

**TOWN OF CUMBERLAND
PLANNING BOARD MEETING MINUTES
Tuesday, December 20, 2016 - 7:30 pm**

A. Call to Order: Chairman Moriarty called the meeting to order at 7:40 pm and explained that the meeting is late getting started because the Board has been in a workshop with the Town Council that ran over a little bit.

B. Roll Call: Present: Steve Moriarty, Chair; John Berrett, Gerry Boivin, Jeff Davis, Teri Maloney-Kelly, Joshua Saunders & Peter Sherr.

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

C. Approval of Minutes of the November 15, 2016 meeting: The Board noted some typographical errors that will be corrected. Mr. Sherr moved to approve the minutes of the November 15, 2016 Planning Board meeting, seconded by Mr. Davis and **VOTED, 6 yeas, 1 abstained (Saunders, not present at the meeting) – motion carries.**

D. Staff Site Plan Approvals: None.

E. Minor Change Approvals: None.

F. Hearings and Presentations:

1. Sketch Plan Review: Spring Valley 10 Lot Subdivision, Tax Map R07A, Lot 1A, Blackstrap Road. Owner: Walnut Hill Investments LLC; Representative: Dan Diffin, P.E. Sevee and Maher: Ms. Maloney-Kelly recused herself from participation in this item and said that she is a direct abutter to the property. Ms. Maloney-Kelly left the dais and sat in the audience.

Chairman Moriarty explained the sketch plan review process. Ms. Nixon noted that the sketch plan review process is not a public hearing, no formal application has been submitted and abutter notices are not required for this step.

Dan Diffin, Sevee and Maher Engineers, showed a map depicting where the proposed project is located in West Cumberland. Mr. Diffin showed an aerial image of the site with an overlay of a conventional subdivision design. The site was harvested in 2015 and tree growth is sparse. There is a wetland/stream complex on the south portion of the site with some steep slopes that have affected the net residential calculations. Mr. Diffin said they have determined that this 25.9 acre lot can have ten 2 acre lots. Mr. Diffin said an area with steep slopes (approx. 3.5 acres) has been protected on both the conventional and cluster subdivision designs. As part of the road construction and lot development, the plan is to grade from Blackstrap Rd. at about 2.4% - 3% down into the proposed cul-de-sac. This will make the subdivision road flush with Blackstrap Rd. and the end will match with existing grades there. There will be an excavation that will result in a 10'-12' elevation change from the property line. There will be a 25' no cut, vegetative buffer around the entire property that will slope down with a graded buffer to match into the 2.5% slope that is proposed across the site. Mr. Diffin said that one reason for doing the excavation here is to create a subdivision that is well screened from the abutting properties.

Mr. Diffin said the owner, Ben Grover of Walnut Hill Investments, LLC, plans to complete the project within 2 years including grubbing and stumping the site of what is left from the

harvesting, regrading the site, constructing the road and selling the lots. There will be underground power. Mr. Diffin said they propose to meet all of the requirements in the subdivision for the road width. There will be an esplanade and a sidewalk. Sewer and water will be private.

Mr. Diffin said the proposal is for a conventional subdivision. Mr. Diffin showed schematics of a conventional subdivision design with ten 2 acre lots and showed a cluster subdivision design also with ten lots and the open space in the natural sloped area and around the exterior of the lot. The length of the proposed road is the same in both designs. Mr. Diffin said they would like guidance on cluster vs. conventional and any thoughts on the proposed construction from the Board.

Chairman Moriarty asked if it will be a public or private road and Mr. Diffin replied private. Chairman Moriarty said this is the RR2 zone and Mr. Diffin agreed.

Mr. Berrett asked Mr. Diffin to point out the esplanade and sidewalk on the plan. Mr. Diffin said the plan would be to create a 4' grass esplanade on the south side of the road with a 5' paved sidewalk.

Mr. Saunders asked Ms. Nixon if cluster zoning has to be on public water and sewer. Ms. Nixon said it does not and cited section 315.43 of the Zoning Ordinance under section B1 the lot size varies depending on whether there is public water and sewer or not.

Mr. Sherr said he is on the Conservation Subdivision Advisory Committee that is currently evaluating a possible new subdivision for the town. Right now, the town has either clustered or conventional subdivisions. Mr. Sherr said that the current plan shows where the house will be in the building envelope but in reality, when the lots are sold, the owner can put the house wherever they want within the envelope. Mr. Diffin agreed and said this will be true with conventional or clustered.

Chairman Moriarty said it would be helpful to show how both versions of the proposed subdivision fit within the neighborhood and how much growth there is separating the project from the surrounding area at a future meeting.

Mr. Saunders asked why the envelope only provides for a 25' front setback vs. 50'. Mr. Diffin said he believes the setbacks are 50'. He will double check but thinks it is a typo.

Ms. Nixon said she has walked the site with Mr. Diffin. One of the elements of the plan is that there will be fairly extensive regrading of the parcel. Ms. Nixon said that from Blackstrap Road to the rear of the parcel it is fairly flat and rises up to a little knoll then drops back down. Ms. Nixon said the developer is proposing to start near Blackstrap Road and take the knoll out, grade the lot and take the gravel out and she wants the Board to be aware of this. Ms. Nixon noted that there is a provision that says that the natural topography of the land is kept as much as possible and the Board may want to inquire as to what the need is for this to happen.

Chairman Moriarty stated that if it was summer time, they would discuss the need for a site walk and he asked what Mr. Diffin's time frame is. Mr. Diffin said that they hope to get final approval in March and to start construction as soon as the snow is gone.

Mr. Davis asked how much of a cut is proposed. Mr. Diffin pointed to the North side of the plan and said this area will max out around 14' from the property line and the existing grade and on the South side will max out around 12'. Mr. Diffin said that the cuts will taper

from zero at Blackstrap Rd. then will steepen as you go in. Mr. Davis asked what the cut in the knoll will be and Mr. Diffin replied between 10' and 14'.

