

**TOWN OF CUMBERLAND
PLANNING BOARD MEETING MINUTES
Tuesday, May 16, 2017 - 7:00 pm**

A. Call to Order: Chairman Moriarty opened the meeting at 7 pm and announced that Item 5 has been tabled due to an abutter notification error resulting in many notices being returned as undeliverable. The Planning Board will meet again on May 30th to take up the tabled item.

Mr. Sherr moved to table Major Subdivision and Major Site Plan review for the West Cumberland Multiplex Units until May 30, 2017, seconded by Mr. Saunders and **VOTED, 6 yeas – unanimous, motion carries.**

B. Roll Call: Present: Steve Moriarty - Chair, Paul Auclair, Gerry Boivin, Teri Maloney-Kelly, Joshua Saunders & Peter Sherr. **Absent:** Jeff Davis. **Staff:** Carla Nixon - Town Planner, Christina Silberman - Administrative Assistant, William Shane, Town Manager.

C. Approval of Minutes of the April 18, 2017 meeting: Chairman Moriarty noted that the Route 1 Design standards do not have to be listed with the findings of fact in future minutes. Mr. Saunders moved to approve the minutes of the April 17, 2017 Planning Board meeting as written, seconded by Ms. Maloney-Kelly and **VOTED, 3 yeas, 3 abstained (Sherr, Boivin & Auclair), motion carries.**

Chairman Moriarty introduced new Planning Board member Paul Auclair and welcomed him to the Board. Mr. Auclair will serve out the balance of John Berrett's term. Mr. Berrett was on the Board for about 16 months and has moved out of town.

D. Staff Site Plan Approvals: Smith Accessory Dwelling Unit: Ms. Nixon noted that this has not yet been approved. She is awaiting more information and it is still in progress.

E. Minor Change Approvals: None

F. Hearings and Presentations:

1. Public Hearing: Amendment to the Village Green Subdivision to show the revised lot line for Tax Map R03, Lot 54 and Tax Map U10, Lot 7B for the limits of the landfill to be on Town property. *Applicant:* Village Green Cumberland, LLC; *Representative:* William Shane.

Chairman Moriarty introduced the item. Mr. Shane explained that this is to take .6 acres from the Village Green Subdivision to go back to Town property. When the Town sold the property to Bateman Partners, the Town had wrongly assumed the limits of the landfill. Mr. Shane showed a plan of the property and outlined the limits of the landfill. Mr. Shane said that the density standards for the subdivision are still well under the net residential acreage.

Mr. Shane said that this item is for final Planning Board action. The Planning Board and the Town Council have already approved a Contract Zone amendment to allow for this line to be moved.

Mr. Saunders asked if 177 units is the new calculation. Mr. Shane said that they stopped counting at 177. There are now about 59 units. There is another amendment that the

Board may see in July for the Russell lot that will add another 4 lots. Mr. Shane said this is well under the density calculations that are required.

Mr. Boivin asked about the location of the test pits that were done on the site. Mr. Shane pointed out where the test pits were done.

Chairman Moriarty noted that there was discussion at the last meeting about moving the salt shed and he asked Mr. Shane to talk about this. Mr. Shane said that right now, the salt shed is within the limits of the landfill. Mr. Shane identified an area on the map near the current salt shed that is outside of the limits of the landfill and said the proposal for the short term is to move the salt shed here if DEP will allow it. The next choice is to move the salt shed to the Town Garage parking lot and Mr. Shane showed the location on the map. This will only be temporary and the Town will come back to the Board, hopefully by the end of the year, with an application for a permanent location on a site next to the Town Forest.

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

Mr. Sherr moved to approve an amendment to the Village Green Subdivision to show the revised lot line for tax map R03, Lot 54 and tax map U10, Lot 7B for the limits of the landfill to be shown on the Town property, seconded by Mr. Auclair and **VOTED, 6 yeas – unanimous, motion carries.**

2. Public Hearing: To make a recommendation to the Town Council regarding ordinance language to prohibit retail marijuana establishments and retail marijuana social clubs.

Chairman Moriarty introduced the item and said that this is the first time this item has been on a Planning Board agenda. Mr. Shane noted that it has been on the Town Council's agenda twice.

Mr. Shane explained that last fall the State voted on a referendum for recreational marijuana that passed narrowly statewide and failed by about 100 votes in Cumberland. Mr. Shane said that the Ordinance Committee felt that they didn't want to waste a lot of resources and time trying to fight this in any way other than to prohibit the retail sale of recreational marijuana as allowed under the referendum. The referendum gave municipalities the right to prohibit the operation of retail marijuana establishments, restrict the number of stores, regulate store locations and adopt/enforce regulations. Personal uses are not regulated by the towns and will have their own set of rules. Persons 21 years or older can transport or possess 2.5 ounces of marijuana, grow plants and give them to friends, purchase 2.5 ounces at retail stores and a lot of other things that cannot be regulated by the Town. The towns can only regulate retail sales and retail uses. Sales of recreational marijuana will be taxed at 10% which will go to the State general fund.

Mr. Shane said the proposed ordinance before the Board tonight basically prohibits what the Town is allowed to prohibit under State law. The proposal requires 23 changes to existing definitions. There are 6 things that the proposal prohibits; retail marijuana cultivation facilities, retail marijuana establishments, retail marijuana product manufacturing facilities, retail marijuana social clubs, retail marijuana stores and retail marijuana testing facilities. Mr. Shane said that the State does not have regulations in place yet. The Town may need come back in time to modify the ordinance to line up with State law. Mr. Shane said that it is a better use of public safety and town resources not to

have to deal with this for the next 12 months. Mr. Shane said that there have been calls asking if the sale of recreational marijuana might be allowed in Cumberland when the State puts the rules and regulations together and his opinion is that it will not happen in Cumberland. The item before the Board is for a recommendation to prohibit the retail marijuana piece of the legalization that is allowed. The Town Council has this item on their agenda next Monday night to act upon. Mr. Shane said that the Town Council had public input opportunities advertised for their two April meetings. Mr. Shane said that the difference between Colorado and Maine is fairly dramatic. Colorado has a local option sales tax so tax could be collected by individual communities but Maine does not have a local tax option in place. Any taxes collected in Maine will be by the State and distributed by the legislature. Sales of retail marijuana have created a boon to the economy in Colorado but it is a very different set up here in Maine.

Chairman Moriarty noted that Cumberland's Zoning Ordinance has a large definitions section and part of what the Board is dealing with tonight are changes to this section. In particular is a change to the definition of "permitted use" that is proposed to be amended to exclude both retail marijuana establishments and retail marijuana social clubs. There is also new language proposed which Mr. Shane showed on the video screen regarding the 6 particular aspects of retail marijuana that would be prohibited if the ordinance is enacted.

Mr. Auclair asked if Mr. Shane knows what is happening in surrounding towns in this regard. Mr. Shane said it is kind of split with some towns moving forward with the prohibition section and other towns taking a wait and see attitude. Many towns have moratoriums and some do not. Mr. Shane said that Cumberland has extended their moratorium and now wants to be more proactive.

Chairman Moriarty opened the public hearing.

