

**Planning Board Meeting - Minutes
Tuesday, April 11, 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

Absent: Bill Richards, Chris Neagle

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

C. Approval of Minutes of March 14, 2006

Ms. Howe moved to approve the minutes of March 14, 2006 with minor technical corrections.

Mr. Robinson seconded.

VOTE: Unanimous

D. Consent Calendar / Deminimus Change Approvals:

There were no consent calendar items

E. Hearings and Presentations

1. Public Hearing - Shoreland Zoning Permit - Re-location of a non-conforming building to the greatest practical extent at 22 Waldo Point, Chebeague Island, Tax Assessor Map I02, Lo 62 in the Island Residential / SOD districts; Bob Vail, Representative, Martha Champagne, Owner.

Ms. Nixon presented background information as follows: The applicants are Jeffrey and Martha Champagne. They own a lot with an existing cottage on it and are planning to relocate the cottage to another lot on Chebeague and build a new house on the lot. The existing building is non-conforming in terms of setback from the shore, and the new home will also be within the required setback. Section 501.1.3.2 of the Zoning Ordinance allows a conforming building to be relocated within the boundaries of the parcel provided that the site of the relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board.

The parcel is located at 22 Waldo Point, Chebeague Island, Tax Assessor map I02, Lot 62 in the Island Residential and Shoreland Districts.

James Katsiaticas is the attorney for the Champagnes. Bob Vail is the contractor and representative.

Bill Longley, Code Enforcement Officer, was also present.

Mr. Powers asked about the topography of the site, and the effect moving the dwelling would have on abutters.

Ms. Nixon stated the property is flat and moving the dwelling back improves the sight line to the water which is better for the neighbors.

Mr. Vail stated he is the contractor representing the Champagnes, who have contracted with him to build a house. The new dwelling was located on the lot so that the house did not extend any closer to the water than the deck permitted by the Town in 2001, which is 77 feet from the mean high water line. However, the Code Enforcement Officer, William Longley interprets the mean high tide to be from spring high tide of the upland edge of a wetland. Mr. Jim Katsiaficas, attorney for the Champagnes is present this evening, Mr. Vail turned the testimony over to Mr. Katsiaficas.

Mr. Katsiaficas stated in 2001 the Champagnes received a building permit to construct a deck on this same property, and located it 77 feet from the mean high water mark as shown on a survey dated May 29, 2001 prepared by Bruce Bowman in order to comply with §423.3.1 of the Cumberland Zoning Ordinance.

The Champagnes began planning this new dwelling over two years ago. They hired an architect to design the new dwelling and had it designed so that there was some area to spare between the 25-foot front setback and the front of the house, while ensuring that the house did not extend any closer to the water than the deck permitted by the Town in 2001.

The Champagnes' builder, Bob Vail, recently consulted with the Town Code Enforcement Officer Bill Longley about the location of the new dwelling, anticipating no issue given the 2001 deck permit. However, Mr. Longley believes that the "mean high water line" depicted by Mr. Bowman on his March 2006 survey is not necessarily the "normal high water line" that forms the basis for measurement of the 75-foot water setback under the Ordinance. His interpretation of the Ordinance, as apparently urged by the Maine DEP Shoreland Enforcement Office, is to use the maximum spring tide line to measure the setback, which would prevent the construction of the new house as designed. DEP apparently urges the use of the maximum spring tide line where there is a coastal wetland; whether there is a coastal wetland here is unknown.

At present, the Champagnes have not applied for a building permit nor moved the existing structure, and Mr. Longley has suggested they apply for Planning Board approval of the relocation of the structure under § 501.1.3.2 of the Ordinance. This section provides that a non-conforming structure or building may be relocated within the boundaries of the parcel provided that the site relocation conforms to all setback requirements to the greatest practical extent as determined by the Planning Board.

