Water District has been provided. The amended driveway permit from DOT has been provided. Mr. Palmer said he has worked with Ms. Nixon over the last few weeks on the items that need to be addressed for the final design. Mr. Palmer said they are looking for the Board to endorse the overall scale and magnitude of the plan. The burden is still on the applicant to address all of the standards for the final approval.

Chairman Moriarty reopened the public hearing that began last month.

Ron Copp of West Cumberland asked if the Board is approving the whole plan tonight. Chairman Moriarty replied that this is preliminary approval for the entire plan. Mr. Copp asked if the southernmost lot (blue house/Burgess) is still part of the plan for the manufacturing facility and is it still on the table. Mr. Palmer responded that the southernmost lot is still part of the plan and was approved for phase 1 and extended by the Board. The Burgess property has to be purchased for any development to occur on the site because this is where the driveway will be. The Allen residential property, closest to Copp Motors, is necessary only for the phase 1 building. The Allen commercial property, which is L shaped, is necessary for the commercial building and the residential buildings. Mr. Palmer said that there may be a phased closing partly to work with the Allens on tax issues. There are tax implications for what year the properties are sold and what the capital gains are. The intent is to construct the phase 1 building. It may change in use from manufacturing to another commercial use. At this point, there is not a final lease with the shoe manufacturing and the applicant is looking at other tenants.

Mr. Copp said that his point is that the Board may give final approval to a portion of this plan but not to the whole plan. The applicant is not looking at purchasing the property in one lump sum. There are two different owners. Mr. Copp believes the applicant plans to have two different sales from the Allens. Mr. Copp said he doesn't believe the applicant will have the acreage needed for this plan if he does not purchase the entire property. Chairman Moriarty replied that the Board can approve the plan with conditions and can keep a running list as the meeting goes along of conditions to be met.

Chairman Moriarty said the Town has been in touch with the Town Attorney on the sequence of events. The ordinance does not specify a sequence by which things must happen when there is a mixed use development like this so no one thing has to happen first. Mr. Copp said he wants to make sure that if the multiplex units get preliminary approval tonight that there is enough acreage to support the ordinance.

Mr. Davis said that the driveway is going to be used as part of phase 2 and the driveway was also approved as part of phase 1. Mr. Davis asked wouldn't the applicant have to have

ownership of phase 1 before the driveway can be built. Mr. Palmer said the driveway is not part of condo unit one, it is a separate common area that will access phase 1, 2 and 3. Mr. Palmer said the intent is to purchase all 3 parcels. For preliminary approval, the applicant has to demonstrate title, right or interest and Mr. Palmer thinks Ms. Nixon will agree that they have. For final approval, the applicant still has to show title, right or interest and they do not need to have purchased any of the property. Before the applicant can draw a building permit, they have to demonstrate that they have closed on the property that the application is based on. Mr. Palmer said there are checks and balances that require the closings to occur for the plan to move forward and if not, it will have to come back to the Board for an amendment.

Kathy Merrill, 17 Tammy Ln. asked if the applicant does not get someone in for the commercial, will they be able to add more residential. Mr. Sherr said any proposed change would have to come back to the Board. Chairman Moriarty said one of the Board's conditions may very well have a lot to do with whether condos (residential) could ever go on units 1 and 2.

Ms. Merrill said that her daughter Tammy mentioned at the last meeting that she would like a chain link fence along the back and asked if the applicant will do this. Chairman Moriarty said this was left unresolved last time and he is not sure that it is a key issue for preliminary plan approval. Mr. Palmer remarked that they will look at this between preliminary and final. One of the comments received was to have a connection between the multiplex and Tammy Ln. Chairman Moriarty asked Ms. Nixon if resolution of the trail is an essential item for preliminary approval and Ms. Nixon said she does not believe so.

Tammy Merrill, 199 Gray Rd. and right of way on Tammy Ln., said she asked at the last meeting if Grun Development would be willing to put more buffering up around the apartment complex due to the privacy of the abutting neighbors and trespassing issues. Ms. Merrill is concerned with the 4 acre pond that 4 of them are liable for and she doesn't want somebody who isn't watching have their child walk down there into the pond. A fence would completely deter that from happening and would give them their privacy. Ms. Merrill said that during the site walk Mr. Schmidt was asked if Grun Development would straighten out a piece of Tammy Ln. and he said yes. Mr. Palmer explained that the last 100' or so of Tammy Ln. was not built where it was supposed to be and Grun will correct this.

