

TOWN OF CUMBERLAND PLANNING BOARD MEETING MINUTES
Tuesday, May 17, 2022

A. Call to Order: Chairman Record called the meeting to order at 7:02 pm.

B. Roll Call: Present: Paul Auclair, Peter Bingham, Jason Record, Joshua Saunders & Ann Sawchuck. **Absent:** Bridget Perry & Lorraine Rardin, **Staff:** Carla Nixon

C. Approval of the Minutes of the April 19, 2022, meeting: Mr. Saunders moved to adopt the minutes as written, seconded by Mr. Bingham and **VOTED, 5 yeas, unanimous - motion carries.**

D. Staff Site Plan Approvals:

1. Major Staff Site Plan Review: Approval for amendment to an approved site plan for a two story office building and associated parking to include expansion of the existing building footprint approximately 2,900 sf, located at 221 US Route 1, Tax Assessor Map R02, Lot 10A. Applicant: LGC Clinical Diagnostics.

Chairman Record reported that this major staff site plan was reviewed and approved by Town Staff, himself and Peer Review Engineer Dan Diffin.

E. Minor Change Approvals: None.

F. Hearings and Presentations:

1. Public Hearing: Amendment to an approved subdivision for OceanView at Cumberland, LLC (Phase 2) to change a culvert and associated road profile, located on Greely Rd., Tax Map R04, Lot 34A, in the Rural Residential 1 (RR1)/Senior Housing (SH)Overlay Zone. *Applicant: Ocean View at Cumberland, LLC / John Wasileski. Representative: Frederic Licht, P.E, LSE, Licht Environmental Design, LLC.*

Chairman Record introduced the item.

Town Planner Carla Nixon explained that this is a straightforward housekeeping change to replace a culvert that did trigger environmental review.

Mr. Auclair asked Ms. Nixon if receipt of the Maine DEP permit was the only outstanding item and Ms. Nixon answered yes.

Rick Licht, P.E., LSE, Licht Environmental Design, LLC said he is here on behalf of OceanView at Cumberland, LLC with Chris Wasileski and Christian Haynes. Mr. Licht identified the location of the culvert on a displayed plan of the development and explained that the original box culvert design would have an unacceptable level of settlement. The plan is to now use a metal arch culvert which is more acceptable from a settlement perspective. Mr. Licht said they are able to reduce the fill over the top of the culvert by dropping the road grade. This required approval from Portland Water District which was granted. Mr. Licht further described the new culvert.

Mr. Licht noted that they have the Army Corps of Engineers amendment and are awaiting the DEP amendment. Mr. Licht asked that the Board conditionally approve the amendment pending the DEP approval, which is expected shortly.

Mr. Licht answered questions from the Board.

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

Mr. Sanders made a motion to waive the reading of the Findings of Fact, except for findings lettered N and O, given the fact that the other findings have not changed, seconded by Mr. Bingham and **VOTED, 5 years, unanimous - motion carries.**

Chairman Record reviewed the Findings of Fact for criteria lettered N and O. Mr. Saunders moved that the Board adopt the Findings of Fact as amended, seconded by Mr. Auclair and **VOTED, 5 years, unanimous - motion carries.**

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 parcel is located above sea level. The project will utilize public water and sewer. A groundwater impact assessment was provided by the applicant and reviewed and approved by the Town Engineer. A comprehensive erosion and sedimentation control plan and stormwater management system have been reviewed and approved by the DEP and the Town Engineer. The project will include a third-party inspector to provide oversight during the construction period. 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 subdivision will be served by public water. There is a letter on file, dated July 31, 2018 from the Portland Water District stating the District's ability to serve the proposed project. 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 subdivision will utilize public water. There is a letter on file, dated July 31, 2018, from the Portland Water District stating the District's ability to serve the proposed project. 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;

A comprehensive erosion and sedimentation control plan and stormwater management system have been reviewed and approved by the DEP and the Town Engineer. The

project will include a third-party inspector to provide oversight during the construction period. 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;

A traffic study was performed by Diane Morabito, PE, PTOE dated 1/2/20. The study concluded that the project will generate a modest level of vehicle peak hour trips, will not have any significant impact on off-site traffic operation, that there are no capacity constraints at Tuttle Road or Greely Road and that there are no attributable vehicular safety concerns from the development of the project. An MDOT Entrance permit up is on file. 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 public sewer. There is a letter from the Portland Water District indicating capacity to serve the subdivision. There is a letter dated 1/14/20 from Town Manager Bill Shane stating that the Town agrees to accept the sewer design flow from the project. There will be a charge of \$500 for each of the required units. 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. Based on a conversation with the Director of Public Services, the addition of 52 new homes in Phase 2 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;