Chris Neagle, 76 Orchard Rd., said he has been a resident for 30 years. It is clear to Mr. Neagle that he is more liberal than the prevailing view. Mr. Neagle said that he was unable to attend either of the Council's public hearings. Mr. Neagle asked how come communities that readily accept alcohol sales, including Cumberland, are afraid of marijuana. Alcohol is readily available at Food Stop, located right across the street from the high school. Mr. Neagle said in his opinion one of the worst phrases in society is "drugs and alcohol". This phrase suggests that alcohol is not a drug but it is a drug that is highly regulated and taxed by federal and state government and the Town gets to tell people where they can sell and consume it. Mr. Neagle said that the starting point in considering this ban is to remember that the majority of the voters in the State of Maine approved marijuana as being useful.

Mr. Neagle said that he grew up in the 50s and 60s as the son of what was then called functioning alcoholics. Mr. Neagle said he attended Wesleyan University in Connecticut. Marijuana was there from the day Mr. Neagle arrived on campus and a vast majority of the students used it as part of their daily lives. Many of Mr. Neagle's classmates went on to have highly successful careers. Mr. Neagle said these people were not harmed by marijuana. Mr. Neagle then went to Cornell Law School and a lot of people there smoked pot too and many also have successful careers so pot didn't hurt anybody there.

Mr. Neagle said that in his point of view, people should not be allowed to smoke pot or consume alcohol until they are 25 years old because of brain development. Mr. Neagle said that no one has ever died from smoking too much pot yet alcohol kills you easily.

Alcohol poisoning takes many lives. Many lives are lost to liver cancer. People who are drunk commonly hurt themselves and others but Mr. Neagle has never heard a report of anyone creating violence because they had been smoking pot. Mr. Neagle said that pot wears off after a few hours but think of how much money is lost every day due to people with hangovers showing up at work. Pot is sometimes feared as a gateway drug but in Mr. Neagle's experience, alcohol is the ultimate gateway drug. Mr. Neagle said that very few people that smoke pot move on to opioids or other hard drugs. Mr. Neagle read that pot is now being used to treat opioid addiction. Pot is increasingly used for legitimate medical purposes and alcohol is almost never prescribed for legitimate medical purposes.

Mr. Neagle asked what the problem with marijuana sales is and said he would like someone to answer this question. Mr. Neagle noted that Mr. Shane referred to a public safety factor and he asked what this is. Can someone provide facts that there is a public safety issue because people are smoking pot? Without facts, why would the Town ban something? Medical marijuana dispensaries have been open in Maine for 2 years. Mr. Neagle is not aware of one problem because of the patrons or owners of these establishments. If there were a problem, the press would be all over it. Mr. Neagle said silence speaks for itself on the dangers of marijuana stores - there is none. Mr. Neagle asked why is it ok to sell alcohol in a growing number of establishments in town and not ok to sell pot anywhere. Mr. Neagle said he doesn't understand the problem and he wishes someone would explain it to him, he agrees that marijuana sales should be regulated. Mr. Neagle said he thinks that the Board should recommend that marijuana sales be allowed in existing business districts on Routes 1, 9 and 100 and on Middle Rd. and asked if the Board chooses not to make this recommendation to articulate a reason.

Chairman Moriarty closed the public hearing and explained that the Board can only make a recommendation to the Town Council. The Board does not modify, adopt or amend any ordinance and does not have that authority. The Town Council does have this authority. The Town Council is not bound by the Board's recommendation and is free to do whatever they want. This item is on the Town Council's agenda for action this coming Monday night.

Mr. Sherr noted that in the proposed language, section 315-59.1.2 indicates "the following are expressly prohibited ..." and identifies the retail marijuana establishment and retail marijuana social clubs as stated in the agenda item and the language includes other things and he asked if all of these things would be prohibited and Mr. Shane said that is correct. Mr. Sherr asked why the Town would not just have a moratorium. Mr. Shane responded that the Town is on the second moratorium for 6 months and is allowed to do another moratorium for 6 months. Mr. Shane doesn't believe that the State will be ready with their language by then and he doesn't think the Town Council's opinion will change. Mr. Shane said he heard a lengthy presentation by the Police Chief this winter about recreational marijuana and how different it is from when he was in college when the THC factor was 3% - 5% and now it averages 18% - 25% and is much more potent. Mr. Shane said that the Town can't regulate what people do to their bodies but can exercise its rights under the referendum which allow municipalities to prohibit retail sales. The Ordinance Committee felt the need to develop this ordinance language and go through the process and the Town Council supported this.

Ms. Maloney-Kelly remarked that this would not be a subject that she would come before the Town to take a stand on and to base how people are really thinking by the number of responses is not a good judge. She appreciates that Mr. Neagle was willing to stand up

and speak his mind. Ms. Maloney-Kelly said the recreational marijuana referendum was a close vote and ordinances in town sometimes stick and sometimes don't. The Town does not always uphold everything that the people ask the Town to do. Ms. Maloney-Kelly said she would prefer to see another moratorium at this point.

Mr. Auclair said that one of his concerns is that in Colorado the Governor has advised other States to wait for more evidence. In terms of reflecting the will of the people, it is nearly 50/50. Mr. Auclair thinks that it is wise to wait to see if the will of the people changes or until there is better evidence.

Mr. Saunders said he is not sure that he wants to ban or dissuade businesses from locating in Cumberland but he is not prepared to say where a retail store ought to go. Mr. Saunders is worried about prohibiting a whole class of business types.

Mr. Auclair asked if there is a limit of one retail store per municipality. Mr. Shane said the towns have the ability to regulate the locations of a store. Mr. Auclair clarified that the Town could have more than one store and Mr. Shane said he thinks so.

Chairman Moriarty said that this item is for proposed ordinance language and ordinances can, and frequently are, changed and amended over time as the desires of the community may change or dictate. Whatever the Council does next week is not necessarily the final word on the subject. Should an ordinance be adopted, it is subject to amendment at any time.

Mr. Sherr said that he is a member of the Economic Development Council of Maine and some of the chatter he has heard is to wait and see what the State is going to do with regulations. Mr. Sherr said that some towns are being more proactive and moving forward with ordinances. Mr. Sherr said that from what he is hearing, most towns are extending their moratoriums and waiting and this is his position.

Mr. Boivin moved to make a recommendation to the Town Council to approve ordinance language to prohibit retail marijuana establishments, retail marijuana social clubs and include the full list in section 3.15.59.1.2, seconded by Mr. Saunders and **VOTED, 3 yeas, 3 nays (Maloney-Kelly, Sherr & Saunders), motion fails.** Chairman Moriarty indicated that the tie vote results in there being no recommendation from the Planning Board.

3. Public Hearing: Final Plan Review: Solar Way - 5 Lot Major Subdivision. 34 Hillside Drive. Tax Map R04; Lot 24. *Applicant:* Live Life Maine, LLC; *Representative:* Tom Greer, P.E., Pinkham and Greer.

Chairman Moriarty introduced the item and noted that this is the 5th time this item has been on the Planning Board agenda from sketch plan review forward and in addition there was a site walk on February 4, 2017.