In determining whether the building relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other buildings and structures on the property and adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

A relocation permit would allow the Champagnes to obtain a building permit to remove the seasonal cottage and to replace it with a year-round dwelling that complies to the greatest practical extent with the setback requirements of the Ordinance. They can locate the dwelling an additional nine feet from the water and it still will comply with the 25-foot front yard setback.

The lot is approximately one-quarter acre in size. The slope of the lot and the potential for soil erosion do not appear to be major considerations here, since the lot does not have a great deal of slope in the area of the building. While it might be possible to shift the dwelling location to the southwest on the lot and perhaps provide a few feet greater setback from the water, such a shift would interfere with the view of the water from other buildings and structures of adjacent properties, and the Champagnes hope not to interfere with their neighbors' property views. The relocation would not affect the location of the septic system, and only the vegetation in a 14-foot by 54-foot area on the road side of the dwelling – away from the shore side – would be removed to accomplish the relocation. Mr. Katsiaficas stated that for the reasons given they believe that the proposed relocation complies with the requirements of § 501.1.3.2 of the Ordinance and ask the Planning Board to grant this relocation request.

Mr. Longley, Code Enforcement Officer stated the law has been on the books since 1989, and was adopted by Towns in 1991 or 1992; his Code Enforcement Shoreland training has used the “spring high tide” or “upland edge of a wetland”. This is not unusual. He has dealt with this issue in both Woolwich and Yarmouth, each case was site specific; in Woolwich the greatest practical extent was 8’ to 10’ from the waters edge. In Yarmouth it was moved as far as practical with the setbacks.

Mr. Ward asked what year the deck was built.

Mr. Longley stated in 2001.

Mr. Ward asked the difference between “mean high water” and “spring tide”.

Mr. Longley stated about 3’ which is the difference between 12’ to 15’.

Mr. Powers asked the specific reference.

Mr. Longley stated the Ordinance stated “mean high water”.

Mr. Powers asked if that was used in the past for the deck permit.

Mr. Longley stated yes.

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

Section 501.1.3.2 of the Zoning Ordinance requires that the Board, in determining whether the building or structure relocation meets the setback to the greatest practical extent, the Planning Board shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other buildings and structures on the property and on adjacent properties, the location of the septic system and the other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation.

Findings of Fact:

- **The size of the lot:** The parcel is approximately ¼ acre in size.

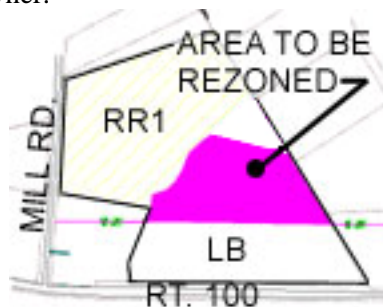
- **The slope of the land:** The building envelope is relatively flat, while the front portion of the site gently slopes down towards the ocean.
- **The potential for soil erosion:** With appropriate erosion control measures, the construction will not create erosion.
- **The location of other buildings and structures on the property and on adjacent properties:** The location of the new structure will be further back from the ocean and will not change the view for adjacent properties.
- **The location of the septic system and the other on-site soils suitable for septic systems:** There will be a new septic system in the northwest corner of the site.
- **The type and amount of vegetation to be removed to accomplish the relocation:** The relocation will require the removal of vegetation in a 14' X 54' area on the road side of the dwelling.

Ms. Howe moved based on the findings and conclusions to approve the relocation of the house back to the 25' setback as illustrated by the sketch.

Mr. Couillard seconded.

VOTE: Unanimous

2. Public Hearing – Recommendation to Town Council – Zone change to extend the Local Business District at Route 100 as shown on map below, Tax Assessor Map R07C, Lot 1A for the proposed Castle Rock Business Park, Jeffrey Amos, P.E., Terradyn Consultants, Representative, Elvin Copp, Owner.