Ms. Merrill said she wants to make sure that the abutters' meeting does happen and the developer takes in the abutters' concerns and she hopes this will be one of the Board's conditions. Mr. Boivin said hearing abutters' concerns is the function of a public hearing and he has a hard time with a condition such as this. Mr. Sherr noted that the applicant said in their response of October 25th that they would conduct an abutter meeting between preliminary and final approval.

Mr. Copp said that right now Tammy Merrill's driveway goes to the left and Grun was asked if they would pay to have it straightened. Mr. Palmer said that Ms. Merrill's right of way is shown on the plan and her driveway currently goes outside of her right of away. Grun will correct this by shifting the driveway as Ms. Merrill has asked.

Chairman Moriarty closed the public hearing and said the Board will hear further questions if needed.

Mr. Boivin commented that the revision history for drawing C100 needs to be updated. It should be revision #3 dated November 14, 2016. Mr. Palmer said he will address this.

Chairman Moriarty said the Board will now begin consideration of preliminary subdivision approval and he reviewed the proposed findings of fact.

Findings of Fact - Chapter 250: Subdivision Review:

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

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

Parcel is above sea level and not within a floodplain. The project will use public water. A groundwater impact assessment was provided by the applicant and reviewed and approved by the Town Engineer. The Board finds the standards of this section have been met.

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

The subdivision will be served by public water. A letter dated 10/26/16 from the PWD stating ability to serve is on file. The Board finds the standards of this section have been met.

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

The subdivision will be served by public water. A letter dated 10/26/16 from the Portland Water District stating ability to serve is on file. The Board finds the standards of this section have been met.

- D. Erosion. The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results;

The erosion and sedimentation control plan was reviewed and approved by the Town Engineer. An MDEP Stormwater permit is required prior to final approval. The Board finds the standards of this section have been met for preliminary approval.

- E. Traffic. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed;

A traffic study was performed by Gorrill Palmer, reviewed and approved by the Town Engineer. An amended MDOT Entrance Permit dated 10/31/2016 has been provided by the Applicant. The Board finds the standards of this section have been met.

- F. Sewage disposal. The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are

utilized;

The subdivision will utilize private septic systems. A Wastewater Disposal Investigation Report was provided by the applicant and reviewed and approved by the Town Engineer. The applicant has provided data showing that there is adequate sewage waste disposal for the residential multiplex units and 22,000 sf of commercial structure (13,000 sf for Phase 1 as well as an additional 9,000 sf for a second commercial building along the Rt. 100 frontage. Additional nitrate study findings have been requested by the Town Engineer and Town Manager. The Board finds the standards of this section have been met for preliminary approval.

G. Municipal solid waste disposal. The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized;

The subdivision will utilize a private waste hauler. The Board finds the standards of this section have been met.

H. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

A letter is on file from Maine Historic Preservation Commission stating that there are no evident historic features on the site. There is a letter from the Department of Inland Fisheries and Wildlife stating there is no evidence of rare or endangered species. The Board finds the standards of this section have been met.

I. Conformity with local ordinances and plans. The proposed subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans;

The plans have been reviewed by the Town's peer review engineer and town staff. There are outstanding issues that need to be addressed prior to final approval, however most ordinance provisions have been met and the plan is in order for preliminary approval. The Board finds the standards of this section have been met for preliminary approval.

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

Technical Capacity: Technical capacity is evidenced by the applicant's use of a professional civil engineer, traffic engineer, surveyor and soils scientist. Financial Capacity: A performance guarantee in an amount acceptable to the Town Manager and Town Engineer will be required prior to beginning of construction and a letter of financial capability will be provided prior to final approval. The Board finds the standards of this section have been met for preliminary approval.

K. Surface waters; outstanding river segments. Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38 chapter 3, subchapter I, article 2-B, the proposed subdivision will not

adversely affect the quality of that body of water or unreasonably affect the shoreline of the body of water;

A complete stormwater report has been completed for the proposed development and has been included in Attachment 6 of the application packet. This report has been reviewed and approved by the Town Engineer. The Board finds the standards of this section have been met.

