

**Planning Board Meeting - Minutes
Tuesday, December 19, 2006
Cumberland Town Hall
290 Tuttle Road, Cumberland, Maine
7:00 PM**

A. Call to Order

The meeting was called to order at 7:00 p.m.

B. Roll Call

Present: Tom Powers, Board Chair, Bill Ward, Vice-Chair, Beth Howe, Bob Couillard, Mark Robinson, Chris Neagle, Bill Richards

Staff: Carla Nixon, Town Planner, Pam Bosarge, Board Clerk

C. Approval of Minutes of November 21, 2006

Ms. Howe moved to approve the minutes of November 21, 2006 with very minor technical corrections.

Mr. Richards seconded.

VOTE: Unanimous

D. Consent Calendar / De minimus Change Approvals:

There were no consent calendar items.

E. Hearings and Presentations:

1. Public Hearing: Shoreland Zoning Permit - To construct a 4.5' x 80' permanent pier on pilings with an attached 3.5 x 4.5 ramp to a 16' x 20' seasonal float, at 23 West View Road., Chebeague Island, Tax Assessor Map I04, Lot 90B in the Island Residential District; Peter and Alice Mellin, Owners; Falls Point Marine, Inc., Representative.

Ms. Nixon presented background information as follows: This pier request is the first to be reviewed under the amended Piers ordinance, which requires notification to all abutters within 1,500 feet. In addition to additional abutter notice, applications are submitted to the Town Council and the Coastal Waters Commission for a separate review. A site walk has been held and the Town Council has issued a wharfing-out permit.

The public portion of the meeting was opened. There were no public comments.

Mr. Couillard asked if there had been any conversations regarding building a common pier.

Mr. Becker, of Falls Point Marine stated it was discussed.

Mr. Couillard asked if there would be any lights on the pier.

Mr. Becker stated yes, downward pointing LED lighting along the walkway surface; the lights will have low impact and are currently being designed.

Mr. Ward asked where the wharf would be stored during the winter.

Mr. Becker stated the float and ramp will be stored off-site.

Mr. Neagle asked if the applicant had a deed showing ownership of the intertidal zone.

Mr. Becker stated he did not have the answer; however, the applicant has a deed which is unclear on intertidal ownership.

The Board reviewed the application and the location of the pier in relation to the intertidal zone.

The Board reviewed the findings of fact:

FINDINGS OF FACT:

The Board is asked to review the following findings of fact, and then make a ruling on the application. Upon positive findings for each requirement, the Shoreland Zone Permit can be granted.

Section 418 (pg. 115):

1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
2. The location shall not interfere with developed beach areas.
3. The facility shall be located so as to minimize adverse effects on fisheries.
4. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.

Based on the submission of the applicant and review by the DEP, ACE and Cumberland Coastal Waters Commission, the standards of this section have been affirmatively met.

Section 423.4 (pg. 125)

1. Access from shore shall be developed on soils appropriate for such use and constructed so as to control erosion.
 2. The location shall not interfere with developed beach areas.
 3. The facility shall be located so as to minimize adverse effects on fisheries.
 4. The facility shall be no larger in dimension than necessary to carry on the activity and be consistent with existing conditions, use, and character of the area.
 5. Not relevant.
 6. Not relevant.
 7. Not relevant.
- } Pertain to structures built upon wharves or piers.

Based on the submission of the applicant and review by the DEP, ACE and Cumberland Coastal Waters Commission, the standards of this section have been affirmatively met.

Section 602.5.1.3.3 (pg. 171)

1. Will maintain safe and healthful conditions;
2. Will not result in water pollution, erosion or sedimentation to surface waters;
3. Will adequately provide for the disposal of all wastewater.
4. Will not have an adverse impact on spawning grounds, fish, aquatic life, bird or other wildlife habitat;
5. Will conserve shoreland vegetation;
6. Will conserve visual points of access to water as viewed from public facilities;

7. Will conserve actual points of public access to waters;
 8. Will protect archaeological and historic resources as designated in the Comprehensive Plan;
 9. Will not adversely affect existing commercial fishing or maritime activities in a Commercial Fisheries/Maritime Activities Overlay District;
 10. Will avoid problems associated with flood plain development and use;
 11. Is in conformance with the provisions of this article, and;
 12. Is not in a flood plain adjacent to tidal waters (Resource Protection/Flood Plain Overlay).
- Based on the submission of the applicant and review by the DEP, ACE and Cumberland Coastal Waters Commission, the standards of this section have been affirmatively met.**

SECTION 424.3.5 – APPROVAL STANDARDS AND CRITERIA

The following standards shall apply to all piers, docks, wharves, floats, bridges, and other structures and uses extending over or beyond the normal high-water line of a water body, submerged lands or wetland:

- .1 Access from shore shall be developed on land and soils appropriate for such use and constructed so as to control erosion.
- .2 The location shall not unreasonably interfere with developed or natural beach areas.
- .3 The facility shall be located so as not to unduly interfere with fisheries.
- .4 The facility shall be no larger in dimension than necessary to carry on the proposed activity.
- .5 No new structure shall be built on, over or abutting a pier, wharf, dock, bridge, float or other structure without an application and approval justifying the functionally water dependant use of said addition.
- .6 No new structure shall be built on, over or abutting a pier, wharf, dock, bridge, float or other structure shall be converted to a residential dwelling unit or any use other than a functionally water dependant use in any district.
- .7 Lighting on piers, wharves, docks, bridges, floats and other structures should be designed and installed to minimize negative impacts on other properties and safe navigation at night. Negative impacts include excessive lighting and unnecessary glare that can be a hazard to navigation.