Ms. Nixon presented background information as follows: There have been three presentations made to the Board by the Applicant's representative, Jeff Amos. At the conclusion of the last presentation, the Board scheduled a site walk. The site walk was held on March 25th. At this point, the applicant has modified the plan to address concerns expressed by abutters. The Board now needs to determine if the rezoning of a portion of the RR1 to LB is appropriate and if so, make a positive recommendation to the Town Council.

Ms. Howe stated at the site walk the water course shown on the materials had the look of a stream, did DEP have any opinion.

Mr. Amos stated they have had several wetland delineations and each has been the same, which did not indicate the water course to be a stream. Mr. Amos summarized the amended request as follows:

- Reduction of area to be re-zoned – 6.45 acres of RR1 to LB

- Reduction of number of total lots – 9-commercial lots and 1 existing residential lot
- Route 100 Connection – The proposed concept plan shows a dedicated left turn lane for the Castle Rock Business Park for southbound vehicles on Route 100; this change will improve the flow of vehicles on route 100 and greatly improve the safety for both turning and through traffic in the southbound direction.
- Provide higher quality of open space – The Concept Plan shows approximately 11.91 acres of dedicated open space. This is an increase from the 8.97 which was shown on the previous concept plan.
- Preserve more of the scenic view corridor – The open space has been situated to preserve the view corridor that exists from mill Road, over-looking the field in the direction of Route 100.

The applicant has reduced the area to be re-zoned and the total number of proposed lots. They have provided a means for vehicles to turn into and pass by the Castle Rock Business Park in a safe manner. They have provided nearly 12 acres of dedicated open space that largely preserves the scenic view corridor. They believe that the Castle Rock Business Park, as shown on the proposed concept plan represents a dramatic improvement over what the current zoning allows. The proposed concept plan provides the Town of Cumberland with an opportunity to preserve nearly 12-acres of quality dedicated open space that will maintain a scenic view corridor that has been identified as important to the local residents. The proposed re-zoning is consistent with the Comprehensive and Open Space Plans and is the best use of the property. They request the Board forward a favorable recommendation to the Town Council.

Ms. Howe asked who would have access to the open space.

Mr. Amos stated they plan to offer the open space to the Town. If the Town did not accept it then it would be the responsibility of the Owners Association and the land would be open to the public.

Mr. Ward asked without re-zoning how many commercial lots could the property support, and the current LB zone acreage.

Mr. Amos stated six lots, they are requesting to re-zone 6.4 additional acres to be added to the current 7.5 acres in the LB zone, and the parcel is 28-acres.

The public portion of the meeting was opened.

Mr. Nick Knight of 22 Mill Ridge Road asked if the Board had obtained a legal opinion on spot zoning.

Ms. Nixon apologized and stated she did not have that information.

Mr. Knight asked if the number of commercial lots could remain at six instead of 9. He voiced concern of review of 9 individual buildings.

Mr. Amos stated the concept plan is not illegal and is consistent with the Comprehensive Plan. Mr. Amos stated the developer has committed to adhere to the design standards of the Route One Guidelines.

Mr. Powers stated the Route One Guidelines give restrictions to construction appearance and impose restrictive covenants to control the development.

Ms. Sara Crisp of 3 Mill Ridge Road stated it is very apparent this has been a long process, and thanked the Board and Developer for their efforts to incorporate abutters' concerns into the plans, but voiced concern over control of how the development will look.

Mr. Powers stated it is helpful if the landowner puts in place design guidelines within the owners' association documents.

Dr. Ruth Frydman of 12 Mill Ridge Road thanked the Board for their time and attention to concerns. Her remaining concern was open space; the proposed open space is not accessible from Mill Road, she also voiced concern regarding traffic.

Mr. Amos stated the open space will be open to the public.

The public portion of the meeting was closed.

Mr. Couillard stated traffic has been one of his concerns; the turning lane will help alleviate that problem. The concept plan will give more open space. Snowmobiles will still be able to use the property.