Tom Greer, Pinkham & Greer, said they are the Civil Engineers for the project and they have submitted an application for final approval for the subdivision. Based on the Board's approval of the preliminary plan, Mr. Greer has come forward with the same lot layout. Mr. Greer said the plan has been reviewed with the surveyor and he is providing two separate sheets for the final subdivision plan. One sheet shows the overall property. The surveyor felt that this plan did not show the boundary lines as clear as they might be and the second sheet shows the boundary line out front in more detail. Chairman Moriarty asked Mr. Greer if he is referring to the two plans in the Board's packet and Mr. Greer said no. Mr. Greer said the plan has been broken down into two sheets for the Board to sign that will be

recorded at the Registry of Deeds. Mr. Sherr confirmed that the two sheets are identified as sheet 1 and sheet 2 in the Board's packet and Mr. Greer agreed.

Mr. Greer said that they have removed the house locations from the plan to be filed because it is his experience Code Enforcement Officers could insist that this is where the house must go. They are asking for approval of the lot layout and the building envelope and the house has to go within the building envelope. The preliminary plan did show houses to give an idea of how big the house may be and where it could be located.

Mr. Greer pointed out an area on the plan near lot 5 that has been under discussion and it is his understanding that this is a disturbed wetland. Under DEP guidelines, disturbed wetlands are sometimes mapped as wetlands and sometimes they not. In this case, the area has been shown on the plan and included in the density calculations as a wetland. Mr. Sherr asked if this is the area mentioned in the review comments as the area with cattails and Mr. Greer said yes.

Mr. Greer showed the landscape plan that is included with the Board's packets and noted that this shows the house locations but these are conceptual. A landscape architect has been hired and has put together a planting plan working with the neighbor to the south. There will be a few minor changes to this plan. Mr. Greer pointed to an area where additional buffer will be put. They will also strengthen the buffer in the front. Mr. Sherr asked if these changes are shown on L1. Mr. Greer said there was a memo sent to the Town asking for additional plantings and these will be added to L1. Mr. Greer said that what is on L1 now is adequate for the Board's purposes and adding additional plantings will only enhance the overall project. Chairman Moriarty asked Mr. Greer if he is referring to Alison Beyea's email when he refers to additional changes and Mr. Greer said that is correct. Mr. Saunders asked if Mr. Greer would be opposed to adding this as a condition of approval and Mr. Greer replied not at all. Mr. Greer said that there is also a note in the Board's packet from Bill Longley requesting a condition of approval to note that the wetland impacts need to be in compliance with DEP regulations and Mr. Greer said he is happy to have this on the plan as well.

Mr. Greer said they are asking for 2 waivers, one for street lights and one for a sidewalk. This is a rural neighborhood and with 5 units the road itself is quite safe for pedestrian traffic and they feel that a sidewalk is not warranted. Mr. Greer said that Ms. Miller wants to be as energy efficient as possible and providing street lights does not fit this concept and he does not think street lights are necessary. Chairman Moriarty noted that originally there have been no waivers requested. Mr. Greer said that they made it clear during preliminary review that they would not be putting in sidewalks and they wish to formalize this with the waiver request.

Chairman Moriarty said that this piece of property was essentially clear cut before a change in ownership. Mr. Greer said it was forested very hard from front to back, more so in the front, and the forestry practices were brutal. Chairman Moriarty said that an important feature of this plan is that the rear 10+ acres will be preserved as open space in perpetuity.

Mr. Auclair asked Mr. Greer to point out the location of the stream. Mr. Greer showed the locations of 2 streams and explained the 2 crossings that have been permitted by DEP. Mr. Auclair asked if he has identified the point where sediment begins. Mr. Greer said they have worked with Audie Arbo at DEP and an erosion control plan has been put in place

that is satisfactory to the DEP. Mr. Auclair asked if Mr. Greer believes that the sediment is no longer there and Mr. Greer said that is correct. Mr. Greer outlined the additional erosion control that will be done when they begin work. Mr. Greer said that the erosion control plan has been reviewed by the Town's consulting engineer as well as the stormwater analysis.

Mr. Auclair said he has heard that one of the existing wells lost water and asked if the well had been fracked. Mr. Greer said he believes it was Alison Beyea's well and he does not know if it was fracked. Mr. Greer said it is his understanding that Ms. Beyea constructed a pond and used the well to fill it. Ms. Beyea can fill the Board in on this. Mr. Auclair asked if Mr. Greer thinks the other sites have adequate water and Mr. Greer said that is correct.

Chairman Moriarty said that there has been a lot of input on some existing erosion which is evidenced by sediment downstream, outside of the bounds of the property, and he asked if this is taking place currently. Mr. Greer said that he has not been on the site in 2 months since they have done some erosion control. Ms. Miller worked with Audie Arbo of DEP and Chase Excavating to identify the places they felt were critical and have put in erosion control in these locations. Chairman Moriarty asked if the erosion issue was a consequence of the heavy logging that took place. Mr. Greer replied affirmatively and said the logging operation stripped off a lot of the top soil where the skidder went back and forth. Ms. Miller did some clearing of brush to clean up the site and probably didn't follow through as well as she could have with mulching the top soil and seeding the area. Mr. Greer said a fair chunk of the erosion issues can be blamed on the logging but there is some blame with Ms. Miller and this will be corrected as part of the application. Chairman Moriarty asked what Mr. Greer's professional expectation is of further sedimentation in the stream. Mr. Greer said there will be some temporary erosion control measures in place to minimize the amount of erosion during construction and once construction is complete the whole site should be stabilized so there is no erosion on site. If there is erosion after the site has been stabilized, it will need to be fixed. Mr. Greer noted that the soils on the site are fine grain soils and when they get into the water, they don't settle quickly. This keeps the water cloudy so even small amount of erosion can look like there is a lot of erosion.

Chairman Moriarty opened the public hearing.

Alison Beyea, abutter, said that her well went dry in November and she can't say if it was related to her use in the summer but this seems unlikely to her. Ms. Beyea said she did not fill the pond even half way with her own water and she isn't sure that she agrees with Mr. Greer about her water usage. She has not had any trouble with her well since then. Ms. Beyea pointed out lot 3 on the subdivision map as Ms. Richter's house and showed where her home is located. Ms. Beyea said that her well is in the same line as Ms. Richter's well and she started losing water pressure around the same time that Ms. Richter's house was occupied. Ms. Beyea said that she was told that the wells could be on the same aquifer line and this could have an impact but she is not sure this is the case. She urged the Board to review the evidence.

Ms. Beyea said that Ms. Miller showed her the original landscape plans and Ms. Beyea felt it would not give the naturalized berm she hoped for. Ms. Beyea said that she worked with Ms. Miller and they came up with a great plan for the west property line to restore the land and create a nice buffer. Ms. Beyea said that she and Ms. Miller still disagree about how much clearing was done. Ms. Beyea said that there has been a lot of disturbance of the

land in addition to what was done prior to Ms. Miller buying it. The landscape plan along Ms. Beyea's property line is a great step to mitigate what happened to the land. Chairman Moriarty confirmed that Ms. Beyea is on board with the landscape plan changes and they are satisfactory to her and Ms. Beyea agreed. Ms. Beyea added that Ms. Miller agreed to insert on the homeowners' association plan a 75' no cut zone around the perimeter so that the next owner doesn't undo the work on restoring the land.