Public and commercial facilities shall submit a lighting plan for review by the Planning Board for safety and compatibility with the proposed use.

All lighting shall be in conformance with all Federal, State and local standards including Coast Guard Regulations for lighting of piers or wharves where applicable.

- .8 Except in the General Development District and Commercial Fisheries/Maritime Activities District, structures built on, over or abutting a pier, wharf, dock, bridge, float or other structure extending beyond the normal high-water line of a water body or within a wetland shall not exceed twenty (20) feet in height above the pier, wharf, dock or other structure.

.9 Structures shall not unduly interfere with passage along or within the intertidal zone in order to protect established colonial rights for fishing, fowling and navigation. This may require accommodations such as steps or pier elevations that would allow passage over or beneath a structure.

.10 Where a waterfront structure is proposed that will serve more than one property, the property owners shall submit to the Town a proposed easement deed demonstrating that permanent access and maintenance rights shall be granted to the parties sharing the structure. The parties shall submit to the Code Enforcement Officer proof of recording of the easement after its review and approval by the Town.

Based on the submission of the applicant and review by the DEP, ACE and Cumberland Coastal Waters Commission, the standards of this section have been affirmatively met.

Mr. Neagle moved based on findings and testimony to grant with the standard and proposed conditions of approval a Shoreland Zoning Permit to construct a 4.5' x 80' permanent pier on pilings with an attached 3.5' x 4.5' ramp to a 16' x 20' seasonal float, at 23 West View Road; Chebeague Island, Tax Assessor Map I04, Lot 90B in the Island Residential district; Peter and Alice Mellin, Owners; Falls Point Marine, Inc., Representative.

Mr. Ward seconded.

VOTE: 5 in favor (Neagle, Ward,
Couillard, Powers, Robinson)
2 opposed (Howe, Richards)

Standard Conditions of Approval

This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to 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.

Proposed Conditions of Approval

1. That the structure is constructed consistent with the submitted plans.
2. That all fees be paid prior to receiving a building permit.
3. That the applicant provide the Town with a copy of the deed to the property; and that deed be reviewed by the Town Attorney and (Mr. Neagle of the Planning Board in an advisory capacity only) to determine if the applicant owns the inter-tidal zone; if it is determined that the applicant does not own the inter-tidal zone or the applicant wants to move the support structure for the end of the pier below the mean low water mark, that the applicant obtain a submerged land lease from the Bureau of Public Lands for the structure; if required.

2. Public Hearing: Preliminary Plan Review - Cumberland Foreside Village a 12-lot major subdivision with a mix of commercial and possible residential uses. Tax Assessor Map Ro1, Lots 7,8,8A, 11, 11B; Stephen Mohr, ASLA, Mohr & Seredin Landscape Architects, Inc., Representative; Cumberland Foreside Village, LLC, Owner.

Ms. Nixon presented background information as follows: The applicant and owner is David Chase, dba/Cumberland Foreside Village, LLC (CFV) of 50 Gray Road, Falmouth, ME 04105. The applicant is represented by Stephen Mohr of Mohr and Seredin. Thomas Greer, P.E., Pinkham, and Greer are the design engineers. The proposed subdivision is located on U.S. Route One, Map R-01, Lots 11,11B, 8, 7, 8A.

The original parcel was 67.2 acres. The 8.8 acre Town lot and the 3 acre Seafax lot have been deducted from this leaving a balance of 55.4 acres. This parcel has been contract-zoned to allow for a minimum of 6 commercial lots and a maximum of 134 residential lots. The applicant is uncertain at this time as to the actual ratio of residential to commercial. The project will be built out incrementally based on lot sales. The initial construction will consist of the site preparation work for Lots 7-12. Schematic site plans for Lots 7-12 have been included for informational purposes.

Outside Agency approvals are outstanding. The M.D.O.T. permit was submitted this week. The DEP application is still in process. The Cumberland County Soil and Water Conservation Commission approval is still outstanding. Site plan applications will be submitted for each lot when ready for development. Ms. Nixon stated it might be best to have Stephen Mohr review what has changed and address the review comments.

HISTORY:

- Sketch Plan Review and Recommendations to the Town Council on the contract zone.
- The Planning Board conducted a site walk in April with the Town Council.
- July 12, 2006: Preliminary Plan Review: Tabled by Board.

Mr. Stephen Mohr, of Mohr, Seredin Landscape Architects, stated he was present this evening with David Chase, Applicant and Tom Greer of Pinkham and Greer; Pinkham and Greer has provided the civil engineering, and Mohr and Seredin has done the land planning and permitting. Mr. Mohr presented a quick overview of the plan development and refinement in the past five months. Mr. Mohr reviewed the master plan for the project; the proposal is a 12-lot subdivision with one stand alone lot to the north. There are 11 clustered lots in the main core of the project; a new access road (Sky View Drive) will be built. There will be 5-lots along the front of the property. The development is governed by a contract zone. Since the last planning board review the applicant has put together the full engineering drawing and submitted them to the Town for peer review, this was done in August. They received comments on August 10th from Gorrill - Palmer; these were addressed in September and are back with comments in this submission in late November.