Mr. Sherr asked about stormwater. Mr. Diffin said they will obtain a stormwater management permit from DEP. They have met with DEP to discuss ideas and have not designed anything. Mr. Sherr asked how the lot will slope and if the stormwater will be retained in the back of the lots. Mr. Diffin said that the plan has not gotten to this level of detail yet. There was a brief discussion with DEP about putting in some smaller infiltration bases and most of these would be between the properties with a swale in the back and storm drains along the road. Mr. Sherr asked if the purpose of the cut is to generate additional income from the gravel. Mr. Diffin responded that one of the reasons for Walnut Hill to do the project is for the value of the material that is coming out that will help fund the development and another reason is for the buffer from abutters.

Mr. Sherr said that, because the lot has already been cleared and for buffering from the neighbors, doing a larger cut does not give him much heartburn. Mr. Davis added that it wouldn't really protect any natural resources. Mr. Sherr said that across the street and adjacent to this property there are gravel pits with large cuts already and, as long as the cuts are done well and buffering with neighbors is provided, the project doesn't take a lot of additional resources that aren't there anymore because it has already been cut.

Mr. Boivin said that the cluster subdivision plan doesn't matter to him and he thinks the traditional plan is the way to go. The value to each homeowner of having a little more space is greater than the value of having an area that is difficult to get to.

Chairman Moriarty said that they will hold off scheduling a site walk. Ms. Nixon said that the aerial photos give a pretty good sense of the area. Mr. Sherr said he prefers a site walk and asked about the application timing. Mr. Diffin said they plan to submit a package for the February meeting. Mr. Sherr suggested a visit in January and Mr. Boivin said that is a good idea. Mr. Sherr said it is good for the neighbors too and Ms. Nixon said abutters are notified of a site walk.

Mr. Davis asked the applicant if they have a preference of a cluster over a conventional design and Mr. Diffin said they prefer a conventional.

Chairman Moriarty thanked Mr. Diffin for his presentation and there was general consensus of the Board to go with a conventional design.

2. Sketch Plan Review: MSAD 51 for an amendment to an approved site plan to construct a performing arts center at Greely High School, Tax Map U-11, Lot 1.

Applicant: MSAD 51; Representative: Pat Carroll, LLA, Carroll Associates:

Chairman Moriarty introduced the item and said that the voters have approved funding for this performing arts center. The approved site plan is a plan that was developed when the high school was expanded and the new wing was added. Ms. Nixon indicated this was about 5 years ago.

Stephen Blatt, Cumberland resident and architect for the proposed performing arts center, said that he has been working on the school campus for many years and he showed a map of the campus. Mr. Blatt said that they designed the Middle School, the High School addition, renovations to the Superintendent's Office, additions to the Middle School and tweaks to Mabel I Wilson school. Mr. Blatt noted that the entire circulation scheme within the campus has been implemented as a result of their work.

Mr. Blatt said they are here tonight to present the Board with a concept of a performing arts center that will be added to the High School as a fairly enclosed, contained box. This will go where the modular park with classrooms was before the new classroom wing was built. The stormwater retention located here will be modified. Mr. Blatt said Pat Carroll, Landscape Architect/Site Planner and Tom Greer, Civil Engineer, are also here to discuss the project and answer questions.

Pat Carroll, Carroll Associates, said that he has been involved along with Mr. Blatt on almost all of the expansion and growth of the Greely campus. Mr. Carroll showed the master plan that was developed in 2007. At that time, a campus parking study was done that indicated that there were about 740 parking spaces on the entire campus including the high school, the Mabel Wilson school, the administration offices and the middle school. Mr. Carroll pointed out the area on the plan where there are about 35 parking spaces that were not built due to budget constraints at the time and it was permitted by DEP. The master plan shows a future addition located at the end of the classroom wing and this is where the performing arts center will fit. The 35 space parking area will now be developed and Mr. Carroll pointed to an area along the side of the drive aisle where an additional 18-20 spaces could go and allow room for a buffer to the neighborhood.

Mr. Carroll said that the proposed building is larger than what was originally on the master plan and will encroach onto an existing stormwater management area. They have met with DEP for a pre-application meeting and will focus on what the disturbance for the project will be on stormwater. Mr. Carroll noted that Gorrill Palmer is on board to provide a traffic and parking study and will define what the parking demand will be on the campus with the addition of the performing arts center.

Mr. Carroll pointed out that the performing arts center will replace the existing theatre functions in the high school cafetorium that currently has about 300 seats. The performing arts center will have about 600 seats. Mr. Carroll said that there will be no increase in school population but they believe that there will be some increase in parking as a result of the project. The utilities will come from the existing building. Mr. Carroll said that in a sense, this is a self-contained project that is not going to have much impact on the school during construction. It will fit seamlessly into the internal circulation of the school and will function well.

Mr. Carroll showed on the map where the front entrance and parking will be. The plan is also to create a small outdoor, multifunctional space on the south side of the building that will be about 40'-50' wide and 100' long. Incorporated within the outdoor space will be a small service drive that will connect to the service area behind the school for intermittent use by emergency or service vehicles.

Tom Greer said that the stormwater is reasonably simple and in the existing condition, there is a pond with filter bases and one area that will be cannibalized by the service drive. There is a difference in the DEP regulations between the original stormwater permit and now and will follow the new regulations for this particular piece of the campus. Mr. Greer explained the revised stormwater plan.

Mr. Carroll said there are some architectural renderings if the Board would like to view them. Chairman Moriarty said he was at a meeting in early October where Mr. Blatt presented a summary of the project and added that the performing arts center will be available for large public meetings that cannot be accommodated here (at Town Hall).