Sam York, Chair of the Cumberland Lands & Conservation Commission, said that he has walked the property twice, once in February and again last week. Mr. York said he fully supports this development but some of the site work is in question. Mr. York said lot 5 and lot 4 have some issues. The problem with lot 5 is that the house envelope is on top of a wetland and Mr. York would like where the home can be built to be defined precisely. Mr. York said last week he found a vernal pool in the area but it was not a significant one.

Mr. Greer said that both Mark Hampton (soil evaluator) and Audie Arbo (DEP) have looked at this area and have determined that there is not a vernal pool there. Mr. Greer said this is the area where the wetland has been mapped and they do not intend to build here. Mr. Longley has provided a condition of approval that will satisfy everyone that they won't be building in the wetland. Mr. Saunders asked Ms. Nixon if we have the condition of approval. Ms. Nixon said Mr. Longley suggested this condition of approval at a staff meeting earlier today that has been put on other subdivisions in the past that basically states that any further disturbance of wetlands beyond what is shown on the approved plan will require approval from the Maine DEP for conformance with the National Resource Protection Act. Ms. Nixon said someone would then come in to see Mr. Longley for a building permit and he would see where the house is proposed to be sited. Mr. Longley is familiar with the project and has the plans and he would explain to the home owner if there will be any impact to the wetlands. In this case Ms. Miller plans to build on lot 5. Mr. Greer said that Ms. Miller intends to build near the back of the lot that is drier and more upland.

Chairman Moriarty said that Mr. York raised the point that by failing to show the locations of the homes, one could simply build anywhere. Mr. Sherr said homes would have to be built within the building envelope. Mr. Greer said that the intent is to approve the subdivision with building envelopes that meet the setbacks and that is what is being shown on the final plan. Mr. Greer outlined one of the building envelopes and said this is what Mr. Longley will look at when he looks at a building permit. Mr. Sherr asked if Mr. Greer is amenable to revising the building envelope for lot 5 to show that it is outside of the wetland area and Mr. Greer said that is fine. Mr. Saunders said that the condition of approval would cover the issue. Mr. Sherr said moving the building envelope outside of the wetland area is quicker rather than putting the onus on the Code Enforcement Officer and the applicant is amenable to this. Mr. Boivin noted that if Mr. Longley were to go away, then moving the building envelope shown on the plan will be clear. Mr. Greer said he is happy to amend the location of the building envelope. Chairman Moriarty asked if this information answers Mr. York's concerns with lot 5 and Mr. York said in a sense it does. Mr. York said he is skeptical based on other things he has seen on the property and that there is a vernal pool that he observed with frog eggs in it and it is not a significant one. Mr. York said it depends on when you investigate if you find the location of a vernal pool. Mr. York said that things were missed but clearly the additional restrictions will adequately support the area if they are adhered to.

Mr. York said that lot 4 has 2 streams on either side that come together and it seems that if you just move lot 4 over the stream and opposite lot 5 there would be a more robust area to build on that is less impactful to the streams that wash down into the Piscataqua water shed.

Mr. Greer pointed to lot 4 on the map and to the stream locations. There are 25' no disturb buffers for the streams and the road has been pulled away from the stream as much as possible. A stream crossing is needed in order to get to lot 4. Mr. Greer noted that they are crossing the stream at the narrowest point possible. Mr. Greer said that even if they don't have the driveway crossing for lot 4 where proposed, there would still be an impact to the stream to get the road through. It is not a simple case of eliminating the driveway to eliminate the impact to the stream. Mr. Greer said that they have combined the driveway and the road together so there is impact to the stream only once.

Ed Libby, abutter on Greely Rd., said his understanding is that the road has been pulled over as far as possible inside the right of way and he does not think the road was proposed to go over the stream. Mr. Greer explained that the road as it approaches the lot 4 driveway crossing is 23' from the stream. The stream in this location has a bend and they propose to put the culvert where the stream bends. Mr. Libby said if the driveway crossing were eliminated, there would not be any impact to the stream from the road and asked if this is correct. Mr. Greer said this is not correct and there would still be an impact from the road for the stream. Mr. Libby said it looks like the placement of the well for lot 4 is within the 25' stream setback and this is a sensitive site with streams on 3 sides.

Mr. Libby said that the buffer for his property line does not have a single tree on it. The result is that there have been a lot of blow downs because the trees aren't used to the wind. Mr. Libby asked that there be a deed restriction that trees do not get cut in the 75' buffer around the perimeter of the subdivision so the buffer can grow naturally. Chairman Moriarty said he understands there is a 75' buffer around the interior perimeter of the subdivision and he asked Mr. Greer what is allowed in the buffer. Mr. Greer said the intent is for the buffer to stay natural and be uncut and he is happy to put a note on the drawing that the buffer will remain uncut. Mr. Libby said that there is a covenant that has been submitted that says no tree will be allowed that will shade a solar panel. There is a potential for conflict with this statement and the no cut buffer. Mr. Greer said that the 75' buffer is a no cut buffer so if a trees grows in the buffer and shades a solar panel then the solar panel will have to be moved. Chairman Moriarty asked if it is sufficient for the purpose and goals of the 75' buffer to be contained within the plan or should it be noted in multiple places. Ms. Nixon responded that typically it is just shown as notes on the plan that is recorded at the Registry of Deeds. When a lot is sold in a subdivision, normally the buyer is shown the subdivision plan and the notes are explained. Ms. Nixon said that as far as having a note put in the deeds, this can't hurt but it isn't the Planning Board's role. Mr. Saunders noted that Ms. Beyea's letter references putting the no cut 75' perimeter buffer into the homeowner's association agreement and it could be a condition of approval.

Mr. Libby said that a neighbor to the north, Alison Leen, was somehow left out of the conversations about buffering and landscape planning. Ms. Nixon read an email from Alison Leen that arrived today at 5:43 pm as follows;

Carla,

It has come to my attention that a Buffer Plan has been submitted for the proposed Solar Way subdivision based upon input from some of the abutters. I was not invited to participate in that process nor have I been

contacted by the applicant at all. The landscaping appears to address the needs of the abutter to the south, but no landscaping is shown along my boundary. The landscaping plan should address the entire buffer area, not just the view from one neighbor. I object to the plan being approved until such time as the applicant submits a more comprehensive landscaping plan. Please forward my comments to the Board so that they may be read into the record at tonight's hearing.

Thank you for your attention to this important matter.

Yours truly, Alison Leen

Ms. Nixon said that she did not have an opportunity to write back to Ms. Leen. Typically the way the process works is that all abutters are notified and have the opportunity to come to meetings and be part of the process and express concerns as Mr. Libby and Ms. Beyea have done. Ms. Nixon said she does not think that Ms. Leen has come to previous meetings to be part of the conversation.

Mr. Libby said it is unclear what the rules of the 75' perimeter buffer are. The project is convoluted because it was built partly before. Now we are trying to fit rules and regulations into something that is on the ground already. Mr. Libby referenced lot 1 and said a piece of the driveway and the well are within the buffer and he is not sure how the Board feels about this.

Mr. Libby said in terms of wetland impacts there are a couple of places on the plan where an underground utility line was put in across a wetland but the impact has not been calculated or included on the existing plan. Mr. Libby said that the proposed trails cross wetlands in 3 locations, one of which crosses the stream. There are no notes on the plan to say whether the trails will be shaped and graded to get rid of the ruts and Mr. Libby said it seems that this would be a wetland impact and this should be addressed.