Mr. Mohr reviewed the following:

- Road, sewer, and stormwater, Gorrill Palmer and Chris Baldwin of CCSWCS are reviewing the submission for stormwater.
- Development of lots- A development scenario for each lot has been submitted for peer review, for approval of total impervious area and for build out in terms of total construction of the site, for buildings; warehouse and office use.
- Landscape and road re-vegetation of the site: The plan shown was one of full development. Under the terms of the contract zone there is a specific two year period to excavate get the grades and site prepped on the top of the hill. The previous plan was the project at full build out; based on the traffic study in 2011. The current design is the project at 21/2 years after approval. The road is built up and in the area at the top has been re-graded and stabilized; there is a series of stormwater basins installed for stormwater management, for the area that was forest that is now open meadow. This is the interim development plan. What have been submitted to the Town are the documents for both; one with the site cleared, and road and utilities installed and the site stabilized. The other set is the development at full build out. These are the same plans that have been submitted to DEP for approval.
- The peer review engineer's questions from Gorrill Palmer are technical questions such as swale sizes, detention areas, under drains and final details on stormwater management.

- Mr. Oulton, of MACTEC has made comments on inverts on the sanitary sewer and specific alignment of pipes; which are being addressed.
- MDOT traffic permit: the initial traffic study was done in late August, which was submitted to the Town and MDOT in September. There was a scoping meeting with MDOT in October to look at the specific scope prepared by Mr. Bray. Based on the October meeting they needed to re-count several intersections, that information has been added and submitted to MDOT on December 18th.
- Mr. Mohr reviewed the plan of Route One at full build-out based on Mr. Bray's traffic report. The only driveway that would require improvements is the main entrance, Sky View Drive. If this is built out at the square footage shown on the plan which is a little over 3,005 sq. ft. of that square footage a little more than 2,000 sq. ft. is up off from Sky View Drive. The trip generation from that area results in the need to widen Route One and create a stacking lane for left turn in on the north side of Route One, and a deceleration lane for right turning into the project. The alignment is not encroaching to the east, but letting all the improvements move to the west. Mr. Mohr reviewed the proposed road changes. The proposal is to push the crown to the west. The closest driveway is Falcon Drive; based on the existing design speed of 50 MPH and the stacking length of 100' and the MDOT design manual this alignment of through-lane passing down and to the right southbound with northbound staying in its current lane paved and a raised island and the same on the south end would meet required standards. The expansion to the west maxes out at 14 feet.

The Town engineer and Ms. Nixon had suggested interconnectivity from Sky View Drive with the Town lot. In the submission to the Town they had looked at a temporary connection into lot 5 from the Town Lot, which is shown in accordance with the contract zone the developer will be building in the first 150 feet of road on the Town lot. The total number of curb cuts is one for lot 6 as it is a stand alone lot. Lots 4 and 3 share a common curb cut. Sky View Drive serves as the main access for lots 1 and 2. There will be a total of five curb cuts.

Mr. Richards asked if moving the road to the west would infringe on the buffer.

Mr. Mohr stated in one area, they will be losing about 15 to 20 feet of the vegetation will be lost at the intersection. The existing tree line will be at the edge of new pavement.

Mr. Neagle asked if the Town's lot would connect behind the buildings to Sky View Drive.

Mr. Mohr stated yes, these are not intended to be a public way.

Mr. Mohr referenced Ms. Nixon's July memo which showed development on the Falmouth side; which were under the control of Peter Kennedy. Mr. Kennedy has withdrawn his application; there are no longer any pending applications on the adjoining land in Falmouth. The current plan submission shows construction diagrams for the sidewalk for Route One and the internal roads. The sign details have been altered to reflect comments from the Planner. The traffic study has been submitted. There is a geotechnical study being completed by Mr. Sweet, this should be submitted to the Town within the week. The applicant is waiting for comments from Gorrill-Palmer regarding individual lot build out and under drains and drainage improvements. Mr. Mohr reviewed the remaining Planner's comments as follows: The applicant is expecting DEP approval in mid January. The wetland authorization permit has been received from Army Corps. The DEP will re-issue their wetland authorization permit for 8,000 sq. ft. of alteration. Chris Baldwin is finishing his review for CCSWC.

- Traffic generation has been looked at by Mr. Bray and the build out anticipates 305,000 sq. ft. being built out by 2011, of that 305,000 sq. ft. somewhere between 25,000 and 50,000 sq. ft. is still under the 100 trip ends. Some building construction can be done prior to a MDOT traffic generation permit being issued. The applicant will have the ability to move forward with sale of these lots and buildings prior to required traffic improvements.

The public portion of the meeting was opened.

Mr. Tom Foley stated he was representing the True Spring condominiums with some responsibility for the Hawks Ridge condominiums. Mr. Foley stated the concern of residents is traffic, the number of curb cuts and the impact of traffic safety on Route One, with regards to impact on their developments and overall safety for the community on Route One. Mr. Foley summarized he felt it would be inaccurate to assume they can have safe access in and out of their developments and commuters on Route One will be at greater risk. If there was an obstruction on Route One traffic would have to be re-directed to Route 88. Route One is a major collector as an alternative stretch for Route 295. MDOT does not want to put in traffic lights to impede the flow of traffic along Route One. He feels there are serious concerns of safety for Route One. He would encourage the Planning Board to not grant any approvals until they have an accurate report on traffic and safety along Route One.

