

TOWN OF CUMBERLAND PLANNING BOARD MEETING MINUTES
Tuesday, March 15, 2022

A. Call to Order: Chairman Record called the meeting to order at 7:00 pm and welcomed two new Planning Board members. Returning to the Board is Peter Bingham and new to the Board is Bridget Perry.

B. Roll Call: Present: Paul Auclair, Peter Bingham, Bridget Perry, Lorraine Rardin, Jason Record, Joshua Saunders & Ann Sawchuck. **Staff:** Carla Nixon, Town Planner, William Shane, Town Manager & Administrative Assistant Christina Silberman.

C. Election of Vice Chair: Mr. Saunders nominated Peter Bingham for Vice Chair, seconded by Mr. Auclair. There were no other nominations. The election of Peter Bingham as Vice Chair was then **VOTED, 6 yeas, 1 abstained (Bingham) - motion carries**

D. Approval of the Minutes of the February 15, 2022, meeting: Mr. Saunders moved to adopt the minutes as written, seconded by Ms. Sawchuck and **VOTED, 5 yeas, 2 abstained (Bingham & Perry) - motion carries.**

E. Staff Site Plan Approvals: None.

F. Minor Change Approvals: None.

G. Hearings and Presentations:

1. Public Hearing: Amendment to an approved subdivision, now “The Mark at Cumberland Foreside”, formerly “Broad Cove Ridge Apartments”, located at 102 US Route 1, Tax Assessor Map R01, Lot 13B, to change the number of units to forty-two (42) condos, to reduce the number of parking space to eighty-two (82) and to make adjustments to the natural gas service. Applicant/Owner: Cumberland Foreside Partners, LLC. Representative, Dan Diffin, P.E., Sevee and Maher Engineers.

Mr. Saunders disclosed that he is currently working with Sevee and Maher on a matter unrelated to this project and he does not believe this will have any effect on his consideration or review of this project. Mr. Saunders said he does not believe he needs to recuse himself but will do so at the pleasure of the Board. Mr. Auclair moved that the Board approve Mr. Saunders’ participating in this agenda item, seconded by Mr. Bingham and **VOTED, 6 yeas, 1 abstained (Saunders), motion carries.**

Chairman Record introduced the item.

Mr. Saunders noted that the project has had two amendments. The Board confirmed that the previous waivers and conditions of approval will carry forward with this proposed amendment.

Dan Diffin, PE - Sevee and Maher Engineers, reviewed the proposed changes to the site plan. The project is now proposed to have forty-two units instead of fifty. The parking has been decreased and some green space added. The project will have eighty-two spaces instead of ninety. Mr. Diffin reported there are some utility connection

changes but nothing that fundamentally changes the site design. Mr. Diffin displayed a rendering of what the project will look like.



Mark Mueller, with Evan Demers, noted they are architects from Portland, and they worked to keep the site plan that was permitted intact. Mr. Mueller said there are no longer any three bedroom units proposed. The building will be predominantly two-bedroom units and some one-bedroom units. They will use traditional materials and there is really nothing modern. The window patterns are a bit unusual but they are traditional windows that would be found in someone's house. The building will have gathering and fitness space in the lower level. All of the units will have decks. Mr. Mueller said that the roof has a horizontal nature that is driven by safety, due to snow and ice slide-off being dangerous. Mr. Mueller further described the appearance of the building.

Dan Diffin described the building elevation and noted the building is set inside the site and is screened well from Route 1 with the existing buffer.

Renderings of the previously approved building were displayed.



Chairman Record asked if the Board has the authority to ask the applicant to keep the look (as was previously approved). Ms. Nixon replied that the design standards that the Town Council adopted, and asks the Planning Board to apply to projects, are very specific. The standards talk about not having flat roofs and the use of gables and peaks with more of a New England feel. Ms. Nixon said she believes the Board does have the authority. Mr. Saunders said his interpretation is that the Board cannot say a design has

to go back to the original, but the Board can say that the design doesn't meet the current design standards. Ms. Nixon agreed.

Mr. Auclair referred to the financing mentioned in their packet that indicates the location is in Portland and said they may want to know it is in Cumberland. The letter states, "this does not constitute a commitment to provide money" and asked whether this is actually a financial commitment. Mr. Auclair said he has reviewed the design standards and, to him, the building looks more commercial than residential and does not match the suggestions.