Mr. Libby said that he agrees with Mr. Greer about the building locations and how that can be confusing later on whether they are set locations or suggestions but the Town ordinance says that the building locations are supposed to be on the plan.

Mr. Libby said that he has submitted a lot of things and he wants to reassert these to make sure they are on the record. Ms. Nixon said that she has forwarded Mr. Libby's emails to the Planning Board and she has printed hard copies for the Board to have and has done this from the beginning. Mr. Libby said there was a letter from John Shumadine, 6 pages of Mr. Libby's perceived deficiencies, the alternate land plan, the narrative, 9 photos that include the unmapped wetlands, unmapped streams, the clear cut along his boundary with downed trees and 2 different series of photos with sediment - one dated April 7th and the other one dated April 26th. Mr. Libby noted that there was discussion about sediment earlier and the significance of the two dates is that the temporary erosion control that was done was in between the two dates and it is clear from the photos that something isn't working right. Mr. Libby said that if there are any questions about what he has submitted he would be happy to answer them. The plan has come a long way but Mr. Libby does not feel that it is ready for approval because of the deficiencies and he said that the item should be tabled. Mr. Libby said that this has not been a good process. Mr. Libby has made several overtures to try to meet with the applicant and that has not happened. Mr. Libby said he lives downstream and the sediment has been an ongoing problem for a long time and is indicative of what happened on the lot and how it happened. Mr. Libby said you can look on Google Earth at timed photos and it is clear from these that a lot of trees were cut subsequent to Ms. Miller's ownership along with de-stumping. A lot of the destabilization happened because of the de-stumping without an erosion control. Mr.

Libby said he is concerned about the stormwater because it has not been planned for the full build out and was only planned for the new build out. Mr. Libby would like to see the project approved when it meets the ordinance.

Chairman Moriarty said that the statement was made that substantial cutting occurred after the change in ownership and he asked if this is correct. Patrice Miller, owner, said she has lived on the site for 3 years come this summer. When she purchased the land it had been cleared and she did have other trees taken down, mostly in the center front of the property that would have blown down. Ms. Miller said she has never removed trees in the buffer and she did not remove that many trees. There was stumping done in the front, closer to Hillside Ave.

Alan Blanchard, 169 Greely Rd., said he owns the farm to the south and west of the parcel. Mr. Blanchard said it is true that the land was ravaged. Mr. Blanchard said he walks the property boundary almost daily and he and his wife want there to be a balance for the owner. Mr. Blanchard thanked the Planning Board for being thorough and said this project is about the best thing that can be done with the land after it was cut.

Alison Beyea maintained that the land was treated differently after Ms. Miller moved in. Ms. Beyea takes issue with the continued statement from many people that the land was ravaged as it was. Ms. Beyea said she moved in the day that additional cutting began and it is a completely different piece of land now. Ms. Beyea said that she is pleased that Ms. Miller has gone to great effort to fix the land. Ms. Beyea wants to make clear for the record that this is not just land that was ravaged by the previous owner and the land was cleared for the solar houses.

Chairman Moriarty closed the public hearing and called for a break. Chairman Moriarty resumed the meeting and asked for Board discussion.

Mr. Boivin said that the net residential calculation takes in the road but he doesn't think it takes in the driveways and Mr. Greer agreed. Mr. Boivin said the road is not going to be paved. Mr. Greer said the road will be gravel with a 50' wide easement. Mr. Boivin asked if there is any note saying that the road will never be paved. Mr. Greer said he does not think there is any note and it doesn't make any difference in the stormwater calculations because he ran the calculations as if the road were paved. Mr. Boivin confirmed that the extension of the lot 5 driveway will not affect anything and Mr. Greer agreed.

Mr. Saunders said that a couple of waivers have been requested and asked if similar waivers have been made in the past and Ms. Nixon said yes.

Mr. Sherr said that on the additional buffering in the final plan there are some updates needed based on recent emails and Mr. Saunders has mentioned a condition of approval for this. Mr. Sherr said he is more inclined to say there should be a resubmitted landscape plan that shows the buffering in detail based on discussions tonight. Mr. Saunders asked if Mr. Sherr would like this as a condition of approval. Mr. Sherr said he would rather see plans updated for adding the no cut zone on the regular site plan and showing the revised building envelope for lot 5 as a condition of approval. Mr. Saunders said the Board should also add a condition of approval to put the no cut buffer in the homeowner's association documents.

Mr. Saunders moved that due to the unique characteristics of this project the Board waive the requirement for any street lights along Solar Way, seconded by Mr. Sherr. Mr. Boivin

asked if this is for lights at the top of Solar Way and Hillside Ave. or is it for down Solar Way. Ms. Nixon asked if there is an existing light on Hillside Ave. and Mr. Greer said he does not believe so. Mr. Sherr noted that Solar Way is a private way. Mr. Saunders said that if there were a light at the corner, it would be in the public right of way and the Board cannot waive this so the Board's approval of this waiver would not make any difference about whether a light is put at the corner. Mr. Boivin said this waiver refers to lights down Solar Way and Ms. Nixon agreed. Chairman Moriarty clarified that the Board is not requiring a street light at the intersection. Mr. Auclair said that one of Mr. Libby's comments was that the improvement ordinance lists lights as one of 12 items that are required and he asked if a subdivision of this size normally has to have lights and is a waiver required. Ms. Nixon said a waiver is a prudent way to handle this and there are subdivisions of this size without lights. The motion was then **VOTED, 6 years – unanimous, motion carries.**

Mr. Saunders moved that due to the unique characteristics of this project the Board waive the requirement for any byways along Solar Way, seconded by Mr. Sherr and **VOTED, 6 years – unanimous, motion carries.**

Chairman Moriarty reviewed the proposed findings of fact. Mr. Saunders moved to adopt the findings of fact as amended, seconded by Mr. Sherr and **VOTED, 6 years – unanimous, motion carries.**

FINAL MAJOR SUBDIVISION REVIEW FINDINGS OF FACT - Chapter 250 - Subdivision of Land

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

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

The applicant has provided a soils report and a storm water management report; these reports have been reviewed and approved by the Town Engineer. In addition, Glenn Angell, LSE from the State Division of Environmental and Community Health visited the site sent an email dated January 18, 2017 stating that the three new lots exceed current requirements for subsurface waste water disposal systems.

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

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

The proposed subdivision will utilize private wells. There is a report on file dated February 7, 2017 from Richard Sweet, Certified Maine Geologist, stating that there is sufficient water for wells serving the proposed 5 houses without affecting neighboring wells.

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

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

The proposed subdivision will not utilize public water.

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

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

The applicant has submitted an erosion and sedimentation control plan that has been reviewed and approved by the Town Engineer.

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

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

The subdivision will add only three additional single family homes. A traffic study was not required.

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

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

The project will utilize private septic systems. Passing test pit locations for each lot are shown on the plan. The applicant provided a soils evaluation report prepared by a licensed soil evaluator (LSE). This report was reviewed and approved by the Town Engineer. In addition, Glenn Angell, LSE, from the State Division of Environmental and Community Health visited the site, inspected the soils in the location of the test pits and sent an email dated January 18, 2017 stating that the three new lots exceed current requirements for subsurface waste water disposal systems.