Chairman Moriarty said an effective slide that was shown at the meeting in October was a view of the building from the parking lot. Mr. Carroll showed slides of what the building will look like.

Mr. Boivin asked what the soils are like and if there will be a foundation. Mr. Blatt responded that there is a history of some interesting soils on the site. This site was formerly a softball field and there has not been any development for a long time. Mr. Blatt showed where the septic is located, where the water will come into the building and where the gas will be. Mr. Blatt said there are no troublesome soils here. There will be a slab on grade, so no basement. The large part of the building that people will sit in will go down below grade inside the building. The building entrance will be at grade. Mr. Boivin asked if they will extend the mechanicals from the existing building. Mr. Blatt said they will coordinate with the existing building and there will be an independent roof mounted heating system that is gas fired. The building will be air conditioned and well insulated and they hope to have some photovoltaic cells on the roof.

Ms. Nixon said that she was asked by the Public Services Director to inquire about snow storage. The concern about snow storage is that it is challenging with current conditions and if more space will be used for parking, how will the snow be stored? Mr. Blatt said they have not discussed this yet and the building committee will be meeting tomorrow and he will bring it up.

Chairman Moriarty asked when the applicant expects to be back before the Planning Board. Mr. Blatt replied that the plan is to have this ready for submission to the Board and DEP by mid to late January but he is not sure if it will be in time for the February meeting. The overall schedule is to start construction towards the end of the summer and to complete the project by September, 2018.

Mr. Blatt said both levels of the building will be accessible from the high school wing and the primary use will be to teach theater, music and dance to the students as well as being a community facility.

Chairman Moriarty said that at the October meeting the capacity of the auditorium was given as between 500 and 700 and he asked if they have now crystalized toward a 600 figure. Mr. Blatt said they have decided on 600. Chairman Moriarty asked if this will be a high school graduation venue. Mr. Blatt answered no it will not because high school graduation needs 1,500 seats in Cumberland.

Chairman Moriarty thanked Mr. Blatt, Mr. Carroll and Mr. Greer for the presentation.

3. Public Hearing: Solar Way 5 lot major subdivision, Tax Map R04, Lot 24. Owner: Live Solar Maine, LLC; Representative: Tom Greer, P.E., Pinkham and Greer:

Chairman Moriarty introduced the item and said that in the Board's materials, the owner has been listed as Live Life Maine and Live Solar Maine. He asked if the terms are interchangeable and, if not, who the right owner is. Chairman Moriarty noted that the Board had sketch plan review on this proposal on October 18, 2016.

Mr. Greer said that Patrice Miller will give an overview of the project and then he will go over the engineering piece.

Ms. Miller introduced herself and said she is a resident of Cumberland. Ms. Miller said she bought the property about 2.5 years ago and it is just shy of 25 acres. The land was logged really heavily and it was a logging ruin. All the valuable pieces were taken and all

of the rest was left and felled. When Ms. Miller purchased the land, she thought it would be ideal to put some highly efficient solar homes on the land. Ms. Miller started with building a home for herself and she has lived there for about a year and a half. Ms. Miller said that it's been an amazing example of mindful building, gaining the power of the sun and powering the house off solar panels on the roof.

Ms. Miller said that this is her 2nd subdivision. The first one she did was at Sunday River Ski Resort and it was also a 5 lot subdivision but the houses weren't initially energy efficient. Ms. Miller said it has been a journey to get here. She started out building more for profit then not with the first home using fiberglass insulation. She found it amazing after living in that house for the winter that the oil truck would come every couple weeks. Ms. Miller said that she realized after building five houses that there has to be a better way. Ms. Miller built her current house as a living example of what is possible today. Ms. Miller described how the homes will be built. Ms. Miller said for over a year it has been \$12.00 a month for heat, hot water and utilities.

Ms. Miller said the proposal is for 5 houses, 2 are there now, so 3 more on 1.5 acre lots. She will have one lot for herself and will have 10 acres in the back that will be open. A road sign is already up for Solar Way.

Mr. Berrett asked what the price point of the homes will be. Ms. Miller said the price point to sell a house like hers will be in the mid to high \$400,000 to low \$500,000.

Chairman Moriarty pointed out that the matter before the Board tonight is preliminary plan review and it is not the final step. Before the project is approved, it will be on the Board's agenda again after tonight.

Mr. Greer gave an overview of the project which is a little over 24 acres off Hillside Ave. They are looking to do a cluster subdivision that goes in roughly 750' and gives access to 4 building lots in the front of roughly 60,000 sq. ft. and one in the back that will be Ms. Miller's home that will be about 7 acres. The back will be common open space. Mr. Greer said the plan is slightly different than what the Board saw last time. The road has been pushed over a little in order to meet setbacks. Mr. Greer showed a plan with building envelopes and noted the two existing homes and an aerial view of the neighborhood. Mr. Greer described the drainage on the property. Mr. Greer said that he has reviewed Mr. Diffin's comments and will address them as part of the final approval and issues that Ms. Nixon pointed out will all be corrected. Mr. Greer said there were some questions on the soils and with him tonight is Mark Hampton to answer any questions on the soil tests.

Chairman Moriarty asked if the open space will break any existing snowmobile trail or anything similar to that. Mr. Greer said there are some trails that are woods roads that they intend to leave in place but do not intend to make them a formal trail network. There is a trail network that goes along the power line but there is a gap. CMP owns the piece before it and there is no connection. Mr. Greer said that the road for the subdivision will be a private road and the applicant does not want to open it up for public access. Chairman Moriarty asked if the public is out and maybe coming off the CMP property would they be allowed to go through and Mr. Greer replied that they most likely will be allowed but the owner prefers not to see hunters there. The trails do get used by runners and walkers year round. Mr. Greer said that if the trails are abused and end up with litter than they will get posted (no trespassing).

Chairman Moriarty opened the public hearing.