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

A groundwater impact assessment was provided by the applicant and reviewed and approved by the Town Engineer. The Board finds the standards of this section have been met.

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

Based on a review of the Federal Insurance Rate Maps, the parcel is located in Zone C- Areas of Minimal Flooding. Based on the information provided, the standards of this section have been met.

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

A stormwater management report was submitted and reviewed and approved by the Town's peer review engineer. An amended MDEP stormwater permit has not yet been received. The Board finds the standards of this section have been met for preliminary approval.

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

A wetlands analysis was performed. There are no wetlands or vernal pools on the site. The Board finds the standards of this section have been met.

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

There are no rivers, streams or brooks on the property. The Board finds the standards of this section have been met.

SECTION 300 -AQUIFER PROTECTION (if applicable)

The parcel is located in the Aquifer Protection District.

An erosion and sedimentation control report has been reviewed and approved by the Town Engineer. There will be no storage of chemicals. Fuel storage is limited to underground propane storage tanks. Additional information has been requested by the Town Engineer. This information will be provided for final approval. The Board finds the standards of this section have been met for preliminary approval.

Mr. Barrett asked if the overall site does not have the capacity for wastewater treatment for Phase 1, 2 & 3 will the project stop or will the architect and developer find a way to fix the shortfall. Mr. Sherr said the applicant will have to come back to the Board to amend the plan.

Mr. Sherr moved to approve the findings of fact as amended, seconded by Mr. Berrett and **VOTED, 4 yeas, 2 nays (Davis & Moriarty), motion carries.**

The Board discussed the following conditions of approval:

1. There will be an abutters' meeting between preliminary plan approval and final plan submission.
2. There will be no multiplex development in Condominium Units #1, #2 and #4.
3. The revised master plan dated November 14, 2016 is adopted by the Board.
4. All responses to comments made at the previous public hearing as set forth in Gorrill Palmer's letter to the Town Planner dated October 25, 2016 be addressed.

Mr. Sherr moved to approve the conditions of approval as stated, seconded by Mr. Davis and **VOTED, 6 yeas - unanimous, motion carries.**

Mr. Sherr moved to approve the preliminary subdivision plan with the standard conditions of approval and proposed conditions of approval as finalized for the parcel located at 197 Gray Rd. / Route 100 (West Cumberland Multiplex Units), Tax Assessor map U20, lots 70A, 70E, 73 & 74, seconded by Mr. Boivin and **VOTED, 6 yeas - unanimous, motion carries.** Chairman Moriarty noted that this vote was preliminary plan approval and a lot has to happen before the application is ready for the Board to consider final plan approval. Mr. Palmer said the application will probably be ready for the Board's January meeting.

Chairman Moriarty called for a 5 minute break at 8:23 pm. The meeting resumed at 8:29 pm.

2. Public Hearing: Re-approval of Site Plan for Lot 2, Cumberland Foreside Village. Integrative Health Center of Maine, LLC, Applicant; Thomas Greer, P.E., Pinkham and Greer, Representative.

Chairman Moriarty explained that the Board dealt with approval of this project last year and in August of 2015 the Board granted full approval. Since that time, nothing has happened and the approval lapsed. An extension was not sought within the 1 year time frame so the project is back to square one. There are no substantial changes to the current application compared to what the Board approved in August, 2015.

Tom Greer, Project Engineer, said he is here tonight with Dr. McCloy, the owner. Mr. Greer displayed a map of the project to build out Lot 2 of Cumberland Foreside Village. The project is accessed by Sky View Drive which will be extended roughly 100' and will include both sewer and water. This project is a piece of a master plan. An access drive will also go to lot 3. Mr. Greer said that lots 3 and 4 will have a combined entrance and he identified the location of the entrance that will be off Route 1. Mr. Greer said the project has DEP approval. The site will

have parking on the upper level that will be for the doctor's office on the top floor. Parking will also be along the side for the lower entrance. This is a 2 story building. Mr. Greer showed the location of the stormwater management that will take care of runoff to treat it before it gets discharged. Mr. Greer identified the location of a buffer along the front. There are some wetlands in the front and there is an Army Corp. permit as well as a DEP permit to fill in a small portion of the wetlands as part of the overall project.