Mr. Ward stated he is usually against re-zoning, but having walked the site, he believes the concept plan will make for a better development and he was in favor of recommending the re-zoning to the Council.

Mr. Couillard stated he preferred contract zoning to give more control over design.

Mr. Robinson stated Site Plan Review would address his concerns.

Ms. Howe agreed she now favors the re-zoning; the site is an open parcel and at the site walk she could see where development would occur. If the zoning remained unchanged the road would go to the swale. The re-zoning gives a clearer open space view from Mill Road. Ms. Howe stated it would be unfair to ask the developer to wait until the Route 100 Advisory Committee and Comprehensive Plan Committee have completed their recommendations for the Route 100 corridor. The concept plan gives more open space and a turning lane for Route 100. Ms. Howe stated she is in favor of the re-zoning and concept plan.

Mr. Robinson thanked the neighbors for helping to ensure the Board took the extra step to reflect on the project. There have been three public hearings, written testimony and a site walk on the property, and the concept plan maximizes open space and preserves the view corridor with the development having the least impact on the view. The Planning Board will continue to review this project to ensure that it complies with the Ordinances.

Mr. Robinson moved forward a favorable recommendation to the Town Council to extend the Local Business District at Route 100 as shown on the map below, at Tax Assessor Map R07C, Lot 1A for the proposed Castle Rock Business Park, Jeffrey Amos, P.E., Terradyn Consultants, representative, Elvin Copp, owner.

Ms. Howe seconded.

VOTE: Unanimous

Mr. Powers reiterated Mr. Robinson's statement thanking the public for their comments the Board has benefited from their concern and input in the process.

3. Public Hearing – Minor Site Plan Review – Suburban Little League requests to add a storage structure and relocate other buildings at the Little League Fields at Drowne Road School, Tax Assessor Map R03 Lot 51A in the Rural Residential (RR1) district; Bill Hawkinson, representative, Town of Cumberland, owner.

Ms. Nixon stated this is a very minor plan. Mr. Hawkinson called this afternoon to state he had a conflict with another meeting and could not be present at the meeting; he asked if she could present the plan.

Mr. Robinson stated it was unusual for the Planner to give the presentation.
Mr. Robinson moved to table the application to the next meeting.

Ms. Howe seconded.

VOTE: Unanimous

4. Public Hearing – Minor Site Plan Review – M.J. Storey Landscape Construction at 224 Middle Road, Tax Assessor Map R02, Lot 36A, in the Rural Industrial (RI) zone, M.J. Storey Landscape Construction, Applicant, Scott Decker, P.E., SYTDesign Consultants, Representative, Bonnie Fusco, Owner.

Mr. Decker was not in attendance.

Ms. Nixon presented background information as follows: The applicant is Michael J. Storey. The applicant has a purchase and sale agreement on a 2-acre parcel of land located at 224 Middle Road, Tax Assessor Map R02, Lot 36A in the RI zone. The applicant is requesting minor site plan approval to construct a 40' x 60' building as a shop for his landscaping business. The operation will involve the parking of vehicles, equipment and landscaping materials. Construction operations are a permitted use in the zone. The applicant will be connecting to public sewer, but installing a private drilled well. This is a minor site plan that is substantially complete. There are a number of concerns that are listed in the review. The project is not ready for approval.

Mr. Storey stated he has a landscaping business that he is proposing to move to the 224 Middle Road location, he will have his office in the building and a gravel pad behind the building where he will stockpile material and equipment.

Ms. Howe asked Mr. Storey if he was aware of the Planner's comments.

Mr. Storey stated yes, he had looked at the comments.

Ms. Nixon reviewed the peer review engineer's comments.