Mr. Cimino of True Spring Farm asked whether consideration had been given to move the curb cut across from True Spring. His also stated he understood the road improvements would be covered by a bond, are the elements for the improvements to Route One also going to be covered with a bond.

Mr. Charlie Thomas of 20 Falcon Drive echoed Mr. Foley's and Mr. Cimino's comments. They would prefer two curb cuts, one for Sky View Drive and the stand alone lot.

Mr. Mohr addressed public comments as follows:

- Access into the Town lot meets the MDOT regulations for off-set entrances. If the entrances were aligned the buildable land on the Town lot would be diminished due to the location of wetlands.
- Curb Cuts: Curb cuts have been a point of discussion since the beginning of the project; the curb cuts have been reduced from the allowable amount stated in the contract zoning agreement. The current plan has reduced curb cuts by one.
- Bond for improvements: David Chase will be providing a bond for the improvements; this will be in stages. There will be a bond during the first two years of stabilization. The improvements within Route One will also have to be bonded.
- Traffic safety: the plans and information that were submitted to MDOT in September looked at curb cuts and determined at full build out with the traffic improvements in place there will be safe access as determined by Mr. Bray. Gorrill-Palmer concurred with the trip generation and adequacy of the report. Gorrill-Palmer did not give an opinion on the proposed improvements; however, the developer stated based on MDOT design standards these are what will be required. Mr. Bray has determined they can meet the safe and adequate access on Route One. The Johnson Road intersection is signalized, and the signalization is working. If the information changes this would be presented back to the Board.

Mr. Mohr referenced Ms. Nixon's question regarding financial capacity. There will be a letter from the bonding agency put in place, the sewer user units are reserved, and will be purchased prior to final approval. Mr. Mohr stated he felt the applicant had met the requirements for preliminary approval, understanding that MDEP and CCSWC and MDOT approvals are needed for final approval.

Mr. Foley of True Spring Farms stated the MDOT received the traffic study on December 18th. The package has been received; MDOT has 14 days to determine completion and then 90 days to respond. At the scoping meeting the MDOT did not approve the curb cuts. The curb cuts are a major issue as abutters. Mr. Foley stated he felt it would be irresponsible to go forward without information for the traffic.

The public portion of the meeting was closed.

Mr. Neagle stated this is a great project. Mr. Neagle asked who would build the driveway across from the Town lot.

Mr. Mohr stated in terms of the contract Mr. Chase would build the first 100' or 150' across the Town's property to connect to lot 5.

Mr. David Chase, owner stated the curb cut on the Town lot is a result of comments from Town and peer reviewer. He has not negotiated anything with the Town to connect the entrance for lot 5, from the Town lot. He would rather not go through that process, he would like to keep his driveways on his property, however, he is willing if the Town would like him to.

Mr. Neagle stated he would assume Mr. Chase would give the Town an easement over the driveway to get to Sky View Drive.

Mr. Chase stated the road will be a parking lot connector, not a road.

Mr. Neagle stated the C2.3 plan that shows parking lots is not what the Board is approving tonight. The current plan still shows an entrance for lot # 5. Did the traffic review take into account one less driveway? .

Mr. Mohr stated yes, Mr. Bray's review considered the original location off lot 5 for a curb cut

Mr. Neagle stated he attends the same church as Mr. Thomas. Mr. Neagle stated when he sees traffic reports by Mr. Bray that have been reviewed and approved by the Town's engineer Gorrill-Palmer and ultimately will probably be approved by MDOT; he felt it would be irresponsible for him to second guess those professional opinions.

Ms. Nixon stated Tom Gorrill had not issued an opinion, the current traffic study was submitted this week. His previous comments were from October.

Mr. Neagle asked what had been added since October.

Ms. Nixon stated the site plan information has been added, the threshold concept, this will be reviewed by Tom Gorrill.

Mr. Neagle stated the Town engineer does a great job in protecting the public.

Mr. Mohr stated the trip generation figures that were submitted to MDOT are the same that were previously submitted, the only thing that has changed are the extent of the area covered. MDOT required that Mr. Bray study the intersection at Bucknam Road and Interstate 295 and up to the on-ramps at Tuttle Road.

Mr. Powers clarified that what is being reviewed this evening is Preliminary plan review.

Mr. Robinson stated he too had concerns regarding curb cuts, but will wait for the MDOT report. This is a huge project which will require an immense amount of review. He felt the application tonight is missing components required for preliminary review. He voiced concern of the applicant having issues addressed prior to coming to the Board. Mr. Robinson also voiced concern about drainage and improvements. Mr. Robinson asked about maintenance of the infrastructure.

Mr. Richards asked about clarification on preliminary criteria.

Ms. Nixon stated they have struggled with this question in the past. Applications should have everything near completion for preliminary. The MDOT and peer review engineers have not reviewed the traffic study. MDOT comments could result in changes to the plan. Tonight the Board will review Autumn Ridge for both preliminary and final plan approval. This project was tabled pending DEP approval. It was a very similar situation.