Chairman Moriarty clarified that Dr. McCloy is the owner of the project and Mr. Greer agreed.

Mr. Berrett asked if there is a town requirement that the driveway go to lot 3 and Mr. Greer said yes. As part of the master plan there are 4 lots across the front with connected parking lots so you can get from one to the other. There are two entrances from Route 1. One entrance between lots 3 and 4 and one near lot 5. The intent is to minimize the entrances onto Route 1 and share entrances and parking.

Chairman Moriarty opened the public hearing. There was no input from the public. Chairman Moriarty closed the public hearing.

Mr. Sherr moved to approve the Site Plan for Lot 2, Cumberland Foreside Village located at Tax Assessor's map R01, lot 11-2 subject to the previous findings of fact, limitations of approval, standard conditions of approval and conditions of approval, seconded by Mr. Davis and **VOTED, 6 yeas - unanimous, motion carries.**

3. Public Hearing: Amendments to Cumberland Foreside Village Residential Subdivision and Site Plan. *Cumberland Foreside Village, LLC, Applicant; Thomas Greer, P.E., Pinkham and Greer, Representative.*

Chairman Moriarty reported that there are several minor changes proposed to the previously approved plan.

Tom Greer reviewed graphics that were provided to the Board beginning with the overall subdivision plan and outlined proposed changes to the underdrain soil filter. Mr. Greer pointed to an area where stone walls were added to spare some trees in the back and as an additional buffer to Interstate 295 and showed pictures of the stone walls and where the underdrain soil filter will be located. The stone walls were put in under the direction of S. W. Cole Engineering to ensure that they are stable.

Mr. Greer said that on the plan that was submitted there was a 30' wide easement along the back for drainage. The developer found that the drainage easement impacts some of the back yards more than they thought. The revised plan has a 30' wide easement for lots 33 through 37 and on lots 38 through 41 the easement will be reduced to 15' wide to pick up the drainage piece and not end up in the back yards.

Mr. Greer said another item is the driveway for lot 32 that originally came out onto Clipper St. and they are changing it to come out onto Captain's Way because it is a nicer layout.

The last item is for lots 6 through 12. These homes are already built and are occupied. Mr. Greer showed pictures and explained that there is a drainage easement through this area with a stone wall on the back side that is 6' to 10' with a mound along the edge. There is a drainage swale in this area. The applicant would like approval for this stone wall. Originally the plan was to cut the trees and have a slope but because the homes back up to the commercial lot, the developer wants to save as many trees as possible for a buffer.

Mr. Greer said the three items the applicant would like approval from the Board for are the stone walls on lots 33 to 41 with the underdrain soil filter changes, a change on the lot 32 driveway and the as built conditions for lots 6 to 12 as shown in the photographs.

Mr. Berrett asked about request change 3 that talks about "commercial lot 5" and he asked what commercial lot 5 is. Mr. Greer showed a plan of the project and explained that commercial lot 5 is in the commercial subdivision that will abut the residential lots 6 to 12.

Mr. Davis asked who is responsible for the fence and the stone walls. Mr. Greer replied that he does not think the fence is necessary on lots 6 - 12. The stone walls were in place when these homes were bought. The developer will pay for putting up a fence for lots 33-41. Mr. Davis asked who will be responsible for maintenance of the fence. Mr. Greer said it will fall under the homeowners' agreement.

Mr. Sherr said he read in the Board's materials that some of the changes started in July. Mr. Sherr said he likes the concept and the idea of protecting the buffers and having retaining walls but he doesn't like that the applicant is back before the Board to approve something after the fact for changes that have already occurred. Mr. Sherr does not want the Board to set a precedent that developers can make changes to Board approved plans and assume that they can come back before the Board. Mr. Sherr said that procedurally, the owner and the developer should have contacted the Town earlier. Mr. Greer said he understands. Mr. Boivin concurred with Mr. Sherr and said the developer is at risk doing changes without approval and the Board could say no.

Chairman Moriarty opened the public hearing.