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

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

Cumberland provides curbside trash collection and recycling through a contracted waste hauler. Section 11 of the application packet details the amount and type of waste that will be generated during and after the construction of the subdivision. The amount to be generated by the 3 new homes will not cause a burden on the municipality's ability to dispose of solid waste.

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

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

A letter is on file from US Fish and Wildlife Service stating that there are no critical habitats within the proposed project area. A letter is on file dated 12/1/16 from the State Historic Preservation Officer stating that there are no historic properties affected by the proposed subdivision. A letter is on file from the Maine Natural Areas Program stating that there are no rare botanical features within the project site.

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

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

The plans have been reviewed by the town planner, town engineer and town department heads and are in conformity with local ordinances and plans.

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

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

Technical capacity is evidenced by the use of the following experts: a professional engineer, a licensed land surveyor, a licensed soils scientist, a licensed hydro geologist and a registered landscape architect.

Financial capacity is evidenced by an irrevocable Letter of Credit dated February 6, 2017 from Maine Capital Group in the amount of \$120,000 which is the amount shown as Schedule A in Section 3 as the cost for the road, utilities and lot/road clearing.

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

11. 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;

The subdivision is located within the Piscataqua River watershed. The low density (5 lots on 24.84 acres) and minimal new impervious surface will not adversely affect this non-regulated watershed area.

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

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

This is a low density (5 lots on 24.84 acres) residential subdivision which will not affect the quality or quantity of ground water as evidenced by a letter dated February 7, 2017 from Richard Sweet, Certified Maine Geologist.

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

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

The parcel is shown as being in Zone C (area of minimal flooding) on FEMA MAPS # 230162-0016C and 230162 0015 B.

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

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

A stormwater management report was submitted as part of the original application packet and revised in February, April and May. These plans have been reviewed and approved by the Town Engineer.

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

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

A wetland delineation letter is on file dated August 23, 2016 from Mark Hampton, C.S.S., L.S.E., Certified Soil Scientist, stating that there are areas of forested wetlands on the site. These areas were shown on the preliminary plan. A total of 86,556 sf of wetlands were identified. A letter dated 4-27-17 is on file from Mark Hampton stating that he amended the previous wetland delineation after a site visit in which a small area of wetland was located just beyond the stream crossings on Lot 5. The total amount of wetlands increased to 116,776 sf. This did not change the results of the net residential density calculation which shows that 5 lots are allowed.

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

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

There are two streams shown on the subdivision plan.

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

The Board reviewed proposed conditions of approval. Mr. Sherr moved to approve the 9 recommended conditions of final plan approval as amended, seconded by Mr. Boivin and **VOTED, 5 yeas, 1 abstained (Auclair), motion carries.**

Conditions of Final Plan Approval:

1. That all outstanding fees owed by the applicant be paid prior to the preconstruction conference.
2. That any clearing limits as may be proposed on the plans be flagged by the applicant and inspected and approved by the Town Engineer prior to the preconstruction conference.
3. That a preconstruction conference be held prior to the beginning of any construction.
4. The project is located in the MS4 section of Town. The Homeowners are required to file an annual report noting the conditions of the site, including erosion issues and drainage related items as contained in the Inspection and Maintenance of Stormwater Management Facilities dated November 28, 2016 and revised May 1, 2017.

5. A note shall be added to the plan stating that all new homes will have sprinkler systems for fire protection.
6. A note shall be added to the plan stating that the building envelope for Lot #5 is as shown on the plan.
7. A revised landscape plan incorporating the changes that were agreed upon during the Planning Board meeting and as listed in the email dated May 16, 2017 from Alison Beyea to Carla Nixon, shall be prepared and submitted to the Town Planner for review and approval prior to the preconstruction conference.
8. The homeowners association documents shall be amended to state: "There shall be no clearing or cutting of trees within the 75 foot perimeter buffer shown on the subdivision plan".
9. A note shall be added to the plan stating that "Any further disturbance of wetland areas beyond what is shown on the approved plan will require approval from the Maine Department of Environmental Protection (MDEP) for conformance with the Natural Resources Protection Act (NRPA)".

Mr. Saunders moved to approve final plan review for Solar Way 5 Lot Major Subdivision at 34 Hillside Drive, tax map R04, lot 24 subject to the Standard Conditions of Approval, the Limitation of Approval and the nine (9) Conditions of Final Plan Approval, seconded by Mr. Sherr and **VOTED, 5 years, 1 abstained (Auclair), motion carries.**

4. 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. *Applicant:* Cumberland Foreside Village, LLC; *Representative:* Tom Greer, P.E., Pinkham and Greer Civil Engineers.

Chairman Moriarty introduced the item. Tom Greer, Pinkham and Greer, explained that this is a project that the Board had originally approved a portion of for another applicant a couple of years ago and it has now been bought by David Chase and is part of the overall plan of Cumberland Foreside Village. This project will be adjacent to the access drive for the apartments and it is roughly 1 acre of land. The driveway location is the same as what is there now and there is an existing gravel pad on the lot. The plan is to build a parking lot in the back with two small buildings in the front. Maine Real Estate will occupy the building to the right of the lot. It is unknown who will occupy the building on the other side and this will come back to the Board when an occupant is found with a final plan for the building for approval.

Mr. Greer said the project will bring in public water from the main along Route 1. The sewer line will get connected to the access for the apartment portion of the subdivision. Power will come in underground from across Route 1. Mr. Greer said that there is a requirement for a 25' buffer along the front that will be filled in with evergreens. Landscaping will be added along the apartment access drive side of the project. Mr. Greer said the project has been submitted to DEP and DEP has reviewed it for meeting the site location and development requirements as part of the overall project. There will be two underdrain soil filters, one on each side, which will provide stormwater treatment that meets the standards. Mr. Greer said that overall it is a simple office project.

Mr. Greer outlined the exterior design for the proposed building and said it will have a hip roof and clapboard siding with shutters. The main entrance will be towards the parking lot. Mr. Greer showed a footprint of the interior of the proposed building with simple offices, two bathrooms and a small conference room.

Mr. Sherr noted that both proposed buildings are shown on the plan and he asked Mr. Greer if both buildings will be built before a tenant is found or if they will wait for the second

tenant to decide what the building will look like. Mr. Greer said the second building is shown on the plan so that the stormwater calculations could be done and they will not build it until a tenant is found. Mr. Sherr said that if anything changes from what is proposed on the plan the Board can be amend it.

Chairman Moriarty asked if the curb cut has been approved and Mr. Greer replied that they have a DOT entrance permit for it and it is in the same location as what is there now.

Chairman Moriarty said that it appears there are a lot of entrance points to the subdivision that are close together and he wants to make sure this has been approved and Mr. Greer said it has been approved. Mr. Sherr asked if the center turning lane that will be added to Route 1 will extend to this project and Mr. Greer said he believes so.

Mr. Auclair asked if the stormwater management standard has been met and Mr. Greer said that the DEP permit was received today and this has been met.