Ed Libby, 145 Greely Rd., said he is an abutter on the back side of the property. Mr. Libby said there are a lot of things about this proposal that cause concern and a lot of questions. Mr. Libby stated that the proper procedure was not followed for the sketch plan review. Only a cluster subdivision plan was proposed and a choice of plans should have been presented for the Board to decide which is best for this parcel.

Mr. Libby said that the net area appears to have been calculated improperly and existing easements were not considered. Right of ways on the plan do not indicate how they were calculated and there are areas that Mr. Libby believes would be qualified as difficult to develop. Mr. Libby said he believes that there are wetlands that were omitted and this needs to be looked at.

Mr. Libby said that if you read through the application, there are lots of people who are mentioned as the owner over many documents and none of them seem to be clearly showing right, title and interest. Live Life Maine, LLC is listed as the owner in some areas and other areas show the owner as Live Solar Maine, LLC. The applicant listed on the agenda for the sketch plan was Clean Conscience Construction. Mr. Libby noted that map R04, lot 24 listed on the application is only a 4 acre lot so there is a discrepancy in the ownership and the amount of land. Mr. Libby said that Melissa Richter is listed with Patrice Miller on the deed and on a mortgage for the 4 acre parcel as the owners. Mr. Libby said that there is something shown on the maps as parcel B with 20.8 acres as the property being presented.

Mr. Libby said that if you look at the registration for Live Life Maine, LLC with the Secretary of State, there is another name that is the only name that appears to be authorized to act on behalf of Live Life Maine, LLC and that is Sam Sherry. The LLC is registered as a foreign LLC and there is a place on the registration to indicate the jurisdiction of authorization and the date that it was authorized to transact business in Maine and it is completely blank. Mr. Libby said that there is no indication that the LLC is authorized to do business in Maine at this point. Mr. Libby said a major question to the Board is who has right, title and interest and that this needs to be clarified before going further with the application.

Mr. Libby said of note, MRSA 30-A Section 4401 4.B. would prohibit the owner(s) of Map R04 Lot 24 from being subject to an application brought forward by the owner(s) of Map R04 Lot 24A. Mr. Libby said that the applicant is presenting a combined application for two lots under different ownership and that is not allowed.

Mr. Libby said there is a sketch in the Board's materials of the existing conditions labeled parcel a and parcel b with a note underneath that says "existing subdivision to be vacated" and it is not clear what is meant by this. Mr. Libby suggested that, given the confusing nature of the issues, the Board require proof of financial capacity by whomever or whatever entity is legitimately bringing the proposal forward.

Mr. Libby read the following on the sketch plan review process; The purpose of the sketch plan approval is for the applicant to submit concept plans for at least two of the following types of subdivisions and to receive the Board's decision as to which type of development is most appropriate for the site, based upon a consideration of all of the factors set forth in Subsection **A (4)**: clustered, dispersed, or traditional. **(4)** The Board shall determine which type of subdivision best suits the property in relation to the natural features of the land, adjacent properties and neighborhoods, and the characteristics of open space to be

maintained, if applicable. Mr. Libby said he witnessed the Board do a fine job of sketch plan review earlier. The Board talked about how it made more sense to spread the houses out so the resources weren't impacted as intensely. Mr. Libby said he thinks that is exactly the same conclusion the Board would have come to on this property given the chance to review a traditional application. Mr. Libby said a predominant feature of this land is extremely poor soil conditions throughout the site. It seems a likely outcome that the Board would recommend a traditional subdivision rather than concentrate 4 septic systems in the cluster area because of the high water table and the clay soil conditions. Mr. Libby said regulating the density of septic systems here would be consistent with the past practice of the Board on neighboring property, 24 Hillside, where the Board restricted an 8 acre property with similar soils from having more than one home. Mr. Libby added that the Board placed a deed restriction on the abutting 10 acre site (145 Greely Road – Mr. Libby's property) without even a finding of fact. Mr. Libby said that the Board must be consistent in its approach and treat all property owners fairly.

Mr. Libby added that since the applicant manipulated the original soil conditions in the "cluster" area by the extensive use of an excavator prior to doing the test pits the validity of the test pits is in question and subject to challenge. Mr. Libby spoke to the State Site Evaluator's Office and confirmed that the soil test pits have to be done on natural original soils. Mr. Libby showed a picture of the property in 2012 and a picture of what it looks like now and said that not only were the trees cut, but after the applicant took ownership of the property the front area had stumps excavated and soil was pushed all around. It is hard to think that the soil conditions are original anymore. Mr. Libby said there is a good chance that the test pits were not done where they were supposed to be.

Mr. Libby proposed spreading the houses out to better fit the neighborhood and because of the terrible soils. Mr. Libby said that concentrating the four wells in this area may have an adverse effect on neighboring wells. Mr. Libby noted that a requirement for a clustered development is that the open space has to include one of seven specific characteristics. There has been no mention of what characteristic qualifies this subdivision to move forward under the clustered subdivision proposal. Mr. Libby suggested that the proposal doesn't meet any of the characteristics and he said that nobody has asked nor has the applicant provided this. Mr. Libby said that it is troubling that the applicant responded to a Cumberland Lands and Conservation Commission inquiry about future development of the open space by saying "the open space is available for development in the future unless the zoning changes" when the current language in the ordinance says the open space must be maintained as open space.

Mr. Libby said that there was a question at the sketch plan review of whether the applicant would ask for a waiver for the roads. The applicant declared that they would not be asking for a waiver for the road. The requirement is for an 18' road. The applicant simultaneously says they will not ask for a waiver and that the road will be 18' and reduce to 12'. It seems to Mr. Libby that they will need a waiver to build a 12' road. Additionally, the stormwater plan would need to be adjusted to account for the compliant road width.