Town Manager Bill Shane said he is concerned about the drainage for the double row of houses and asked how that will be handled and is there a drainage easement. Mr. Chase said there is a drainage easement on each lot. Mr. Shane said that there are a lot of drainage easements within this project that are going to be a concern in 20-30 years from now when there is maintenance that has to be done and it isn't clear who is responsible. It would be very helpful to have specific details on the recorded plan listing the homeowners' association's responsibilities. The Town will not be willing to accept responsibility for the drainage easements or the fence when the road comes to the Town for acceptance in the future. Mr. Shane asked the developer to be careful with this because the Town is typically responsible for the detention ponds, catch basins and the pipe within the road and the right of way but when you go in between houses and the Interstate 295 right of way that is beyond the scope of what the taxpayers of Cumberland should be burdened with in the future. Mr. Greer said the subdivision plan will be amended and he can add additional notes to it to reflect the easements and who maintains them.

Chairman Moriarty closed the public hearing.

Mr. Boivin asked if the plan doesn't have all the easements on it. Mr. Greer said there is an easement on the plan showing a 30' easement in the back and this will be amended because the easement will be changing to 15' for some of it. The changes to the plan will be ready for the Board to sign at their next meeting and he will add notes on the plan about who maintains the easements and reference the homeowner's documents. Mr. Davis asked if Mr. Greer would also include a note about who will maintain the fencing.

Mr. Sherr said there will probably be a couple of conditions of approval moving forward, with one of them being the fencing. Mr. Sherr said that now the applicant is proposing fencing behind lots 33 to 41 but not behind lots 6 to 12. Mr. Greer agreed. Mr. Sherr asked if Mr. Greer would be amenable to also having fencing on lots 6 to 12 for any wall greater than 4'. Mr. Chase said the fence idea came from the Code Officer on a site walk. It is the Code Officer and Town Planner's opinion that a fence is merited. Mr. Chase does not think a fence is merited in this situation because there is such a distance from the back of the houses to where the wall is. The stone wall was built before people bought the houses. Mr. Sherr clarified that Mr. Chase is opposed to putting a fence on lots 6 to 12 and Mr. Chase said he is opposed to it. Ms. Nixon said the concern she has is that the distance from the back of the house to the wall is not very great. She can see a child throwing a Frisbee and another child going to catch it and not realizing how close to the edge they were and falling. The rip rap and rock could cause a serious injury. The fact that the applicant did this without coming to the Board first at which time the Board could have said there needs to be a fence or could have modified the height of the wall. Ms. Nixon said that after having been out there to see it she thinks it is a safety hazard.

Chairman Moriarty said he is also concerned about the fact that something has been done and the applicant is seeking approval after the fact. It doesn't make sense to tell the applicant to restore the property to how it was before and then come back for change approval. As a matter of practice, the horse has to come before the cart. Mr. Sherr said that he likes the concept but wishes they had come before the Board first. If the Board is going to approve this, he would like to talk about conditions of approval such as the fencing, stormwater controls – the swales & collection systems, and the homeowners' association responsibilities.

Mr. Boivin asked if the Town has a draft homeowners' association document and Ms. Nixon said there was one for the final approval but it was not included with this application. Ms. Nixon said the Board can draft their conditions of approval tonight and she will work with the developer to put language on the final plan or the Board could table this tonight and put it back on the agenda for a future meeting.

Mr. Boivin said if the item is tabled he does not want the developer to deviate from the approved plan any further.

Mr. Chase said that changes that he made were done with the best of intentions to save buffering which is always a positive for a subdivision. There would have been approximately 80' of trees on the Interstate 295 corridor that he would have had to clear if he had not built the retaining walls, which cost him extra to do. It is a benefit to the subdivision as well as the abutters on the other side of the highway and along Route 1 to save as many trees as possible. Mr. Chase said he was not trying to do anything behind anyone's back. Mr. Sherr said his point is that he does not want the Board to set precedence that this is an allowable and acceptable thing in the future. Mr. Sherr said he fully understands why Mr. Chase did what he did but it is how it was done that disturbs him. As soon as there is a change to an approved plan, Mr. Chase should have been in contact with the Town to discuss what the next steps were.