Mr. Bingham said he has concerns with the financial letter and is not comfortable with the design.

Ms. Sawchuck said that she thinks the proposed building is nice but she doesn't think it meets the design standards. Ms. Sawchuck remarked that the financial letter is non-committal.

Mark McClure, GenX Capital Partners, explained that Hall Financial Capital is willing to commit to finance the project with caveats that they need the approvals and budget and then they will give full commitment.

Mr. Saunders suggested a condition of approval to show the final commitment from the bank on the loan term and conditions at the preconstruction meeting. Mr. Auclair agreed. Ms. Nixon outlined the purpose of the performance guarantee.

Mr. Saunders asked what the issue is with the natural gas. Mr. Diffin replied that there isn't an issue but the entrance into the site for the natural gas was relocated.

Mr. Saunders referred to mention of a waiver for a traffic study and said he doesn't see the request for a waiver and also he doesn't know if the waiver is needed. Mr. Diffin agreed the waiver is not needed. Mr. Saunders noted that waivers were previously granted for this project and asked if the waivers move with the project. Ms. Nixon replied that it doesn't hurt for the Board to state that they are approving the project with the waivers that were previously approved.

Chairman Record opened the public hearing.

Sandra Lee Porter, 106 US Route 1, asked if the current design has an identical footprint to the previous design. Mr. Diffin responded affirmatively. Ms. Porter asked if the occupants will be owners or renters. Mr. McClure responded that they will be renters. Ms. Porter asked if there will be dynamiting with this project and when would it start. Mr. Diffin replied yes, and it would be summertime. Ms. Porter said she is concerned, because she works from home, about the noise from the blasting. Mr. Diffin explained the blasting process and said that they could have the owners representative meet with Ms. Porter to talk about the timing as it comes closer. Chairman Record noted that the item before the Board is an amendment to a plan that has already been approved.

Chairman Record closed the public hearing.

The Board further discussed the design of the building in the proposed amendment. Ms. Nixon recommended the architect refer to section 2.2 of the design standards relating to large scale buildings.

Chairman Record said he is not hearing support for the proposed design.

Greg Shinberg, owner's representative, asked if the design standards apply to the entire building and would a flat roof on the back be acceptable. Ms. Nixon replied that the standards are not as strict on the back side.

Mr. Saunders moved that the Board table action on the amendment to the subdivision and site plan for The Mark at Cumberland Foreside, formerly Broad Cove Ridge apartments, located at 102 US Route 1, Tax Assessor map R01, lot 13B, seconded by Mr. Bingham. Chairman Record suggested that the applicant work with Ms. Nixon to get to the next stage. Mr. Auclair noted that he is supportive of the project and looks forward to them coming back with a more traditional look. Ms. Sawchuck said that the project came to the Board originally as a condominium project and now it is apartments and asked if that makes a difference in the Board's approval. Ms. Nixon replied that she does not think it does, the Board is really looking at the site plan and if the Council didn't want rental units, there would have to be something in the ordinance. The previous motion to table action on the amendment to the subdivision and site plan for The Mark at Cumberland Foreside was then **VOTED, 7 Yeas, unanimous – motion carries.**

2. Public Hearing: Recommendation to Town Council on proposed amendments to the Cumberland Code of Ordinances, Chapter 226 – Shoreland Zoning, to align with State requirements.

Chairman Record introduced the item and asked if legal counsel reviewed the proposed amendments. Ms. Nixon said yes.

Mr. Auclair outlined some typos in the prepared amendment.

Mr. Saunders said that in a number of places there are notes embedded pertaining to what a municipality can choose and these notes should come out.

Ms. Sawchuck noted that there are parts that appear to be within the Board's discretion and she asked if the Board needs to make a decision.

Ms. Nixon said she will work with Bill Longley, Code Enforcement Officer, to clean up the amendments and will ask him to attend the next meeting.

Mr. Auclair referenced additional areas of concern with the proposed amendments.

Chairman Record opened the public hearing. There were no public comments the public hearing was closed.

Mr. Bingham noted that there are specific things in the ordinance regarding dealing with vegetation and trees within some distance (from the shoreline) and what you can and can't cut. This is a statewide ordinance. Mr. Bingham recommended that before you even look at (cutting) a tree, you should consult with the Code Enforcement Officer.