Mr. Libby said there are restrictions proposed by the applicant that talk about not having surface water impact the neighbors or alter the natural flow and the existing development so far has done this. Mr. Libby showed pictures in support of his statement. Mr. Libby said that the banks of the streams are caving in from surface runoff from the development that has already happened. Mr. Libby said that there is an erosion control plan and it

would be great if the Board could impose the plan on the two houses that have already been done. Mr. Libby said he is all for solar houses but he is also for protecting the water shed and not draining onto other properties and choking the streams with fallen trees.

Mr. Libby said that there is a restriction for not building more than one house on a lot and the applicant excepted lot #5 from this. Whether this is a conventional or clustered subdivision, Mr. Libby thinks it should also apply to lot #5. There is language that talks about the type of materials that can be used and that you can't use tar paper and asphalt siding and such but this won't apply to lot #5 and Mr. Libby said it should apply to lot #5 because it will impact the neighbors.

Mr. Libby said that the applicant makes a representation on #13 of the checklist that there are no existing utilities or easements. A deed submitted as part of the application includes a utility easement. Mr. Libby said that on record at the Registry of Deeds there is a second utility easement and these easements were not included or considered in the net residential acreage calculation.

Mr. Libby said for lot #5 on the plan there is no well location given. This could be because he couldn't see it because it is difficult to read and cluttered with information. Mr. Libby urged the Board to get more readable plans and said there is a symbol used on the plan that is not shown on the legend.

Mr. Libby suggested that the issue with the soils be looked into, there is a requirement on a major subdivision to do a high intensity soil survey and this has not been done yet. There is no information about the type of tier permit, which was asked for but was not given, for the stream crossings. Mr. Libby said that his message is that not only does the process need to be slowed down but the Board should back up and go back to the sketch plan review to understand this property for what it is and determine the best type of subdivision.

Mr. Libby said that there is a yurt on the property. In a letter from Patrice Miller for the building permit for the yurt it says it is an outbuilding for storage. The application also indicates it is for storage. Mr. Libby said that the permit was approved as a temporary structure and according to the zoning regulation a temporary structure is only to be used during the period that construction work is in progress for up to a 6 month period. Mr. Libby said there seems to be a zoning violation on the property. The yurt has electricity and a wood stove and he understands that there is a toilet inside with beds and a kitchen and Mr. Libby said that this needs to be looked into.

Alison Beyea said she moved to Cumberland in May of 2015. She lives directly next to the (proposed) subdivision where the current houses are and she has a 5 acre lot. Ms. Beyea said that the day she moved in was the day that the land started being cleared. Ms. Beyea said that she understands that the lot was harvested and people spoke to her about how poorly the land had been treated but when she moved in, there were plenty of trees standing and a lot of brush and every single tree was removed on the front of the property. Ms. Beyea said she started noticing the yurt because she could see it from her property. She has about 20' of trees on her land before there is a stream. Ms. Beyea said the problem is that the bank on Ms. Miller's side has been eroding and the trees are falling. This got much worse over the spring. Ms. Beyea said that there is a stream/wetland area next to the second house. There is a culvert that goes under Ms. Beyea's driveway and a huge standing pool of water has developed right next to the culvert. Ms. Beyea said she has had more water in the front of her yard and even during the drought in the summer the ground was squishy. A

huge white pine tree on Ms. Beyea's property collapsed at the end of the summer right where the pool is. Ms. Beyea said that someone that was helping her with landscaping told her this summer that her water pressure was down but she didn't think much of it and about 3 weeks ago she had no water. She had someone check it and was told her well had gone dry. Ms. Beyea said she asked if another well could affect her well and was told it could if it is in the same aquifer. Ms. Beyea said she has no idea if her water issue is connected to the development but she had plenty of water a year ago. Ms. Beyea said she has no problem with a subdivision but she is concerned about whether the land can handle this and if the right testing has been done to know. She is also concerned about the ownership. Ms. Beyea said that it is important that everyone follow the same rules and if there is an unfortunate situation with the environment we know who the players are and who is responsible.

Phil Gleason, 24 Hillside Ave., lives on the other side of Ms. Beyea's property and has lived there 14-15 years. He has observed what is going on with this site from the logging to the clearing and the development of the houses on the site. Mr. Gleason said that the addition of the two houses has improved the site. Mr. Gleason said that the site is still a "war zone" and he urged the Board to wait until spring and do a site walk. Mr. Gleason said that it is a very environmentally sensitive site with water/wetland issues and flowage issues which affect the stream that drains into the Piscataquis water shed. All of the houses on this stretch from Greely Rd. up to the power line on Hillside Ave. are on wells and private septic systems. Mr. Gleason said that given the sensitivity of water issues on the site and issues with the soil, this is an area where the Board wants to take a hard look at some of the technical issues that have been raised. Mr. Gleason urged the Board to do peer review on the soil testing or to require further soil testing and to do the same on water and flowage issues due to potential impacts on the water shed and on the abutters. Mr. Gleason said he thinks the Board needs to give the whole project a harder look and as much as he would like to see the property developed into a nice looking site which blends into the neighborhood, he thinks the addition of several more houses, wells and septic systems bears a lot of scrutiny and the Board cannot do it justice looking at it at this time of year.

Alan Blanchard, 169 Greely Rd., said this is a wonderful place to live and is a good lifestyle for him and his wife. Mr. Blanchard said he knows the property well and has walked it for 50 years or more. He shares the concerns of his neighbors with how this parcel got treated and saw it firsthand. Mr. Blanchard said he had to have some candid conversations with the man who was cutting the property because he knocked a lot of trees down along the boundary. Mr. Blanchard said he abuts the back of this property and that the stream used to run clear and now it silts up and is not clean when it rains. Mr. Blanchard said he agrees that this application needs a lot of review and things need to be put in writing. One option is to spread the housing out and he personally would be happier to keep some of the land in back from being developed so the land can recover. Mr. Blanchard urged the Board to do their due diligence and think about the land use he is trying to hold onto on the farm.