Mr. Sherr said if the item will be tabled tonight, he would prefer to have fencing for lots 6 to 12, maybe for anything greater than 4', added to the plan to provide safety along with the fencing for lots 33 to 40. The fences should be part of the homeowners' association for maintenance

along with the stormwater and the retaining walls. Mr. Boivin said he has no objections to this. Mr. Boivin and Mr. Kerr concurred that if the Board tables this item they want the applicant and developer to understand what the Board's hope is.

Mr. Berrett said he agrees with having fencing added to lots 6 to 12 even though people have bought the properties and never said anything. Mr. Berrett said that he lives on a busy street and every time his grandchildren run in his front yard, his heart starts beating fast that there is danger for them. Children will run into a street to catch a Frisbee and could easily go over a wall to catch a Frisbee. That fact that people weren't complaining about it does not change the risk that there is to children.

Ms. Maloney-Kelly said that she is not hung up on having a fence. People have bought these homes with the existing condition and people have to watch their kids. Ms. Maloney-Kelly said she loves how the lots look now. If she was a homeowner and was told that some of the tree line would be blocked she probably wouldn't be very happy, especially having already bought the house.

Chairman Moriarty said he also does not think a fence is necessary for lots 6 through 12. There are homeowners in place who went into the purchase with eyes wide open and apparently have no complaints. There are risks in this world and you can't mitigate everything.

Mr. Sherr moved to table this item, seconded by Mr. Berrett and **VOTED, 6 years - unanimous, motion carries.**

Public Hearing: To recommend to the Town Council draft zoning map amendments to re-zone property at Tax Assessor Map U 07, Lot 16 to change zoning designation from Rural Residential 1 (RR 1) to Highway Commercial (HC). Town of Cumberland, Applicant.



Chairman Moriarty introduced the item and explained that the lot is divided in half more or less by the zoning line splitting the Highway Commercial (HC) from the Rural Residential 1 zone (RR1). The proposal is that under half an acre be changed from RR1 and placed into the Highway Commercial zone thereby unifying the parcel in a single zone as opposed to having it be split by two. This will potentially promote future commercial and or agricultural uses of the property.

Mr. Boivin remarked that the Board was sent a revised copy of this proposal. Ms. Nixon noted that from last month to this month, one of the two lots that had been originally been proposed for the zone change has been dropped (map U07, lot 13).

Mr. Shane said that after the last meeting when this item was tabled, he had the opportunity to meet with the homeowners that were present. The homeowners that abut lot 13, which was proposed to be changed, have a shared driveway with a barn on lot 13. There currently is a buffer of brush in the area of lot 13 that is proposed to be changed. The abutting homeowners would like to leave the zoning the way it is if there is no request to take it out of the RR1 zone. Mr. Shane said that when he was looking at lot 16, that is proposed to be changed tonight, he noticed the small piece of lot 13 that was in the RR1 zone and added it to the request. There was no pressing reason to change lot 13, no one had asked for it and he added it as a housekeeping exercise. Given the request of the abutting homeowners, Mr. Shane has removed lot 13 from the zone change request.

Mr. Shane said the change to lot 16 does have a reasonable request. The Cianchette family that owns lot 16, and most of the former Merrill Farm nearby, are looking to put something to support their agricultural business here. It could be retail related to their farming operation or some type of butcher shop for lamb, turkey, chicken, etc. When Mr. Shane looked at the lot with CEO Bill Longley, he asked how the Town would deal with a lot that bisects 2 zones. Mr. Longley said it would be a lot easier to work with one zone instead of 2. The HC zone allows for some type of retail. Mr. Shane said that the Comprehensive Plan supports keeping agricultural based businesses in town and businesses that support the agricultural use make a lot of sense here. Mr. Shane said he does not know what the business will be but the HC zone allows for a multitude of types of uses. This lot used to be part of the railroad and has not been used for anything for many years. Mr. Shane said Michael Cianchette is here tonight if the Board has any specific questions.

Mr. Sherr said he supports the concept of not having two zones across a single parcel and asked why the Town is the applicant and not the owner of the parcel. Mr. Shane said that when Mr. Cianchette made the request, he thought it was more of a map exercise and it looked like a housekeeping matter. Mr. Shane said that there is no particular reason why the Town is the applicant.

Mr. Boivin asked if the abutters know about this. Mr. Shane said all of the abutters have been notified twice now because the item was tabled last month.