Mr. Saunders moved to table action on the recommendation to the Town Council on proposed amendments to the Cumberland Code of Ordinances Chapter 226, Shoreland

Zoning, seconded by Mr. Bingham. Chairman Record asked about the next steps. Ms. Nixon said that she will work with Mr. Longley on the edits and ask him to attend the next meeting. Chairman Record asked if the Board should have a workshop to review the proposed changes. Ms. Nixon said Mr. Longley felt the changes were housekeeping. Mr. Bingham questioned if the Ordinance Committee should review the changes. Mr. Shane said he did not think so and that the Ordinance Committee would be looking for the Planning Board recommendation. Ms. Nixon said she will try to get the updated amendments to the Board well before the next meeting so they have more time to review the changes. The previous motion to table the item was then **VOTED, 7 Yeas, unanimous – motion carries.**

3. Public Hearing: Recommendation to Town Council on the proposed Capital Improvement Plan for Fiscal Years 2022-2027. Presented by Town Manager William Shane.

Chairman Record introduced the item.

Town Manager Bill Shane reported on an economic development plan for Route 100 that includes a new intersection with a roundabout and displayed a proposed plan. Mr. Shane shared history on issues the Town has had with the intersection. Mr. Shane noted that the Town has tried unsuccessfully for years to get a traffic light at the intersection but doesn't meet specific warrants through DOT. Mr. Shane outlined the sidewalk plans, shown in pink on the plan.



Mr. Shane shared examples of potential future development that the Town would like to encourage along the Route 100 corridor. Mr. Shane wants the development to be something different so people driving along Route 100 feel like they have arrived at something.

Mr. Shane invited the Board to attend a public meeting at the West Cumberland Hall to review the plans of the Route 100 intersection. Mr. Shane said this is a \$7,000,000.00 project and 90% would be funded with Federal and State funds. The Town Council has approved the project to move forward to the TIF (tax increment financing) Committee to

work with the DOT to see what a finished product would look like. Mr. Shane said there are a lot of things to be worked out over the next year or so and he would like to see this started by the end of summer 2023.

Members of the Board shared words of support for the proposal.

Mr. Shane outlined the Capital Improvement Plan (CIP) that looks at a lot of Town department capital needs and tries to separate these to adequately fund them.

Mr. Bingham asked about the expansion of sewer and water lines. Mr. Shane replied that there are no immediate plans for expansion of Town sewer and about 55% of Town is serviced by Portland Water District (for public water). Mr. Shane said his interest in expansion of water is for fire safety. The Bruce Hill Rd. water expansion project is a good example that will be in the five to six million dollar range so this will likely be a capital project in the future. Mr. Shane reported on the sewer capacity for the Town.

Mr. Shane outlined some of the current capital projects and answered questions from the Board.

Chairman Record recommended that anyone that wants to see where the Town is headed should read Mr. Shane's CIP report.

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

Mr. Bingham moved that The Board endorse the proposed Capital Improvement Plan for the fiscal years 2022-2027, seconded by Mr. Auclair. Ms. Perry asked who is responsible for the repairs to the Tuttle Rd. bridge overpass. Mr. Shane replied that DOT is responsible and repairs are scheduled to happen in two years. The previous motion was then **VOTED, 7 Yeas, unanimous – motion carries.**

4. Report on Growth Permits issued per the Growth Management Ordinance - Chapter 118-9. Presented by Town Manager William Shane.

Chairman Record introduced the item.



Mr. Shane shared the above chart showing growth permit activity and reported the Town has averaged 34 growth permits and six exempt permits per year. Mr. Shane

reported that the exempt permits are defined by ordinance and are mostly for senior housing or contract zone exemptions. Mr. Shane noted that Cumberland has had the highest percentage of growth in Cumberland County in the last ten years. Cumberland is still a very highly desirable community.

Mr. Shane said that the Town has seen a high turnover of homes. It is not the new homes, rather it is the turnover in housing that is driving the enrollment numbers at the school and bringing more families to Cumberland. Mr. Shane said he could count on one hand the number of subdivisions that have been approved over the last two years, and these were not starter homes for young families.