1. The entire driveway should be paved to control dust and because site is wet and will likely be muddy in spring. – *Mr. Storey stated they are proposing to pave a 20' apron, and not pave the entire driveway.*

2. White pines should be replaced with a type of tree that will not loose its lower branches over time and are more suitable to wet conditions – *Mr. Storey stated he is comfortable with Balsam Pine which is better in wet areas and will have fuller lower limbs.*

3. The site plan shows that a number of white pines will be planted. The type of trees and location should be finalized after consulting with abutters. Fencing and berming might be

requested. The dumpster should be screened. The nature of this operation and the fact that it is surrounded by residential properties requires more screening and buffering than is proposed. – *Mr. Storey stated he is proposing 6' to 7' trees.*

4. The side setback should be labeled as 45' on the site plan – *Mr. Storey said that will be changed.*
5. The abutting property owners names should be shown on the plan - *Mr. Storey stated they would be added.*
6. What are the plans for fire protection, the closest hydrant shown on the plan is 100' at Tuttle and Middle Roads.
7. The parking area is not clearly depicted on the plan. A handicap space is required. A circular drive would reduce the amount of backing up needed by the trucks and reduce the amount of noise generated. Excessive tree removal has been questioned by the Town Engineer. A snow storage area is not shown. – *Mr. Storey stated there will not be a lot of traffic, strictly employees; he will not be selling products at the location. He will gather equipment and leave for the day at approximately 6:00 a.m. – 6:30 p.m. with an occasional Saturday. There are two parking spots to the right side of the building; he is not opposed to having a handicap parking sign. The building will block the material and equipment so there will not be a visual impact.*
8. The plans show three 60 watt wall pack lights over each entrance area. Will the lights be on a timer? – *Mr. Storey stated the lights can be on a timer.*
9. The days and hours of operation should be clearly stated and shown on the plan the parking and loading area should be designated to minimize the need for vehicles to back up. The driveway should be paved to minimize the noise made by the entering and exiting of trucks. *Mr. Storey stated hours are Monday – Friday from 6:00 a.m. to 7:00 p.m. with an occasional Saturday.*

Mr. Ward asked about parking space requirements per employee.

Mr. Couillard asked how much material would be stored on site.

Mr. Storey stated up 1,000 yards.

Mr. Couillard asked if his business did snow removal and would he be storing snow on site.

Mr. Storey stated no.

Mr. Couillard asked if his equipment had back-up horns.

Mr. Storey stated some do, he has a Bobcat and pick-up trucks.

The public portion of the meeting was opened.

Mr. Joshua Dow of 218 Middle Road stated he is the owner of the abutting parcel. Mr. Dow reviewed his letter dated April 11, 2006 submitted as written testimony to the Board. Mr. Dow stated they believed certain information was missing from the application, making it difficult to evaluate. It is apparent that the application requires revision before it should be approved by the

Board. They understand that construction uses are permitted uses in the RI zone. However, the use must be consistent with the natural capabilities of the site and should be integrated with surrounding, existing uses to the greatest possible degree. If the determination is made, they would suggest that the requirements of the ordinance with respect to buffering and setbacks be strictly adhered to in order to protect the rights and property interests of abutting landowners. They believe the application should be tabled until the application is deemed complete.

Ms. Heather Burr of 228 Middle Road submitted written testimony dated April 9, 2006. Ms. Burr's letter voiced concern of stockpiling, buffering, and the narrow lot.

The public portion of the meeting was closed.

Mr. Powers asked the Board if they felt a site walk was in order.

The Board agreed a site walk would be helpful. The Board also requested that the applicant have his engineer present at the site walk and at the next meeting to address the peer review engineer's technical comments.

A site walk was set for 5:30 p.m. on Wednesday, May 10, 2006.

Mr. Powers asked that the building site, road, and property boundaries be staked.

The Board tabled the application to the next meeting.

5. Public Hearing – Recommendation to the Town Council for a contract zoning agreement for Cumberland Foreside Village, Tax Assessor Map R01, Lots 11, 11B 8 and 7; Cumberland Foreside Village, LLC, Owner, Applicant; Stephen Mohr, Mohr and Seredin Landscape Architects, Representative.