Mr. Berrett asked if the railway that runs next to the property is defunct and Mr. Shane said no, it is very active. Lot 16 was formerly owned by the railroad and the Cianchette family purchased it less than a year ago.

Chairman Moriarty opened the public hearing.

Andrea Peabbles, 10 Cross Rd., said she is an abutter next to the barn, around the curve. She said she can understand why the Town would want to have one unit owned by one person under one zone but it seems arbitrary to make it commercial from agricultural, it is a big shift. Ms. Peabbles said they wondered who owned the property because all of a sudden a bunch of trees got cleared. Ms. Peabbles' property is getting a lot more light and noise from Route 9 and the railroad now. A lot of dirt has been put on lot 16 and near the rail way filling in a gully. Ms. Peabbles said that lot 16 is basically wet with cattails and birds and she doesn't know if that is something to be considered. Ms. Peabbles said it is sort of a dangerous curve for

having a commercial zone. There is a stand now on Winn Rd. for selling agricultural products. Ms. Peabbles said she supports the farm and wants it to stay a farm but she doesn't want commerce across the street. She wouldn't mind if the lot is used for turkeys or eggs but she is afraid that by changing the lot into commercial, it might change into something louder and brighter in the future. Ms. Peabbles asked if there are any specifics about what is being proposed and she is opposed to it being commercial.

Deborah Puhl, 1 Cross Rd., said her concern is increased travel on Cross Road. Earlier this year when they talked about repaving Cross Road, the Town Council indicated that they did not want a lot of traffic on Cross Road. If a commercial building is added here, one way or another, there will be an increase in traffic. Mr. Puhl said she does not have a problem with the lot being rezoned all commercial, but the front of the lot is already commercial along Route 9 and that would be the best place to put something. Ms. Puhl added that what used to be Basil's is supposed to be a butcher shop when it opens and this may be something that the farm could coop with and work together. Ms. Puhl noted that coming out of Cross Rd. onto Route 9 there is a sight line problem.

Chairman Moriarty said that even if the entire parcel were classified as HC, the real commercial use would likely be on the part of the parcel that abuts Route 9, which is already zoned for commercial. Mr. Sherr said that from a procedural standpoint, the commercial use will have to come before the Board for approval and there would be a public hearing and the Board would review the setbacks and buffering and other things. Ms. Puhl said that as an abutter, there is a lot of activity across the road from her now, especially with the 2nd Amtrak line and it could be busy for her.

Michael Cianchette, 33 Winn Rd., said that he has a few different parcels in the area. Mr. Cianchette bought the land from the railroad and when he was looking at the zoning he asked Mr. Shane how the Town deals with a parcel that is in multiple zones. Mr. Shane said he could request a map amendment. Mr. Cianchette said he has lots of ideas for the parcel but no firm plans right now. Mr. Cianchette said their objective is to get the farm to be self-sustaining and he supports the map amendment. Mr. Cianchette added that when they come up with an idea, they will be back before the Board and will work with the neighbors to figure out any questions and solutions at that time.

Ms. Peabbles said that regarding map cleanup, she likes things neat and tidy and can see why things sometimes need to be revised along the way but it goes back to when is something a master plan. Ms. Peabbles wondered how much allowance should there be to make these changes, there are other lots like this. Ms. Peabbles said that there is a lot of talk about cluster residential so what about cluster commercial.

Chairman Moriarty said that the Highway Commercial Zone has been designated by the Town as a growth area. It is one of several growth areas in Town and the Town anticipates that there will be more commercial development in these areas. Chairman Moriarty noted that anything new will abut against an existing use and there can be friction. The Board works hard to minimize the impact of any seemingly inconsistent or new uses. Mr. Sherr said he thinks in RR1 that farm retail use is an approved use. Mr. Sherr noted that it is a good spot for commercial development along Route 9. Chairman Moriarty cited that farm based retail is allowed in the RR1 zone.

Ms. Peabbles said it is great that farm based retail is allowed in RR1, then it doesn't have to be changed if it is already approved for a use that the Cianchette's are proposing. Mr. Sherr said that the issue at hand is conflicts between the two zones and he supports changing the zones into one zone. Mr. Sherr added that there are other uses in the RR1 zone, not just residential and that this change is not a major change but does have merit because of the potential conflicts between the Highway Commercial Zone and the RR1 Zone.