Ms. Nixon noted that in her review that was in the Board's packets, she highlighted the areas that were outstanding up until the time the Board received their packets. Ms. Nixon said the first area is the common pathway and the contract zone (CZA) states that this will be a 5' paved walkway with 10' of cleared space and Mr. Greer has proposed something different than this. The outside agency approvals require the DEP site location permit and this was received today. Mr. Saunders said he thinks the contract zone was amended regarding the walkway. Mr. Chase said that in the most recent updated contract zone a gravel path was added from Skyview Dr. to Casco Bay Dr. and it was discontinued at that point because it would go down into a gully. Mr. Chase said that for consistency he thinks the current CZA will require a gravel path and not a paved path. Ms. Nixon said a condition of approval could be added to say that the path will be consistent with the CZA.

Ms. Nixon said that she does not have responses yet to the questions in her review under #5 - Planner's Comments. The first one is about the walkway and they will check the CZA and have a condition of approval for this. The second one is regarding plan C1.1 that talks about the trail but does not say who it will be constructed by or when. Ms. Nixon suggests adding a note that the trail will be built by the developer prior to the issuance of a certificate of occupancy. Mr. Greer said this is fine. Third is for the Route 1 building elevation that doesn't appear to be consistent with the Route 1 Design standards because what is facing Route 1 is the back of the building. Ms. Nixon said she realizes that the parking is in the rear so the applicant wants the main entrance to be there but some attempt has to be made to the Route 1 side to meet the standards. Ms. Nixon suggests they put in a mock front door like the Mercy Quick Care in Yarmouth on Route 1. Mr. Greer said he will do this. Ms. Nixon said the Board can do a condition of approval for this. Number 4 is regarding the sewer user permits and she does not have a letter from Town Manager Bill Shane on this. Mr. Greer confirmed with Mr. Shane that the letter for sewer user permits has been received. Number 5 asks if there will be a name for the entrance drive. Mr. Greer said it will just be the street number. Ms. Nixon asked if the sign design will show two street addresses or the business names. Mr. Greer said the sign will have the business names and a large street number noted on it such as 200 A & B.

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

Ms. Nixon noted that there are no requested waivers. Chairman Moriarty reviewed the proposed findings of fact. Mr. Saunders moved to adopt the findings of fact as amended, seconded by Mr. Sherr and **VOTED, 6 yeas – unanimous, motion carries.**

Chapter 250: Subdivision Review:

FINDINGS OF FACT - Subdivision Ordinance, Section 1.1:

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

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 utilize public water and sewer.

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

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

The subdivision will be served by public water. There is a letter on file from the Portland Water District dated 10-9-16 indicating that it will be capable of servicing this project. Based on the information provided, the standards of this section have been met.

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

The proposed subdivision will utilize public water; there is a letter on file from Portland Water District dated 10-9-16 indicating that it will be capable of servicing this project. Based on the information provided, the standards of this section have been met.

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

The erosion and sedimentation control plan was reviewed and approved by Town Engineer. Best Management Practices will be used during construction. Based on the information provided, the standards of this section have been met.

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

A traffic study dated 8-29-16 is on file. It was prepared by Traffic Solutions, Inc. (William Bray, P.E.). A Traffic Movement Permit modification is not required by MDOT as the plan generates only 7 peak hour trips during both peak commuter hours. If the peak hour volume is less than 100 trips during any peak hour, a modification is not required. The Board finds the standards of this section have been met.

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

The subdivision will be served by public sewer. Based on the information provided, the standards of this section have been met.

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

The proposed commercial office use will not create a burden on the municipality's ability to dispose of solid waste. Based on the information provided, the standards of this section have been met.

H. Aesthetic, cultural and natural values. The proposed subdivision will not have an undue adverse effect

on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

A letter dated 3/14/13 from Maine Historic Preservation Commission states there are no evident historic features is on file. There is a letter dated 3/1/17 from the department of Inland Fisheries and Wildlife stating there is one threatened species (Northern Long-eared Bat. There is a note on the plan stating that there shall be no tree cutting between June 1 and July 31st. Based on the information provided, the Board finds the standards of this section have been met.

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

The plans have been reviewed by the Town's peer review engineer and town staff and found to be in conformity with local ordinances and plans. Based on the information provided, the Board finds the standards of this section have been met.

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

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

***Financial Capacity:** There is a letter on file from Gorham Savings Bank dated March 1, 2017 stating that the developers, Chase Excavating, Inc. and Cumberland Foreside Village, LLC have the financial capacity and management capability to successfully complete the project.*

A performance guarantee in an amount acceptable to the Town Manager and Town Engineer will be required prior to beginning of construction. Based on the information provided, the standards of this section have been met.

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

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

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

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

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

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

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

A stormwater management report dated 8-31-16 prepared by Thomas Greer, P.E. was submitted. It was reviewed and approved by the Town's peer review engineer. Based on the information provided, the standards of this section have been met.

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

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

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

There are no rivers, streams or brooks on the parcel. Based on the information provided, the standards of this section have been met.

Chapter 229: SITE PLAN REVIEW

FINDINGS OF FACT

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

A. Utilization of the Site. The site has been designed to minimize wetland and environmental impact. It has been reviewed by MDIFW to note there are no rare or endangered plants or animal or unique communities or natural area impacted.

This standard has been met.

B. Traffic, Circulation and Parking. The application states that there will be between 5 and 10 employees in Building # 1. The site plan shows 11 regular parking spaces and 1 handicapped. The proposed use is a real estate office. It is not expected that all employees will be on site at all times and the demand for customer parking is low.

This standard has been met.

C. Stormwater Management and Erosion Control. A stormwater management report was prepared by Thomas Greer, P.E. It was reviewed and approved by the Town's peer review engineer. The MDEP SLODA permit is on file.

This standard has been met.

D. Water, Sewer, and Fire Protection. The project has public water and public sewer. The project has been reviewed by the Town Engineer and found to be adequate. Portland Water District has supplied a letter stating that it has adequate supply for the project. The Fire Chief made recommendations that are included as notes on the plan.

This standard has been met.

E. Water Protection. The subdivision will be served by public sewer and water. There are no other proposed activities associated with construction of two office commercial buildings that would adversely affect the quality or quantity of ground water.

This standard has been met.

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

This standard has been met.

G. Historic and Archaeological Resources. A letter dated 3/14/13 from Maine Historic Preservation Commission states there are no evident historic features is on file. There is a letter dated 3/1/17 from the department of Inland Fisheries and Wildlife stating there is one threatened species (Northern Long-eared

Bat on the site. There is a note on the plan stating that there shall be no tree cutting between June 1 and July 31st to protect the bats.

This standard has been met.

H. Buffering and Landscaping. Plan C1.2 shows a mix of fir and maple trees around the buildings, however there do not appear to be any flowers or plants along the front edge of the building foundation facing Route 1. Additional plantings should be shown in this location. In addition, the Board needs to determine that the proposed landscape plan meets the standard set forth in Section III H of the contract zoning agreement. The Board determined that foundation plantings in the front (Route 1 side) are not needed because of the natural forest area that will remain and the buffer of fraser fir trees because flowers would likely not be seen from Route 1.

This standard has been met.

I. Storage of Materials. Trash will be stored inside. No dumpster is proposed.

This standard has been met.

J. Financial Capacity. There is a letter on file from Gorham Savings Bank dated March 1, 2017 stating that the developers, Chase Excavating, Inc. and Cumberland Foreside Village, LLC have the financial capacity and management capability to successfully complete the project.