Letters are on file from the relevant state agencies stating that the subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat or rare and irreplaceable natural areas. In addition, the SHC Ordinance created a 500 foot preservation area off Greely Road to preserve the historically agricultural character of the former Godsoe farm from Greely Road. The closest development neighborhood, Leonard Lane, will be located over 1,000 feet from Greely Road and visibility screened by a 100 foot wooded buffer towards Greely Road and abutting properties. There is an extensive landscaping and buffering plan proposed. 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 and approved by the town planner, the town engineer and town department heads for compliance with the applicable SHC and subdivision ordinance standards. The project is located within a mapped Growth Area. The project helps to address housing for seniors in Cumberland which was an identified need in the

Comprehensive plan. 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 traffic engineer, an architect and a licensed soils scientist. Financial capacity is evidenced by a letter dated 10/14/19 from Kennebunk Savings stating that bank has approved financing of the infrastructure for the project and that Oceanview at Cumberland has the financial capacity to complete the land development and construction project as proposed. 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 project does not lie in the watershed of an Outstanding River Segment, pond or within 250 feet of any wetland, great pond or river as defined under Title 38, Chapter 3, Subchapter 1, Article 2-B Shoreland Zoning.

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;

The project will be served by public water and sewer. Infiltration of stormwater is limited to the installation of BMP's along the access road which meet all DEP standards for treatment of stormwater prior to discharge to groundwater. 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 on FEMA floodplain maps as being in Zone C (area of minimal flooding) and a portion within Zone A (a 100 year mapped floodplain). No residences will be located within the mapped floodplain. A stream crossing and box culvert sized for the 100 year storm event which will be within the 100 year mapped flood plain. A 100 year hydrologic study was conducted for the 900 + acre upstream watershed which demonstrates that the culvert and crossing will not cause any back up or restrictions on the current stream flow. 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 plan was submitted as part of the application packet and has been reviewed and approved by the Town Engineer for conformance with Chapter 250-38 of the Cumberland Subdivision Ordinance. The use of an alternative culvert structure, which is the reason for this amendment, has been reviewed and approved by the Town Engineer. The Maine DEP will need to issue a Modified Permit; the receipt of which is a proposed condition approval. Based on the information provided, and with the proposed condition of approval, 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.

All wetlands within the proposed subdivision have been delineated and mapped by Mark Hampton Associate, Inc. and shown on the project plans. The applicant has submitted revised plans to Maine DEP and is awaiting approval. Based on the information provided, and with the proposed condition of approval, 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]

Two streams as defined by the MDEP cross the site. Both streams have been shown on the project plans. All rivers, streams or brooks have been shown on the project plans. Based on the information provided, the standards of this section have been met.

Mr. Saunders moved that the Board approve an amendment to an approved subdivision for a culvert change at Cumberland Crossing (Phase 2), Tax Assessor Map R04, Lot 34A subject to the Standard Condition of Approval, the Limitation of Approval and the single additional proposed Condition of Approval, seconded by Mr. Auclair and **VOTED, 5 yeas, unanimous - motion carries.**

Standard Condition of Approval: This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted by the applicant. Any variation from the plans, proposals and supporting documents, except de minimus changes as so determined by the Town Planner which do not affect approval standards, is subject to review and approval of the Planning Board prior to implementation.

Limitation of Approval: Construction of the improvements covered by any site plan upon which the approval was granted shall be in accordance with section 250-20 of the Subdivision Ordinance.

Conditions of Approval:

1. The applicant shall provide a copy of the Maine DEP SLODA permit prior to the issuance of first building permit.

2. Sketch Plan Review of a proposed seven (7) lot subdivision, located on Tuttle Rd., Tax Assessor Map U11, Lot 4A in the Town Center District (TCD) / Setback Overlay 2 (S2) Zone. *Applicant/Owner: William Wyatt. Representative: David Latham, P.E. – Trillium Engineering Group.*

Chairman Record introduced the item and explained that a sketch plan is to seek guidance from the Board to the applicant as to what the Board prefers. Chairman Record noted that there is a waiver to discuss.