Ms. Howe asked about the elevation between the lots along Route One and the interior lots, underneath Sky View Drive, and how would the slopes retain the stormwater.

Mr. Mohr stated there is a flat area, then a drainage area and a back slope 1 to 1 that ranges from 12' to 25' in height. Then up onto another flat table above at Sky View Drive.

Mr. Greer of Pinkham and Greer stated it doesn't retain the stormwater, there will be underground soil filter system, and it is not the slope that does the retaining it is the basin at the top. There is a geotechnical study that will show the stability of those slopes.

Ms. Howe asked about pedestrian connection between the lots on Sky View Drive and Route One.

Mr. Mohr stated there is a proposed sidewalk along Sky View Drive, there is no proposed walkway across the slope.

Ms. Howe voiced concern of the loss of buffer along Route One.

Mr. Mohr stated the sidewalk is in the Route One right-of-way and is a specific recommendation from the contract zone.

Mr. Couillard stated he was surprised that ten items were outstanding, he thinks the infrastructure for the project should be built out by the developer and not individual lot owners.

Mr. Ward stated he respects this is a complex major project, it is a good project for the community. He is concerned about development along Route One, and comes back to what are the criteria for preliminary approval. He stated it would be reckless to approve a preliminary plan this evening without MDOT permits.

Mr. Neagle asked what the Homeowners' Association responsibilities were.

Mr. Mohr stated the association will have two responsibilities. The maintenance of the pavement of Sky View Drive will be the responsibility of the Town of Cumberland, but all of the side swales and drainage system will be the Association's. Every lot will have an interest that all of the buffers remain as buffers as shown on the subdivision plan.

Mr. Robinson stated the detention basins will be the responsibility of the Association until there is a problem, when there is a problem history shows they will appear before the Town Council and say they pay tax dollars and shouldn't have the responsibility of maintaining the detention basins.

Mr. Powers asked at what point traffic signals will be required

Mr. Mohr stated based on the traffic study this project will not hit the traffic levels to warrant signalization.

Mr. Powers stated given there are residential dwellings on the other side of Route One, who might want to cross Route One, would that have any influence on signals. Mr. Powers stated it is abundantly clear that traffic is one of the public concerns. Mr. Powers asked about a walkway along Route One.

Mr. Mohr stated that in conversations with Augusta, that will happen.

Mr. Powers stated connectivity is a good thing; he will be interested in how that will be best achieved from the Town parcel to the other development

Ms. Nixon stated she has spoken with Bill Shane, Town Manager several times and the location of the shared driveway will be either straddling the two lots or just over the Town property line.

Mr. Powers asked if the connectivity could occur at the cul-de-sac.

Mr. Mohr stated this can't happen due to the change in elevation.

Mr. Powers also asked if they would look at a plan for re-buffering for the trees that need to be removed.

Mr. Powers asked about maintenance of the infrastructure and who would determine maintenance is needed. How will the maintenance be funded?

Mr. Mohr stated the Association documents are not clear enough and specific to say what those tasks are. The submission to the Town and DEP are, at the time of contract zone there were conversations regarding infrastructure. The new DEP stormwater regulations have a specific process for maintenance and a specific annual checkup and a five year re-certification of all stormwater systems.

Mr. Powers asked if the DEP is not happy with results what happens.

Mr. Mohr stated the Association is empowered to hire an engineer or someone certified by DEP to test the water quality system, to test the under drain filters, check detention basin and the maintenance log. Every five years this has to be submitted to DEP. There is a maintenance form in the association documents.

Ms. Howe stated the contract zone allows housing, and asked what would happen to the property owners' Association if there were a mix of uses. How would this affect traffic and stormwater.

Mr. Mohr stated with regards to traffic, stormwater, and impervious areas the permit submitted were for the higher commercial use. Mr. Mohr stated the contract zone requires age restriction for housing.

Mr. Robinson reiterated his concern regarding who is responsible for developing the infrastructure of this project. Is it Mr. Chase or the future developers of the project?

Mr. Mohr stated on Sky View Drive, the developer Mr. Chase will be developing all the improvements in Sky View Drive for the side swales the fore bays and the two large detention basins. In the interim stage when the area is re-vegetated the under drains will be created by the developer. The issue in question is the common swale that runs behind lots 2, 3 4 & 5. Gorrill-Palmer raised the issue of who will be responsible for developing that. That is an issue that only plays out in how the project gets built out.

Mr. Powers asked about the 6 commercial lots along Route One and six lots expected to be a mix of residential and commercial. Mr. Powers asked at what point the Planning Board would know what kind of development will be done.

Mr. Mohr stated they have shown all commercial development on their plans, which is what they are planning.

Mr. Powers asked what Mr. Mohr is asking of the Board.

Mr. Mohr stated he has heard several of the Board members state they are not comfortable granting preliminary approval without the MDOT traffic permit. He stated the curb cuts and traffic issue and Route One improvements are of such magnitude to this Board they are not willing to grant preliminary approval because Ms. Nixon has linked preliminary tantamount to final in terms of detail; and with traffic being a major detail, Mr. Mohr stated it is clear the Board is not comfortable moving forward with anything without MDOT approval. For the benefit of the design team and the client he has never had a project not receive preliminary approval without a traffic moving permit.