A performance guarantee in an amount acceptable to the Town Manager and Town Engineer will be required prior to beginning of construction. This is listed as a condition of approval.

This standard has been met.

K. Design and Performance Standards: See following section.

ROUTE 1 DESIGN STANDARDS

Section 100: Policy and Goals

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

This standard has been met.

NOTE: The Design Guidelines for Commercial Properties and Multiplex Dwellings below are included in the Contract Zone Agreement.

Cumberland Foreside Village Contract Zone Design Guidelines for Commercial Properties & Multiplex Dwellings

The following design guidelines have been prepared as a part of the Contract Zone for the Cumberland Foreside Village Subdivision. These guidelines will serve to assist in the development of the parcel in an orderly manner and will establish the design criteria to guide the development of the individual buildings on all lots used for commercial purposes or as multiplex dwellings. The overall intent of these design guidelines is to assure that the building designs are well thought through and have coordinated architectural forms, massing, materials and color ranges.

General Design Guidelines:

- The design for the buildings at Cumberland Foreside Village (CFV) are encouraged to draw upon elements found in traditional New England vernacular architecture.
- All buildings proposed for CFV should be designed by an architect registered in the State of Maine; buildings designed by engineers are acceptable as long as the guidelines contained herein are closely followed.
- Individual building designs should have all of the elements coordinated to achieve harmony and continuity in the structure's appearance.
- Adjacent structures must be considered in the design for all new buildings. This should include scale of building, use of materials, and general building form.
- Buildings within 200 feet of US Route One, and in particular building elevations directly fronting on US Route One, need to have well designed, carefully detailed facades that have architectural interest and

appeal. The existing Seafax structure can be referred to with regard to this guideline.

Specific Design Guidelines:

- Exterior siding materials are encouraged to be traditional building materials common to Northern New England. The use of split-face concrete block should be used in limited quantities. The use of asphalt shingles, metal siding T-111, or highly reflective siding materials is not permitted.
- The mass of larger structures needs to be broken down through the use of architectural detailing, changes in materials or other means so as to create visual interest. Main entrances to the buildings should be emphasized by architectural detailing, glazing, lighting, etc.
- Arbitrary or frequent changes in siding materials, applied embellishments, or the addition of architectural details that are not integrated into the building form or function should be avoided.
- All functional elements visible on the exterior of the structure (e.g., meters, service connection, downspouts, vents, etc.) shall be treated as integral parts of, and incorporated into, the building design.
- All buildings shall provide an appropriate proportion of windows, doors or other fenestration so as to break up the building façade. The building fenestration should provide sufficient transparency to provide views to the interior of the building as functionally appropriate. Careful attention must be paid to the relative size, detailing and positioning of all openings in the building elevations.
- On small buildings (e.g., those under 5,000 sq. ft.), flat roofs should be avoided on one-story structures. Pitched roofs with traditional slopes (e.g., higher than 8 in 12) are encouraged. Where the roof will be visible from adjoining public ways, the roofing materials should be selected so as to complement the building's façade. Preferred roofing materials shall include architectural grade asphalt shingles, standing-seam metal roofing, or natural materials.
- Color selected for the exterior of buildings should be earth-toned, or colors that are muted and not garish. The use of bright colors should be limited to areas where accents are desired (e.g., doors, window trim, entrances, etc.).
- Where roofs are flat, parapets or other architectural elements should be used to break up a large expanse (e.g., greater than 80 feet) of flat roof-line. Roof-top mounted mechanical or other equipment shall be screened.
- Long horizontal facades of buildings (those greater than 80 feet in length) should be made more interesting through either changes in the façade plane or selection of materials to provide interest through color, shadow, etc.
- Buildings with multiple entrances or uses shall be designed to be visually unified through complementary detailing and use of materials.
- Separate accessory structures on the same lot as a principal structure should have consistent architectural detail so as to provide unified project design.
- Underground utility connections are required.
- A 5' paved walkway, with 10' of cleared space, is required within the Route 1 buffer zone as shown on Exhibit B and Exhibit E.
- Signage shall consist of natural materials (wood, stone, etc.) and shall not be internally lit.

Mr. Sherr moved to approve the 9 Conditions of Approval as amended, seconded by Mr. Saunders and **VOTED, 6 yeas – unanimous, motion carries.**

Conditions of Approval:

1. A preconstruction conference shall be held prior to the start of construction.
2. All fees shall be paid prior to pre-construction conference.
3. A performance guarantee in an amount acceptable to the Town Manager shall be provided prior to the preconstruction conference.
4. All clearing limits are to be staked and inspected by the Town Engineer prior to the preconstruction conference.
5. Note #19 states that there shall be no tree clearing between June 1 and July 30th to protect the Northern Long eared Bats population. This shall be reviewed at the preconstruction conference.

6. A blasting permit, if needed, shall be obtained from the Town Code Enforcement Officer prior to blasting.
7. A sign permit application that meets the requirements of the standards in Section 500 of the Route 1 Design Standards must be submitted to the Town Planner for review and approval prior to installation of the sign.
8. The façade facing Route 1 shall be modified to show a more traditional front elevation style with a faux entrance and symmetrical windows.
9. The walkway along Route 1 to be constructed by the developer consistent with the dimensions and materials specified in the Contract Zoning Amendment. This shall be completed prior to the issuance of the Certificate of Occupancy.

Mr. Saunders moved to approve major site plan review for 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 subject to the Standard Conditions of Approval, the Limitation of Approval and the nine (9) recommended Conditions of Approval, seconded by Mr. Sherr and **VOTED, 6 yeas – unanimous, motion carries.**

5. TABLED ~~Public Hearing: Major Subdivision and Major Site Plan, West Cumberland Multiplex Units.~~ 197 Gray Road, Tax Map U-20, Lots 70A, 70E, 73, and 74. ~~Applicant: Grun Development, LLC; Representative: Alton Palmer, P.E. Gorrell Palmer.~~
This item was tabled.

G. Administrative Matters/New Business: Chairman Moriarty gave a reminder that the Planning Board will meet again in two weeks to take up the tabled item and said that the Board cannot add to the agenda due to notification requirements. Ms. Nixon replied that the Town Manager approached her today about adding 1 thing to the agenda that would have been on the June agenda. The Town is developing a senior housing community floating overlay district to allow for development of a senior housing community similar to OceanView. The floating overlay would not apply to any one area of town at the onset. If a project is proposed that meets the regulation of this draft ordinance, the Council would place it in the overlay. Ms. Nixon said it is a mechanism designed to allow these types of projects to be in locations with certain provisions such as water and sewer. Ms. Nixon said she suggested a workshop first but Mr. Shane has asked to place it on the agenda for recommendation to the Town Council. The Board discussed this and decided that they would prefer to conduct a workshop first. A workshop will be conducted on this matter at the conclusion of the Planning Board's May 30th Special Meeting.

H. Adjournment: Mr. Sherr moved to adjourn the meeting at 10:15 pm, seconded by Mr. Saunders and **VOTED, 6 yeas – unanimous, motion carries.**

A TRUE COPY ATTEST:

Stephen Moriarty, Board Chair

Christina Silberman, Administrative Asst.