Ms. Nixon presented background information as follows: This is the property that was previously owned by Peter Kennedy. David Chase is the new owner. Mr. Chase's attorney, Phil Gleason, and landscape architect, Stephen Mohr, were present.

Mr. Stephen Mohr, ASLA, of Mohr & Seredin Landscape Architects, stated that this is the existing contract zone that was put in place several years ago with Peter Kennedy. Peter Kennedy has sold this parcel to David Chase. Mr. Mohr reviewed the drawing of the existing contract zone. At the time there was commercial land to the right, Route One is on the bottom, there was a 10-acre parcel deeded to the Town of Cumberland and 5 commercial lots on Route One. The interior land was proposed as single-family and multiplex lots with the ability to have some commercial development on the upper right hand side. As David looked at this for development, he was convinced that the single-family lots will not work as well in this setting as would commercial development. Particularly in light of SeaFax and also in light of the terrain and that the underlying zoning is Office Commercial. They have been working with Mr. Chase to see what could happen at the site, and developed the current plan. The frontage on Route One remains commercial, the red lot belongs to the Town of Cumberland; the white lot is the SeaFax building. On the interior of the parcel the lightly shaded yellow is proposed as commercial lots with the option of multiplex residential lots, on lot 10 and lot 7. Mr. Chase's vision for the lot is to move forward with commercial development. The dark green area at the top is the buffer; part of that is the 100 feet that remains from the I-295 beautification project. The rest is green buffer gradient down from the site itself. There are a couple of changes in the site plan. The road has been moved, and is now aligned and designed to be a commercial road. It has changed from a

24' road to a 28' road width, with a 60' right of way. The driveway has been moved in order to align with access up into the interior, and to limit curb cuts; one curb cut has been eliminated from the previous plan from five to four. The road is shorter and simpler, designed on the premise of commercial use of the property. The other change is the buffer down by Route One was wider, and has been reduced to the 35' width on the site plan. The submission package also includes some design guidelines; in the previous contract zone there were no design guidelines. The guidelines attached will be integral to the contract and address issues such as scale, height, layout, harmony and are intended to use the existing SeaFax building as the model to look at particular for the development along Route One. The SeaFax example has been used as an example for a starting point to look at how the buildings will be separated from Route One. They are proposing the buffer 35' on the property 25' of which must remain undisturbed which will leave anywhere between 38' and 40' of existing vegetation between the property line and existing Route One and then a 20' swale. In that part of Route One the property line sits back between 55' and 60' from the edge of pavement. Route One is not centered within the right of way; they know they can accomplish a denser buffer than what exists at SeaFax with the proposed buffering plan.

Other substantial changes is proposed regarding of the site. In the previous plan incremental development was planned; to build the road, level and shape the residential sites and leave the upper part of the site intact until another use came along. In discussing this with Mr. Chase, the new concept is to go to the top of the hill and pull between 15' and 25' of height off that through ledge excavation. On Route One they would go in and cut a shelf to create level pads to allow lots along Route One, and create level lots along the top of the hill. The idea is to take care of site preparation through ledge removal and crushing operations in one short period, which is specified in the contract as a 5-year period. The yardage for this ledge removal on the site is somewhere between 200,000 and 250,000 cubic yards. That is a quantity that is almost identical to what Chase Excavating has taken out of between the Yarmouth and Falmouth lines in the past 2 ½ to 3 years in terms of traffic and operations on Route One. The real desire is to prepare the site for development and not do incremental ledge removal over the next twenty years as the site is built out.

The other changes in the contract zone are fairly minor in terms of an adjustment in the side setback from 12' to 10' and a change in the height restriction, the former contract zone stated 35' and they are asking for 50' height of buildings. Mr. Chase and Mr. Gleason are present for any further questions.

Ms. Howe asked Ms. Nixon why this is still a contract zone, what public benefit is there.