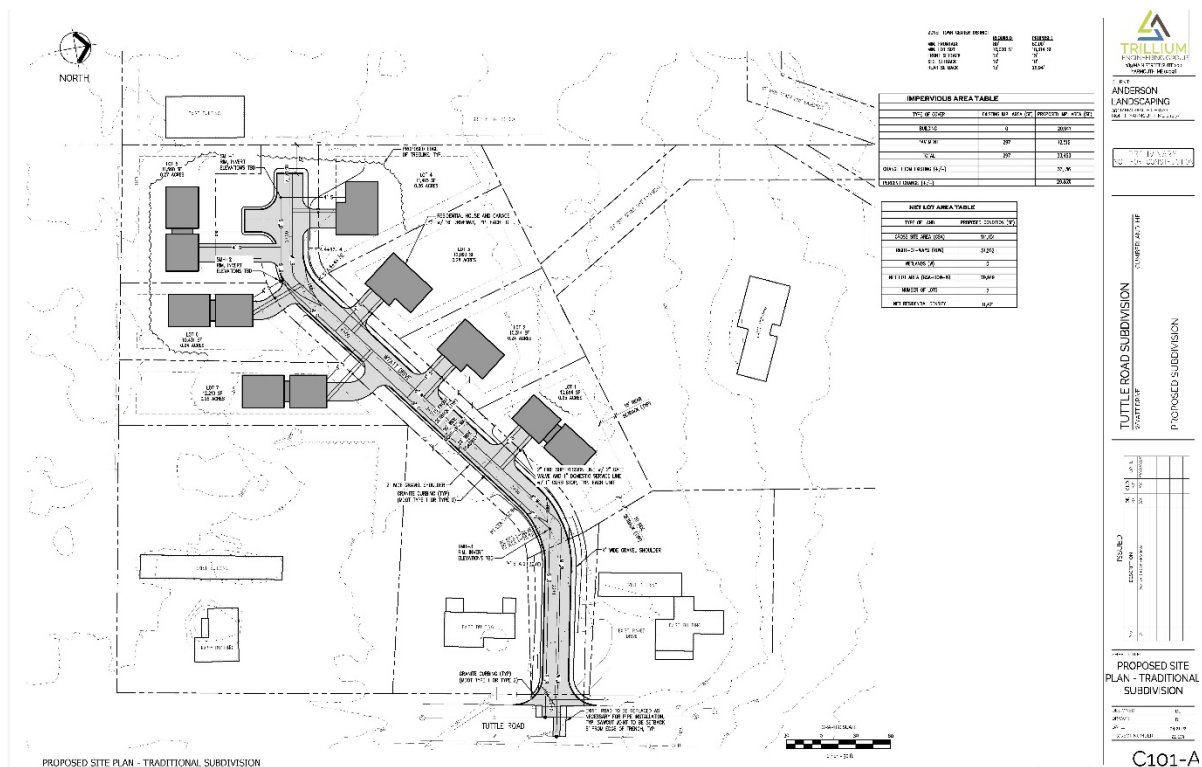
Mr. Bingham disclosed that both he and Chairman Record serve on the MSAD 51 Board of Directors, which is an abutter to this property, and he does not feel this would cause any issue at this stage. Mr. Auclair moved that both Mr. Bingham and Chairman Record participate in this, seconded by Mr. Saunders and **VOTED, 3 yeas, 2 abstained (Bingham & Record) – motion passes.**