Mr. Neagle stated there are several items missing from the packet such as financial capacity. Traffic is not the only loose end.

Mr. Mohr asked if there was a consensus that the Board is not willing to grant preliminary approval without the MDOT permit.

Mr. Powers asked about the expected timeline for receiving the MDOT permit.

Mr. Mohr stated they just submitted, and it will be early January before response on completion; he didn't think the MDOT permit would be received until March or early April.

Mr. Neagle stated he would be willing to review the project as long as the Town Engineer had reviewed the report.

Mr. Powers asked what the applicant would like from the Board this evening.

Mr. Mohr stated they have received clear direction as to the ends the Board wants addressed, and again asks if they can't clear up the traffic issue he doesn't want to waste the Board's time.

Mr. Chase stated he has submitted more information than required; his request is for a 12-lot subdivision. He has submitted full build out plans of lots and stormwater and turning lanes that may not be accurate, as the numbers are based on maximums, which may never happen.

Mr. Powers asked what it means to not get preliminary approval.

Mr. Mohr stated he is clear on what the needs of the Board are and will not ask for preliminary approval, they have received questions on missing items.

Mr. Powers stated the Board has concerns regarding clarity on traffic. No one needs final approval from MDOT for preliminary approval, but they do need more information including peer review to grant preliminary approval. The Board is 99.9% in support of the project, and this is the largest project for the Town. The Board understands the expense to the developer; however they have a responsibility to the community to do the best job that they can. Mr. Powers stated he didn't think the Board should table the item, perhaps they would prefer to withdraw request for action.

Mr. Mohr stated they would withdraw their request for action on preliminary approval. Mr. Mohr stated as an observation three of the Board members stated they are not comfortable with this application until they have heard from MDOT.

The Board took no action. The applicant withdrew the request for Preliminary Plan Approval.

The Board took a recess at 9:10 p.m. and reconvened at 9:20 p.m.

3. Public Hearing: Preliminary & Final Plan Review – Autumn Ridge a Major 12-lot clustered subdivision at 174 Orchard Road; Tax Assessor Map R08, Lot 42A, in the Rural Residential 2 district; Scott Decker, P.E., of SYTDesign Consultants, Representative, Burton Associates, Owner.

Ms. Nixon stated this project appears ready for preliminary and final approval. Ms. Nixon presented background information as follows: The applicant is David Burton. The owner is Burton Associates at 200 Hodsdon Road, Pownal, Maine. The applicant has purchased 33.4 acres of an original tract of land that was originally 45.46 acres. The remaining 12.06 acres is being retained by the previous owner, Alexandra Hughes and is labeled Lot 12.

The applicant is represented by Scott Decker, P.E., SYTDesign. The request is for major subdivision review and approval of a 12-lot clustered subdivision at 174 Orchard Road. The property is shown on Tax Assessor's Map R08, Lot 42 in the RR2 zone.

HISTORY:

- September 20, 2005: Sketch plan review.
- December 1, 2005: Application found complete by Planner.
- December 20, 2005: Plan for Preliminary Approval tabled by Board pending outside agency approvals.
- February 16, 2005: Preliminary Plan Review; limited to discussion of access road.
- July 18, 2006: Preliminary Plan Review: Tabled by Board pending MDEP approval.

PROJECT DESCRIPTION:

- Zoning: RR2 (Rural Residential 2)
- Subdivision Style: Clustered
- Min. Lot Size: 1.38 acres
- Lot frontage: 100'
- Setbacks: Front = 50', Rear = 75', Side 30' (combined = 75').
- Roadway Private, paved road with 2- 10' traveled ways and a 4' gravel shoulder on one side and a 4' grass esplanade with a 4' freewalk on the other side.
 - **3100' long.** See comments below regarding road length and connection issue.
- Sidewalk: None proposed
- Water: Private wells on each lot.
- Sewer: Individual private septic systems.
- Aquifer Protection: Yes
- Utilities: The applicant is proposing underground utilities (telephone, cable & electric)
- Fire Protection: Sprinklers
- Lighting: No street lighting.
- Trails: 4' walking trail to be cleared by developer. Open to public.
- Min. Open Space: Required: 25%
Proposed: 36.9% (12.36 acres)-Will be open to public.
- Wetlands: 18,478 sq. ft. to be filled. DEP Tier 2 Permit is required.
- **Net Residential Acreage: Gross site area: 33.40 acres (less Lot 12)**
Wetlands: 3.95 acres
ROW or easements:2.07 acres
Roads and parking (15% of gross):5.01 acres
Steep slopes/areas difficult to develop: 0
NRA: 22.37 acres
- **Max. # of Lots:** The maximum number of lots is calculated by dividing the net residential density (22.37 acres) by the minimum lot size of the underlying zone (1.38 acres) which yields a maximum of 16 lots.
- Outside Agency Approvals Required:
 - MDEP Tier 1 NRPA Wetlands Permit **(Received)**
 - CCSWCD Approval of Erosion Control Plan **(Received)**
 - MDEP Stormwater Permit: **RECEIVED**
 - Maine DEP General Construction Permit: To be received within 30 days of start of construction.