Mr. Greer showed a plan with the building envelopes and said Mr. Libby did a good job reviewing the application and pointing out a few holes in it. Mr. Greer expects that the Board will table the application tonight and he will fill in some of the holes. Mr. Greer said that he thinks they have the right plan for the project and that he did not show a conventional plan because it would add another 500' to 600' of road and crosses another stream and would impact more of the site. The cluster plan jumped out as the right way to go with this project

and he thinks the Board agreed at the sketch plan meeting. The lots are not small, they are 1.5 acres/60,000 sq. ft. and this provides enough area to put the well and septic systems on them. Mr. Greer said because of the 75' setback going all the way around the outside, some of it is a little tight but they do comply with the cluster provision. Mr. Greer said he will provide some more background on how they got here and why the open space works for this project. Mr. Greer said with him tonight is Mark Hampton who would like to talk about some of the soils and wetland mapping he has done.

Mark Hampton, Mark Hampton Associates, greeted the Board and said he is a licensed site evaluator and a certified soil scientist in Maine. He has practiced for more than 25 years and the last 17 years has had his own business. Mr. Hampton completed the wetland delineation and the preliminary soil evaluation on this property. Mr. Hampton said that this property was a scar before this application and before the applicant owned the property. When it was cut over, it was left with a lot of slash. After Mr. Hampton completed his wetland delineation, he told Mr. Greer that even though the site was cleared, it was the worse site he has ever walked on. Mr. Hampton said that the soils are marine lacustrine soils that are very typical for this part of Cumberland. The loams are silty clay and if they are exposed they can be erosive. Mr. Hampton said that two homes already exist so he only did soil tests on three lots and one lot near Hillside Ave. had been stumped and regraded. Mr. Hampton said he did the soil tests in areas that exhibited soil horizon development so they were not cut completely down to the hard pan and also were not filled with material over the top. Mr. Hampton said when he is on a site, he does not do his tests in the middle of a disturbed area. Mr. Hampton feels that his test pits were done in areas that were representative of the original soils on the site and the other two lots had test pits done in areas where stumps were still existing. Mr. Hampton said that he is confident about the work he has done and that it will hold up under any type of scrutiny.

Chairman Moriarty asked Mr. Hampton for his thoughts about the location of wells. Mr. Hampton said he is not a geologist but 60,000 sq. ft. lots are typical of what is being developed across Southern Maine today. Mr. Hampton noted that the Maine State Plumbing Code requires 100' of separation between wells and septic and these lots provide adequate separation distances. The soils are a high run off soil so if there is a thunderstorm, the water will run off quicker than if on sand or gravel. Mr. Hampton said that if we were looking at dug wells drying up, that may be a concern that could be addressed, but we are talking about drilled wells. Drilled wells are never associated or attached to ground water running along the surface. The purpose of having a casing on a drilled well and a seal at the bedrock/casing interface is so that you don't get ground water that is silt laden and potentially has bacteria. Mr. Hampton said that the issue with wells is not a surface issue, it is more of an aquifer issue and he really can't address that.

Chairman Moriarty confirmed that that the soils are suitable for septic. Mr. Hampton agreed and said that the minimum requirement for State subsurface plumbing rules is that there is a limiting factor, water table or ledge at least 9" below the surface or deeper. Mr. Hampton explained how this site will meet the requirements.

Chairman Moriarty closed the public hearing.

Chairman Moriarty asked Ms. Nixon if she received a packet today from Mr. Libby. Ms. Nixon said the information was received after she had left this afternoon and she will forward it to the Board.

Chairman Moriarty said that a lot of information has been received and he feels the item should be tabled. Mr. Sherr agreed and said that Mr. Greer mentioned that the applicant may be willing to table this so that they can address the comments from the public tonight as well as Mr. Libby's package of information. Mr. Sherr said he also noticed some questions that have been identified by the Town Planner and the engineer review. Mr. Sherr said maybe the applicant could work with the abutters on some of the comments heard tonight to get some items resolved. Mr. Sherr noted that net area calculations, easements/right of ways and ownership are factors that need to be looked into.

Mr. Boivin said he is concerned about the stabilization of the site and the runoff but he is not sure how to address these. Mr. Sherr said the Board does have some latitude here and the soil and erosion control plan is a requirement of the State and the Board can implement conditions of approval as well to make sure things are addressed during development. Mr. Boivin said if this project goes nowhere and the applicant backs out, the issues are still there. Mr. Sherr said that there are State laws & regulations and Town ordinances and everybody has the option to file a complaint or address these issues outside of the Planning Board.

Mr. Boivin said he would like to see a traditional subdivision plan for this site. Mr. Saunders asked Ms. Nixon to explain the formal rules for a sketch plan. Ms. Nixon explained that the ordinance is written in a way that the applicant has to provide two plans if they are proposing a traditional subdivision plan. Typically the Board has expected subdivisions to be clustered whenever possible because it does lessen the impact on the environment. If a cluster subdivision design is the only plan shown, the Board hasn't asked for a traditional plan to be submitted because the understanding is that whenever possible, a cluster subdivision is preferable. Ms. Nixon said the actual language of the ordinance says that the Board will require that the development be a cluster subdivision if one or more of certain things are met and then the ordinance gets into subjective determination on the Board's part. In looking at the criteria, Ms. Nixon thinks the Board has the grounds for having determined that this is appropriately developed as a cluster subdivision. Ms. Nixon said there is no harm in asking for a traditional plan to be submitted but, as Mr. Greer explained, the length of road on a site that's already been harmed doesn't have a lot of validation for why a traditional plan would be better unless it can ameliorate the impact on abutting properties, and that may be. Mr. Sherr said he thinks that Mr. Greer mentioned a traditional subdivision plan in the sketch plan review and are proposing a cluster for the reasons noted tonight. Mr. Sherr said that if the Board feels strongly to formally have a traditional subdivision plan submitted than it makes sense. Mr. Greer said they will be happy to put together a conventional plan will try to answer as many of Mr. Libby's questions as he can.