Ms. Nixon stated there was a parcel given to the Town. When Mr. Chase purchased the property, it included the contract zoning agreement.

Ms. Howe stated that one issue for tonight is to discuss what uses are appropriate for contract zoning.

Ms. Nixon stated they are looking for greater density, reduced road widths and other items typically seen in contract zoning. Ms. Nixon stated there is also a request for a use that is not allowed elsewhere in Town: warehouse storage buildings. (Section D, lots 7 - 12 indoor storage and warehouses.) The letter from the attorney for the homeowners' association did bring up the issue of allowing something that is not allowed in the underlying zone. Ken Cole's letter interprets the language to include uses from all zones in town. Either way that use would not be allowed according to the current zoning ordinance.

Ms. Howe asked about the Route One buffer, she remembered the SeaFax project as being constrained by rear wetlands. Are there similar constraints on these lots? The Route One Guidelines specify 75 feet.

Mr. Mohr stated there were wetlands on the SeaFax building; there is about 12' of buffer on their lot; the rest of the buffer is in the Route One right of way. The difficulty is the ledge face behind; they cannot get far enough behind to achieve the 75' buffer along Route One. They are envisioning lots that would have 12,000 to 15,000 sq. ft. buildings on them. There will be a 35' buffer, 10' of which can be disturbed for the walkway; 25' of which remains undisturbed, then the Route One buffer, there will be 60' to 65' buffer. The feeling is that would accomplish what was accomplished in the underlying zone in terms of protection. The design guidelines also afford protection to the Town to address construction, type, building finishes etc. The feeling was the design guidelines and buffer address some of the things the buffer was intended to address.

Ms. Howe stated she would not support higher density at the expense of the buffer.

Mr. Couillard asked if they were proposing to take 25' from the top of the hill to the bedrock.

Mr. Mohr stated the grading plan is illustrated by the cross sections; they are looking at 25' at the maximum height, in some areas 25' of that is ledge.

Mr. Couillard stated the top of the hill is all treed. How big an expanse would be cleared and cut down, all of lots 10 and 7?

Mr. Mohr stated correct, on lots 7, 8 and 9, and would be cleared out down to ledge, re-loaded, and re-vegetated.

Mr. Couillard asked about increased noise level from removing the trees. That is a tremendous area.

Mr. Mohr stated it is about 28 to 30 acres; it may have some effect on the noise from I-295.

Mr. Couillard stated he was not in favor of stripping the trees. He asked if there might be 134 residential dwellings.

Mr. Mohr stated that there is a provision for multiplex dwellings, which might be 3 and 4 story buildings.

Mr. Couillard asked about the location for the communications tower, he stated he thought there was some opposition to the tower.

Mr. Mohr stated at the common junction between the Town lot and lot 7, the communication tower is not a certainty. It is simply carried over from the original contract zone.

Mr. Ward stated he would like to hear some public testimony.

The public portion of the meeting was opened.

Attorney Lawrence Clough spoke on behalf of the residents of True Spring Farm. He stated the residents are not opposed to all development; they do not oppose the high quality of commercial development in accordance with the Route One Design Guidelines. The SeaFax building is

evidence of the high quality of development. There are three concerns he is present to address this evening. The first two derive from the State Statute that is applicable to all contract zones in the State. The third concern is derived from the similar activity that is now occurring in the Town of Falmouth. The residents of True Spring Farm have photos to help the Board get a sense of the massive scale of quarrying activity taking place on the site. In the first instance the contract zoning agreement has some fundamental flaws under State Statute, first of all it would allow a variety of uses that are not allowed in the underlying OC zone, if you look at the preface to the Ordinance, it reads as follows: "The purpose of the OC district is to allow a limited range of employment-intensive commercial uses with low intensity land use impacts, measured in terms of traffic generation, environmental effects, and building scale and site layout". This proposal will leave the property with no trees; there will be a massive impact. There is no site plan proposal before the Board; this is really a quarrying activity, which is not allowed in the OC zone. The Town of Falmouth approved the activity for 2 years, it has already exceeded that time, and there is still no proposal for buildings on the abutting property.