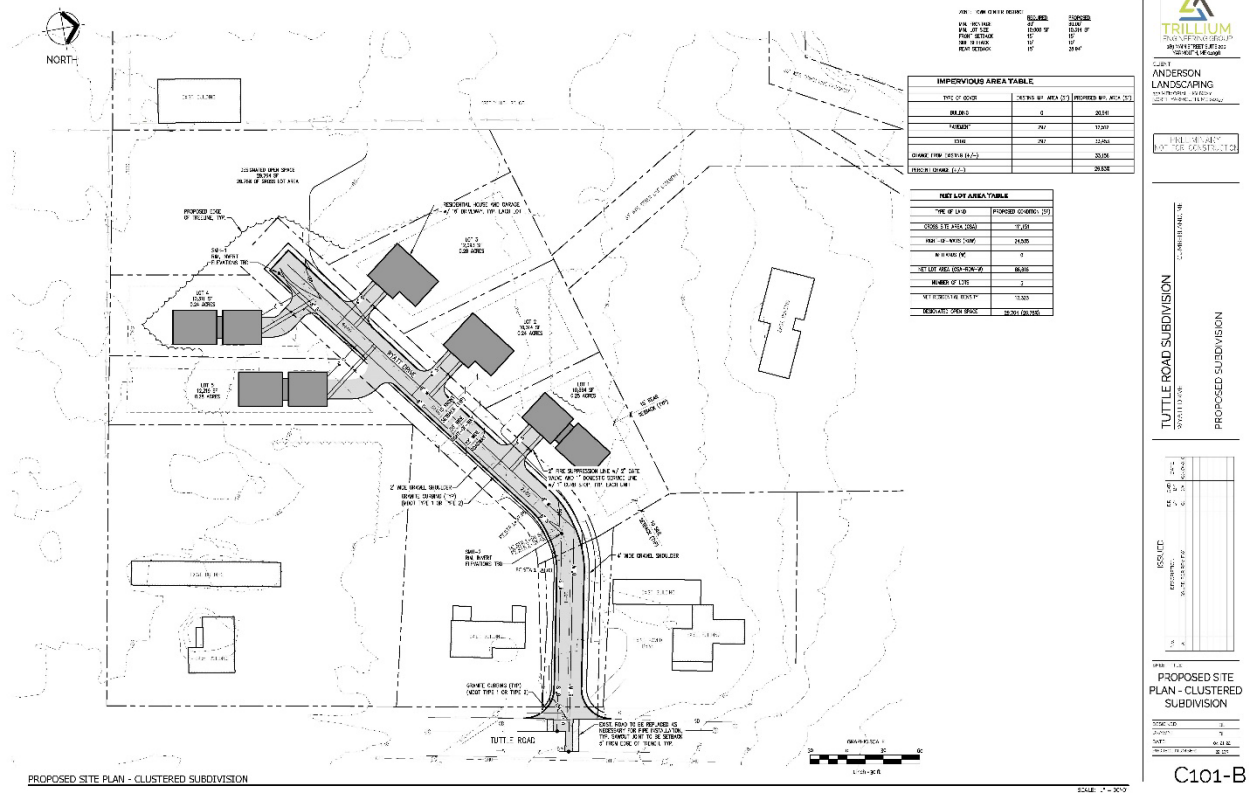
Mr. Auclair noted that he read the Town Attorneys' message and asked if it has occurred before where a buffering waiver was given for the reason of creating a hardship. Ms. Nixon said she does not recall that this has been done for that specific reason.

Chairman Record noted the Town Attorney's comment was that the Planning Board may waive a standard if it finds either an unnecessary hardship will result from strict compliance with the subdivision standards or there are special circumstances of a particular plan that makes the standard inapplicable.

Eric Dube, P.E., Trillium Engineering Group, explained that there are three subdivision proposals. A traditional design with a 75 foot perimeter buffer, a seven lot traditional design without a perimeter buffer and a five lot clustered subdivision design without a perimeter buffer. Mr. Dube described the location of the proposed subdivision and the abutting properties.

Mr. Dube outlined a seven lot traditional subdivision plan without a perimeter buffer.





Mr. Dube showed a plan for development of the parcel including a 75 foot perimeter buffer that would allow for only one lot.

Mr. Dube answered questions from the Board. Board members expressed concerns with the lack of a perimeter buffer.

Mr. Record expressed preference for a cluster style subdivision. Mr. Record said that in this instance, a 75 foot buffer may not be reasonable but he is not a fan of going down to 15 feet and would like to see a 40 or 50 foot buffer. Mr. Record said that he does not believe that requiring a buffer would be a hardship and even one house on this lot would make a fair amount of money.

Mr. Saunders said if there is a way to build in a 75 foot buffer to the houses on Tuttle Rd., he may be open to smaller buffers on the other sides. Mr. Saunders referenced the ordinance language for section 250-10 for cluster subdivisions that states if the lots are connected to public water and sewer systems the minimum lot size for each single family dwelling shall be 30,000 square feet. Mr. Saunders noted that on this cluster design, he does not see the lots at 30,000 square feet and there is not ordinance language saying that the lot size can be modified by the underlying zoning district. The underlying district has a 10,000 square foot lot size. Mr. Saunders added stated that it makes no sense that in a cluster subdivision, the minimum lot size is three times greater than a non-clustered subdivision lot size. Ms. Nixon said that the Board is caught in a snafu because everything in this subdivision ordinance anticipates that subdivisions will be in the rural districts and does not consider being in the Town Center District.