Mr. Boivin said that you're bringing in more approved uses by going HC the whole way so there is an impact. The applicant will have the ability to change from a farm stand to whatever is allowed in the HC. Mr. Sherr noted it would have to come before the Board. Mr. Boivin asked if it doesn't impact what the applicant wants to do, then what is the gain in changing it? Mr. Sherr said that in terms of zoning there are different lot standards. Mr. Boivin added there are also different uses. Mr. Sherr said that the concern is having one set of standards to apply for a given project and if we start to discuss a development that covers two zones with different lot sizes and setbacks and things we are opening up major complexities. Mr. Boivin said this is true but the change adds uses that aren't there right now and he is pushing against the change because he doesn't see the need for it. Mr. Sherr said part of the parcel is already in Highway Commercial along Route 9. It is a growth area that has been identified as part of the Comprehensive Plan and the Land Use Committee.

Ms. Nixon said that the first thing to take into consideration is that the Board may remember a business called Cumberland Glass that was located just beyond the Corey Rd. business park that had a split zone. The building was 2/3 in the HC zone and the way it was looked at was that building was allowed to be a commercial use in that part of the building that was located in the HC. This may be an argument for changing the zone. However, when considering the HC minimum lot size, the HC only requires 40,000 sf and allows for up to two principal uses, whereas the RR 1 requires 4 acres. Ms. Nixon said that right now, the lot can only have one use and with the zone change, it could have 2 uses.

Mr. Shane said that this parcel becomes part of a greater property that far exceeds 1 acre because it is contiguous to other parcels. When Mr. Cianchette came to the Town to see what the best way forward is, Mr. Shane and Mr. Longley said it would be a lot cleaner to make the lot one zone than to deal with 2 different zones, similar to what the Town did with Cumberland Glass. Mr. Shane said this proposal is their best recommendation. Mr. Shane said could Mr. Cianchette still do what he wants to do, probably, but there still could be retail on the parcel. Mr. Shane said he believes that this change cleans up the zoning map and he doesn't think it is an unreasonable request. Tonight is for the Board's recommendation back to the Council. Mr. Shane said that when the idea started with the Council, the Council believed it was a reasonable request and the item has to go back to the Council with or without a positive recommendation.

Chairman Moriarty closed the public hearing and explained that the Planning Board is empowered to make a non-binding recommendation to the Town Council. The Board does not determine whether the change will be made. The Board recommends one way or another and the Council has complete discretion to agree or disagree with the Board. The item will go back to the Town Council's agenda and they will have a public hearing, much like the one tonight, at which time people will have another opportunity to speak. The Planning Board vote tonight is non-binding on the Council.

Mr. Boivin said that he would keep the parcel as is. There is no change needed for what the property owner wants to do with it so there is no impact whether the zone is changed or not.

Mr. Sherr moved to recommend to the Town Council draft zoning map amendments to re-zone property at Tax Assessor Map U07, Lot 16 to change zoning designation from Rural Residential 1 (RR 1) to Highway Commercial (HC), seconded by Mr. Davis and **VOTED, 5 yeas, 1 nay (Boivin) – motion carries.**

G. Administrative Matters / New Business: Chairman Moriarty reported that at last night's Town Council meeting there were 4 things to report on. The Town Council adopted the ordinance changes that the Board recommended regarding contract zoning and the procedure involved. The Council voted to send to the Board a proposed new sign ordinance which will deal with LED lighting. The Council recommended a request for a utility easement for water and sewer from the Crossing Brook Rd. Subdivision through the center of that area of Town over to Greely Road and the Godsoe property and this will come to the Board for consideration. The Council held a public hearing on a proposed contract zone change to Cumberland Foreside Village which entails more residential development. The Board discussed where additional residential development at Cumberland Foreside Village would go.

H. Adjournment: Mr. Sherr moved to adjourn the meeting at 9:43 p.m., seconded by Mr. Berrett and **VOTED 6 yeas – unanimous, motion carries.**

A TRUE COPY ATTEST:

Stephen Moriarty, Board Chair

Christina Silberman, Administrative Asst.