- MDEP Permit by Rule (for 1 stream crossing)
RECEIVED
- MDEP Individual Permit (for 2nd stream crossing) **RECEIVED**
- Army Corp of Engineers (PBR-Tier 1)
RECEIVED

REQUESTED WAIVER:

7.15: Sewage Disposal Plans. Test pits logs provided. Plan can be done as part of building permit application. **Note: This request is routinely granted by the Board to allow flexibility to homeowner when installing the system.**

The Town has accepted Rose Drive as a Town Road; this road will connect to Autumn Ridge Subdivision. Mr. Andrew Johnson and Mr. Chris McDonald are present from SYTDesign Consultants, as representatives along with Mr. David Burton, the Owner of Burton Associates.

Mr. Johnson, representative reviewed the project as follows: The project has been under review for just over a year. The applicant has received DEP approval and all outside agency approvals. The road connection was solved with the Town Council accepting Rose Drive. The subdivision is an 11-lot clustered subdivision with one out conveyance for a total of 12 lots. All buildings will be served by private wells and septic systems. All houses will have sprinkler systems. There were a few outstanding items in the Planner's comments; item # 12 which stated that well testing includes uranium. They would prefer if that note is included it be changed to state DDHE well testing.

Ms. Nixon stated her understanding from talking with Sevee and Maher that routine water tests do not include uranium. There is a Town employee, an abutter in Gray, who has uranium in his well.

Mr. Johnson stated it is odd to reference one item and not others.

Mr. Powers stated perhaps there could be more general language without coming up with unnecessary concern from buyers.

Ms. Howe asked if this area has high levels of uranium.

Ms. Nixon stated she did not know, but there is an abutter who has high levels of uranium.

The public portion was opened. There were no public comments. The public portion of the meeting was closed.

Mr. Neagle stated this is a great project, and he would like to have input on the water uranium issue.

Ms. Howe asked about water testing.

Ms. Nixon stated the ordinance doesn't require water quality, only quantity. Ms. Nixon stated there is a standard panel of tests for water.

Mr. Couillard stated the peer review covenants state that there should be a note on C102, which he couldn't find.

Mr. Johnson stated that will be included on the plat.

Mr. Couillard asked why there was a temporary gate at the end of Rose Drive.

Mr. McDonald stated that was installed in case Rose Drive wasn't approved.

Mr. Ward asked about 11 or 12 lots.

Ms. Nixon stated there are 11 lots and lot 12 was an out-parcel retained by the original lot owner.

Mr. Ward asked about the financial commitment.

Ms. Nixon stated this has not been approved, and will be covered as a condition of approval.

Mr. Johnson stated the letter will be arriving from the bank.

Mr. Neagle stated he drove down Rose Drive this year and was pleased with the detention pond and gazebo, the project looked very nice.

Mr. Powers asked about the sign indicated in the landscape plan.

Ms. Nixon stated it is an entrance sign.

Mr. Powers asked about the maintenance of the stormwater facilities.

Mr. Johnson stated under the new DEP regulations there is a maintenance burden on the current owner of the property which transfers with the property. They are required to submit a maintenance schedule and log, every five years the engineer has to sign off on the logs stating the facilities are operating as designed. The Homeowners' Association will be responsible for the burden of the stormwater facilities.

Mr. Robinson stated he felt the Town should accept drainage easements in the right-of-way.

Mr. Powers stated the applicant shall contract with SYTDesign for weekly inspections for installation of the under drain systems.

Mr. Robinson asked how inspections once a week are adequate. How can you affectively examine a construction site with only one visit?

Mr. Johnson stated there has to be confidence in the material and how it is placed. This would also rely on judgment of the contractor.

Ms. Nixon stated prior to construction there will be a pre-construction meeting. Inspection schedules are discussed.

Mr. Powers referred to the Cumberland Town and Lands Conservation Commission comments.

Mr. Johnson stated there are Tier 1 and Tier 2 permits; no mitigation is required if there is less than 20,000 square feet of disturbance.

Mr. Neagle asked who would build the connector road.

Mr. Johnson stated the applicant will build the connector in the Town right-of-way.

Ms. Nixon stated this can be added as a condition of approval.

Mr. Powers stated he was pleased with the connectivity.

The Board reviewed the proposed findings of fact:

PROPOSED FINDINGS OF FACT - Subdivision Ordinance, Section 1.1:

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

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 not located in a 100-year floodplain.

The applicant has submitted a preliminary soil investigation conducted by Richard Sweet, dated 9/8/05, which states that two passing test pits were located on each of the proposed lots.

A groundwater impact study dated 9/8/05 prepared by Richard Sweet which concludes that the plumes of nitrate nitrogen will not exceed 5 mg. /liter at the property line.

The Applicant has received a Maine Department of Environmental Protection permit for the filling of 13,192 sq. ft of wetlands and for the two stream crossings. Based on the information provided the standards of this section have been met.

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

The proposed subdivision will utilize private drilled wells.
There is a letter on file date January 12, 2006 from Sweet Associates stating that there is sufficient water for 11- four bedroom homes.
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;

Private wells will be drilled; no municipal water will be used.

The standards of this section do not apply.

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

The erosion control plan has been reviewed and approved by the Cumberland County Soil and Water Conservation Commission, the MDEP and the Town Engineer.

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

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

The 11 lot development is expected to generate 100 weekday trips. This level of traffic can be accommodated by the existing road system.