Mr. Sherr moved to table the preliminary application for Solar Way 5 lot major subdivision, Tax Map R04, Lot 24, seconded by Mr. Saunders and **VOTED, 7 yeas – unanimous, motion carries.**

4. Public Hearing: Recommendation to Town Council re: amending or repealing Section 315-28.2 Village Center Commercial Multiplex Overlay: Chairman Moriarty said that this item has come up in the context of a valid, pending application for some multiplex housing that the Board has had a number of meetings for and the item tonight is not to discuss this particular application. The Town Council has made a request to the Planning Board to recommend back to the Council whether the multiplex overlay ought to be done away with, amended or retained.

Mr. Shane showed a map identifying the lots that are left in the Village Center Commercial (VCC) zone that would apply to the overlay district that allows for minimum 5 acre lots to have a residential component as part of a master plan. Mr. Shane reviewed the applicable lots. Mr. Shane said that when the Town Council talked about sending this request to the Planning Board, the Council thought about modifying the ordinance to require that the commercial be built first or that there be a 300' to 400' setback from Route 100 but Mr. Shane doesn't know how many more times this will come up. Mr. Shane said that the Board's recommendation can be anything from rescinding the VCC, doing a setback or a combination of things that the Board may come up with. Mr. Shane said looking at this with only 3 lots remaining with potential development, he would rather leave them for potential commercial development rather than encumber them with anything residential.

Mr. Davis said the wording of "overall master plan" is really stuck in his head and has no value from what he has gathered. Mr. Davis asked if, regardless of what you do for a master plan, at the end of the day does it have any strength to it or is it binding in any format? It may have some value but to Mr. Davis, without having value of a clear master plan with a binding element to it, he doesn't see where it has a place. Chairman Moriarty said that as he reads the ordinance, the master plan is not binding and it simply has to be submitted. Chairman Moriarty said it may or may not be realistic or feasible, some things may not come to pass for reasons beyond control of the owner and some things may be more conceptual than real.

Chairman Moriarty said that the Board has learned through the Town Attorney that under the current ordinance, the Board cannot stagger the sequence of events. The commercial parts can't be required to take place first before someone comes forward with a multiplex proposal. The multiplex can be the first thing that actually becomes a reality on the ground and the rest of it may never see the light of day. Chairman Moriarty said another concern is that there is nothing that requires the multiplex to be in the more remote area of the parcel as opposed to that portion which fronts Route 100. Chairman Moriarty said that if a master plan showed multiplex right on Route 100 and commercial lots in the rear, chances are it would never get developed because the commercial would be obscured out of site and it would look more residential than commercial which is contrary to the intent of the VCC as it was conceived. Chairman Moriarty said that if there is merit in maintaining a multiplex or residential option, he thinks it would be best, to prevent the Board from getting into a bind, to do away with the multiplex at this point and have it studied. Chairman Moriarty also said that the Town Attorney could draft something that could mandate a sequence of events and give legal impact to the presentation of a master plan. Chairman Moriarty said that his sense, based on what the Board has been through and heard from the public, is that it is best to repeal the multiplex and maybe study it in greater detail in the future. Mr. Davis said he doesn't believe the multiplex overlay has accomplished what it was trying to do.

Chairman Moriarty opened the public hearing.

Jim Schmidt, 4 Middle Rd., said he doesn't disagree with the practicality of the residential overlay given that there are very few sites that it seems to apply to but he personally, in the interest of the continuing effort to develop the retail and office industrial space along Route 100, would like to see the Board consider what they can do to encourage development along Route 100 that will have an impact on potential commercial development. The big problem, as things stand now, is that people go to Gray or West Falmouth to get on the

turnpike and this sucks a lot of traffic out of the Route 100 traffic flow. Mr. Schmidt said that for a major artery Route 100 has low traffic counts. Mr. Shane has been working at getting a turnpike entrance in the area which would have a major boost to commercial development. Mr. Schmidt said that the weaknesses of Route 100 for business is a very low traffic count for an arterial road, very low population density and long commute times to get into Lewiston/Auburn or Portland so it is a difficult site to sell particularly to retail or traffic oriented businesses. Mr. Schmidt said the area is not busy enough for a high traffic type of use and it's not cheap enough for someone that wants to locate a real estate office or something like that. Mr. Schmidt would like to see the Board take an active role in trying to figure out what they can do mainly to boost the population density along the Route 100 corridor and maybe do something like make the VCC zone apply to property that is within a certain distance of a major intersection so that potential other sites are free for residential development that will in turn develop some traffic and population for businesses to draw from. Mr. Schmidt said he does not know if the Town has ever tried to get input from different types of businesses.

Chairman Moriarty said that several years ago he chaired the Route 100 Advisory Committee which was a three year project. When the Committee started there were two zones along Route 100, Highway Commercial, a much smaller version of the VCC, and the rest of it was called Local Business. Chairman Moriarty said that the Committee came up with 5 new zones that were designed to attract business with a focus in the VCC and to prevent the corridor from becoming entirely residential because the Committee saw commercial potential. Chairman Moriarty said since the Committee finished their work and the zones were adopted public water has been brought there and there has been activity regarding a highway exit, which will be a slow process. Chairman Moriarty said that what Mr. Schmidt is proposing would probably require more than just the Planning Board but possibly a new citizen committee to look at what took place 7-8 years ago, how it has worked and what could be done. Mr. Schmidt said he thinks this would be useful.