Mr. Saunders said that if the Board can waive lot size, his preference is for a clustered subdivision pushed up to the high school and away from the residential to allow for seven lots with open space towards Tuttle Rd. and the residential abutters.

Mr. Bingham said that he likes Mr. Saunders thoughts and noted that the Town has tried to concentrate development within the Town Center District where the Town wants the density.

Mr. Saunders said there is nothing to prevent a conservation style subdivision from being built in districts other than RR1 and RR2. Ms. Nixon said she does not think that is correct and noted the ordinance talks about the conservation subdivision replacing the cluster subdivision in the rural residential zones. Mr. Saunders said there is nothing in the ordinance that says a conservation subdivision is not allowed in other zones and he outlined how the minimum lot size is achieved in a conservation subdivision.

Mr. Saunders said his preference is to buffer the closest residential uses first and noted that the buffer can be spread around and be part of the open space.

Chairman Record said his preference is for nice lots that are spaced properly and not jammed in on five to seven thousand square foot lots. Chairman Record said the buffer is a huge thing.

Ms. Sawchuck said that she would expect to see this type of development in the center of town and asked if condominiums or townhouses were considered. Mr. Dube said they did look at this and it could still be an option but the buffer is the issue. Ms. Sawchuck said that the road going in between the houses would be an annoyance.

Mr. Auclair agreed that smaller lots in this location are fine and said the buffer is important. Mr. Auclair referred to development on Wyman Way and said people buying homes there know what the spacing is between the homes and know what they are getting. Mr. Auclair said that if the buffer could work, especially with the residential places, he could live with a traditional subdivision.

Mr. Saunders noted he is not opposed to a traditional design in this case because it is unique.

Ms. Nixon referred to a sewer easement that runs across the back of Mr. Campbell's property and asked if this will be used. Mr. Dube said this is not the plan. Ms. Nixon explained that buffering could be achieved by distance, vegetation or fencing and said that in this case there could be a combination of these.

Chairman Record invited members of the public to comment.

Joe Campbell, 359 Tuttle Rd., stated it would be fine to have a nice neighborhood of houses on this property if it is done well and he appreciates the Board's consideration regarding buffering. Mr. Campbell agreed with Ms. Nixon that the buffering can be achieved well with the right kind of vegetation such as the arborvitae hedgerow between his property and the school parking lot.

Steve Pardue, 367 Tuttle Rd., said he abuts the proposed subdivision and his lot is against the right of way. Mr. Pardue said is not against development at this location but

when he bought his property in 2017, he came to the Town to see what could be developed here and relied on the subdivision rules. The road to get to the development would go between Mr. Pardue and his neighbors' houses that is very tight with little room for error. Mr. Pardue said the buffering is huge for him and he expressed concern with the traffic for seven houses at this busy location. Mr. Pardue said he knows there can be some concessions for a reduced buffer but he is not for taking it away entirely.

Chairman Record noted that there seems to be support for houses here but the buffer is a big issue. There is not a consensus to run with either of the sketch plans presented. Chairman Record recommended that the Board have another sketch plan review to see what the applicant can come up with after taking in everything discussed tonight.

There was no need for a motion to table. The applicant was asked to revise the plans to show a reduced buffer as desired and return to the Board at a later date.

G. Administrative Matters/New Business:

1. Planning Board member signatures needed for the approved subdivision plan of The Mark at Cumberland Foreside.

Chairman Record reminded the Board that their signatures are needed.

Ms. Sawchuck asked when the Town will start to focus on LD2003 (an act to implement the recommendations of the Commission to increase housing opportunities in Maine by studying zoning and land use restrictions). Ms. Nixon replied that she is working on a presentation to share with the Board. Ms. Nixon reported that she is working with Town Council Chairman Bob Vail and Town Manager Bill Shane on a charge to appoint a committee to look at housing issues and noted that the Town is very mindful of the issue.

H. Adjournment: Mr. Auclair moved to adjourn the meeting at 8:09 pm, seconded by Mr. Bingham and **VOTED, 5 yeas, unanimous - motion carries.**

A TRUE COPY ATTEST:

Jason Record, Planning Board Chair

Christina Silberman, Admin. Asst.