Mr. Shane said the Growth Management Ordinance is working and he doesn't know what tool the Town could implement to deal with turnover which is where the real growth in the number of children and in our population is coming from. Mr. Shane reported that he and Ms. Nixon are working with the State to navigate through the census data to get statistics for Cumberland and he will report back to the Board with the statistics.

Mr. Shane noted that by ordinance, growth permit review is required every three years. Last year, the Board requested a report this year and Mr. Shane said he is happy to do it every year. Mr. Shane said that staff is not recommending any changes to the ordinance.

Mr. Bingham suggested everyone in Town review Mr. Shane's memo available on the Town website through the posted Planning Board agenda. There is good, solid information about where the Town is, where we were and where we are going.

Chairman Record said he is in favor of continuing impact fees and maintaining minimum lot sizes to try to manage growth and senior abatements to help people stay here to the degree possible. Chairman Record joked that if people really want their town to stop growing, they could make it undesirable, and we are a victim of our own success. Southern Maine is a wonderful place to be.

Mr. Auclair asked how much undeveloped land there is in Town. Mr. Shane said that there is quite a bit. The Conservation Ordinance that was passed effects 75% of the land area that is left. This doesn't prevent the number of homes being built but half of the acreage will be preserved going forward. Mr. Shane said acreage wise, the Town could triple the population.

Mr. Saunders referred to proposed legislation regarding dwelling units that is moving through the State House and asked where this stands and how it affects Cumberland. Mr. Shane said that The Town is in the crosshairs for exclusionary zoning with zoning of four, three or two acres in size brought down to a quarter of an acre in size and 10,000 square foot lots. Mr. Shane said it would be a conflict with the State plumbing code that requires 20,000 square feet if there is no sewer. Maine Municipal Association (MMA) is fighting this proposal very hard. Mr. Shane said he talks with Kate Dufour of MMA regularly and Kate does not think this legislation will go forward.

Mr. Saunders said one proposal is to allow for three more dwelling units to be added to a single family lot. Mr. Shane said that this would throw zoning out the window. Mr. Saunders asked if the State can do this. Mr. Shane replied that the town is a creature

of the State and would not have a lot of choice but the towns can fight back, and we will. Mr. Shane said what he is hearing from our Representatives is that they don't believe the legislation will be successful the way it has been presented. The State is trying to pass a "one size fits all" model that just doesn't work for Maine. Mr. Shane said he thinks we will see some changes in zoning language but there is still too much work to be done.

H. Administrative Matters/New Business:

1. Discussion on reciting the Pledge of Allegiance at the beginning of meetings.

Chairman Record introduced the item and explained why he asked the Board to consider reciting the Pledge of Allegiance.

Ms. Rardin said she thinks the Board serves at the pleasure of the Town Council and is apolitical board that does judicial work. Ms. Rardin said any change in the way the Board conducts their business should come from the Town Council. Ms. Rardin said the Pledge has recently been politicized and weaponized at the School Board level. Ms. Rardin thinks this is inappropriate and does not want to see this at the Planning Board.

Ms. Perry agreed and said she thinks the Board is a more inclusive group if they do not say the Pledge.

Mr. Auclair said he is neutral on the issue and he is certainly for America.

Mr. Bingham said that he is a veteran of the School Board and a Vietnam veteran. Mr. Bingham added that he is not comfortable, as a quasi-judicial Board, that the Board recite the Pledge but he is happy to say it under other surroundings.

Ms. Sawchuck said saying the Pledge is a big deal and it is a loyalty oath. Some of the language is actually controversial, particularly references to religion and justice. This could discourage people from wanting to participate on the Planning Board. Ms. Sawchuck said doesn't think it is appropriate for the Board to do it.

Mr. Saunders said he is agnostic on the subject but hearing people's comments against reciting the Pledge, he would not want them to be in a position where they are uncomfortable so he will vote against this.

Chairman Record said he realizes this can be a deep thing but he didn't mean for it to be a deep thing but he understands others' points of view.

I. Adjournment: Mr. Saunders moved to adjourn the meeting at 9:05 pm, seconded by Mr. Auclair and **VOTED, 7 Yeas, unanimous – motion carries.**

A TRUE COPY ATTEST:

Jason Record, Planning Board Chair

Christina Silberman, Admin. Asst.