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;

A groundwater impact study by Richard Sweet dated 9/8/05 shows that there are suitable sites for onsite disposal of wastewater from each residence. Mr. Sweet has also performed a nitrate impact analysis and determined that the nitrate plumes will meet drinking water standards prior to the boundary line.

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;

The Applicant has provided a letter dated 12/20/05 from Pine Tree Waste stating they have adequate capacity to service this subdivision.

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

1. 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 appropriate State agencies that state the proposed subdivision will not adversely impact existing aesthetic, cultural, and natural values.

A walking trail and the designation of 12.36 acres of open space will be available to residents of the subdivision and the public.

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, department heads, and town engineer.

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 expert engineering, surveyors, and soils evaluators.
The Applicant has submitted a letter dated 7/6/05 from Bath Savings Bank which states that Mr. Burton has the financial capability to complete the project. However a letter of commitment to loan the necessary funds, or evidence of existing financial resources is required. This is listed as a proposed condition of approval
With approval of the proposed condition of approval, 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;
There are two streams on site. The MDEP has issued permits for the crossing of the streams for the road installation.
Based on the information provided the standards of this section have not 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;
A groundwater impact study was conducted by Sweet Associates. The conclusion was that the subsurface wastewater disposal systems will not result in an increase of NO-3-N above 5mg/L at any subdivision property line for the SSWD systems located at Lots 1-11.
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 located in Zone C- Areas of Minimal Flooding.
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;
The Town Engineer and MDEP have reviewed and approved the stormwater management plan.
Based on the information provided the standards of this section have been met.
15. Freshwater wetlands. All potential freshwater wetlands, as defined in 30-A M.R.S.A. §4401 (2-A), within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

A wetlands survey was conducted by Richard Sweet for the land easterly of the pipeline and Mark Hampden for the land westerly of the pipeline. Wetlands were mapped and flagged.

The Applicant has received a Maine Department of Environmental Protection permit for the filling of 13,192 sq. ft. of wetlands and for the two stream crossings.

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

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

There are two streams on site. They are shown on the plan.

The Applicant has received a Maine Department of Environmental Protection permit for the two stream crossings.

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

SECTION 300 – AQUIFER PROTECTION (if applicable)

The site is located within the Town Aquifer Protection Area. A high intensity soil survey and a groundwater impact study were conducted and have been reviewed and approved by the Town Engineer.

Based on the above, the Board finds that the standards of this section have been met.

Section 206.9 - Limitation of Approval

Construction of the improvements covered by any site plan approval must be substantially commenced within twelve (12) months of the date upon which the approval was granted. If construction has not been substantially commenced and substantially completed within the specified period, the approval shall be null and void. The applicant may request an extension of the approval deadline prior to expiration of the period. Such request must be in writing and must be made to the Planning Board. The Planning Board may grant up to two (2), six (6) month extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.

Ms. Howe moved to approve the findings of fact.

Mr. Robinson seconded.

VOTE: Unanimous

Ms. Howe moved to grant Preliminary & Final approval with the standard and proposed conditions of approval for Autumn Ridge Subdivision a major 12-lot clustered subdivision at 174 Orchard road; Tax Assessor Map R08, Lot 42A, in the Rural Residential 2 district; Andrew Johnson, SYTDesign Consultants, Representative, Burton Associates, Owner.

Mr. Richards seconded.

VOTE: Unanimous

STANDARD CONDITIONS OF APPROVAL:

This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to 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.

RECOMMENDED CONDITIONS OF APPROVAL:

1. That all fees be paid prior to releasing the plan for recording.
2. That the Town Attorney review and approve the proposed warranty deed, drainage maintenance agreement and covenants and restrictions prior to releasing the mylar for recording.
3. That the applicant's engineer responds to the final requests of the Town Engineer as outlined in his review dated 12/6/06 prior to the plan being released for recording.
4. That a revised plan for recording depicting the well exclusion zones be provided for signature by the Board.
5. Note # 11 on the plan be changed to read the Homeowners' Association is responsible for stormwater improvements.
6. A note should be added to the plan stating that raised disposal fields approximately 21" to 25" high are required.
7. That a letter of commitment from a lending institution for the cost of the required improvements plus inspection fees be provided to the town planner for approval prior to the release of the plan for recording.
8. That all clearing limits be flagged prior to the preconstruction conference. The Town Engineer will inspect the flagging to ensure conformance with the plans.
9. That a preconstruction conference be held prior to the start of construction.
10. That a landscaping plan showing plantings, signage and lighting be submitted to the Town Planner for review and approval prior to the preconstruction conference.
11. The applicant will build the connector road in accordance with the approved stormwater management plan.
13. The applicant is required to build the connector road to Rose Drive prior to the issuance of any building permits.

F. Administrative Matters:

Mr. Powers stated the Board is losing one its most faithful and diligent members. Ms. Howe will be leaving the Board after this meeting since her seat as the Chebeague Island representative will no longer be needed come July 1st when the Island becomes its own town. On behalf the Town

and Board he thanked Beth for her years of service and dedication and said that Beth has had a sensitivity to important community issues that has added quality to the Board's review work.

G. Adjournment:

Mr. Robinson moved to adjourn at 10:00 p.m.

A TRUE COPY ATTEST:

Thomas C. Powers, Board Chair

Pam Bosarge, Board Clerk