Rhonda Small, 34 Maurice Way and her husband's business at 198 Gray Rd., said back in 1990 when there were two zones, Bud's Golf moved from the corner and built under the Local Business zone. Ms. Small said the VCC is working, we have the Board Barn, Skillin's and her husband David's business (DJ Small Plumbing). Ms. Small said they specifically chose to go to this part of town because of the VCC zoning. Ms. Small urged the Board to repeal the overlay and said it has to be kept commercial. Chairman Moriarty said there is no question about abolishing the commercial zone, only the multiplex overlay.

Mr. Saunders questioned if a master plan is really a site plan that has the same teeth that a site plan does. Ms. Nixon said no, they are different things. Mr. Davis said the legal opinion was no. Mr. Sherr said he thought legal counsel said that the Board can make the master plan a part of the application and approve it and if a project is not going to be developed as shown on the plan, the applicant has to come back before the Board for a change of that master plan if the plan was part of the approval process. Chairman Moriarty said that the Board doesn't really approve the master plan. Mr. Sherr said the town's counsel said the Board could make it a condition of approval that the master plan be part of the application and is part of what is being approved. Mr. Davis said he thinks it is based on if the applicant agrees to submit a master plan for approval but there is nothing binding them to agree. Mr. Sherr said he thinks the town's counsel is saying that by the Board approving the master plan it gives it teeth meaning that the applicant doesn't have

to sequence that they build something first or second but if and when something is to be built on an area that is part of the master plan that was not originally shown, the applicant has to come back to the Board for an amended master plan for the site.

Mr. Saunders asked if there is a reason we can't change "master plan" to "site plan". Ms. Nixon said that a site plan is for one project and a master plan is showing how a whole site could be built. Ms. Nixon added that the drafting of the ordinance didn't anticipate that someone would want to put residential along Route 100, the anticipation was that the residential would be put further back so the ordinance needs some work. Mr. Saunders said that in the case of the one project that is going forward, the site plan for the commercial got approved before the residential. Mr. Saunders asked could the ordinance say that there has to be an approved site plan for commercial before the Board will approve residential. Ms. Nixon replied yes, but it doesn't say this now. Mr. Saunders said that just because there is an approved site plan, the applicant does not have to follow through and build it but it can't be anything else unless the applicant goes back before the Board. Chairman Moriarty noted that the site plan could lapse after a year if it is not built. Ms. Nixon said then the applicant could not do anything. Chairman Moriarty said the applicant could come back with a different plan after an approved plan lapses and Ms. Nixon agreed. Mr. Saunders said the town did the overlay because they thought it was a planning tool to increase the likelihood of commercial development. If residential development bringing in more commercial development is a valid premise then Mr. Saunders is not opposed to continuing to have it as long as it meets the town's goals.

Mr. Boivin said that he thinks there are a lot of open items and he is in favor of repealing the overlay and studying other options.

Mr. Berrett asked if the Board could propose that the Town Council temporarily suspend the overlay until it can be studied with the option of doing away with it or modifying it. Chairman Moriarty said that in theory the Council could do a moratorium but that would be time limited to a six month moratorium and this could be a drop in the bucket compared to how much time it could take and the moratorium could expire. If the Town repeals, then it is an open slate automatically and the town could take whatever time they need to study and get input.

Mr. Davis moved to make a recommendation to the Town Council to repeal section 315-28.2 Village Center Commercial Multiplex Overlay, seconded by Mr. Berrett and **VOTED 5 yeas, 2 nays (Maloney-Kelly & Saunders), motion carries.** Chairman Moriarty noted that this is a recommendation to the Council which means this will be on the Council's agenda in January and the Council will hold a public hearing.

G. Administrative Matters / New Business: Chairman Moriarty asked Ms. Nixon for an update on the status of the Allen's Farm project. Ms. Nixon said that the tax lien foreclosure process has been suspended because the oldest year of taxes has been paid. Ms. Nixon asked Mr. Schmidt if he has a better sense of a closing date for the properties. Mr. Schmidt said the little blue house piece has closed and they have not closed yet on the Burgess piece but expects to soon.

Mr. Boivin emphasized the importance of the engineer reviews for the town because a lot has come out from the Solar Way project and some of the issues were caught but there seems to be quite a bit more. Mr. Boivin added that when a member of the public brings up a lot of items, he feels like he personally is kind of letting things down. Ms. Maloney-

Kelly agreed. Mr. Boivin said he doesn't know how to address this. Ms. Nixon agreed and said some of the things that were brought up were related to the LLC and the town doesn't look at the LLC and not everything that was said is correct. Mr. Sherr said there has to be some time to do some fact checking. Ms. Nixon agreed and said that she and Mr. Shane talked about the need for a more thorough peer review this morning at the weekly Planning & Code meeting. Chairman Moriarty said that one red flag is when you see multiple LLCs, this may be a clue to call the Secretary of State's office. Ms. Nixon said the LLCs are not looked at and Chairman Moriarty said rather than getting caught unawares, the Planning Board could ask for LLCs to be looked at. Mr. Saunders said the Board can't say on this certain case we will ask for it. Mr. Sherr said there are two points the Board can ask for, financial capacity is one and also right, title and interest and to him these are the most important. Mr. Sherr said by verifying financial capacity and right, title and interest then we verify that the applicant that is applying is the owner of the site and has financial capacity. Chairman Moriarty said he is not suggesting the Board pick and choose but he thinks right, title and interest ought to be checked out before the application hits prime time. Ms. Nixon said that if the Board wants to have checking the LLC status be part of the application, then it has to be added as part of the application checklist, otherwise she doesn't know to ask for it and the town doesn't review it.

H. Adjournment: Mr. Saunders moved to adjourn the meeting, seconded by Mr. Boivin and **VOTED 7 yeas – unanimous, motion carries.**

A TRUE COPY ATTEST:

Stephen Moriarty, Board Chair

Christina Silberman, Administrative Asst.