The State Statute states a zoning ordinance may include a provision for contract zoning; all rezoning must be consistent with the growth management program adopted by the Town. The Route One corridor established under the Comprehensive Plan fits under that. Secondly contract zoned areas must be consistent with existing and permitted uses within the original zones. That is the legislation that that the Board has to follow, in other words if the new uses are not consistent with the existing and permitted uses, they cannot be introduced. He said he had not seen Ken Cole's letter, but he has seen a decision from the Cumberland County Superior Court this November, which was McMillan vs. City of Portland. The superior court judge said this subsection requires that the legislative body consider if any re-zoning would be in basic harmony with existing and permitted uses within the area to be re-zoned. Will turning this lot into the surface of the moon be consistent with existing and permitted uses? The preface to the zone states low intensity land use; is the impact of 5-years of quarrying consistent with these uses? The essence of the residents' concerns is that the applicant is backing into an extraction of materials permit, this is not permitted in the zone. If it were allowed as an incidental use Section 410.6 it requires that a building permit be issued. In other words, in order to consider the use incidental and not fall under the ordinance requirements of Section 410 and receive a permit from the Board of Appeals there must be a building permit issued. The second requirement is the contract zone must be consistent with the Town's Comprehensive Plan; Section 1.3 of the Town's Comprehensive Plan states Route One buffer Strip - Developments should be designed to preserve the naturally forested character along much of Cumberland's Route One corridor and to ensure that it does not become developed in a treeless strip development. This contract zone must comply with these requirements. Sec. 1.5.3 - Side and rear building setbacks must comply with the underlying requirements for the zone. The central zone of these guidelines is to encourage front setback from Route One to be consistent with the 75' buffer. Sec. 1.5.4- Hillside development when a proposed development is located on a hillside that is visible from Route One or other public areas its presence will be much more obvious, because of this it is important that the structure be designed to fit harmoniously to the visual environment. Site clearing should be minimized and the vegetation should be retained for provided to minimize the visual impact of the development. These are the standards the Planning Board and Council have to follow when adopting a contract zone. It is pretty clear these are not met. There is a reduction from 150' to 100' in the required frontage as noted earlier there is a reduction in the buffering and what they are really seeing is in a situation where the Town hopes this area will become a high quality commercial development; in the short term it appears that there will be a gravel quarry, with a treeless landscape there will be no natural buffering. If the trees are removed there will be an increase in noise.

Mr. Tom Foley, representative for the True Spring Farm Condominium complex, stated that he was very pleased to hear that there is a comparison of the earth removal that would be equal to Falmouth. Mr. Foley presented photos of the scope of earth removal that is currently taking place in Falmouth. Mr. Foley reviewed the consequences in Falmouth in which were originally designed for Peter Kennedy. There was a grading plan for the existing quarry in which the back wall was to be terraced and planted. The original approvals of December 2003 stated the site work would be completed within one year. Mr. Foley stated it would be unfair to extend the quarrying operation for a 5-year period; there are 20 families in True Spring and 14 in Hawks Ridge who are at risk for a loss of value in their properties due to the quarry operation across Route One. The residents of True Spring and Hawks Ridge are concerned; they are not obstructionists. They are in favor of commercial development that conforms to the Route One Design Guidelines. Mr. Foley stated he met with Ms. Nixon and raised the question of quarrying for a 5-year period with no proposal for development. Mr. Foley spoke with Bill Longley, CEO who stated §202.2 requires a Site Plan approval prior to grading. Does a contract zone supersede this?

Ms. Nixon stated that Cumberland Foreside Village had received an “extraction of gravel permit”, which is a one-year renewable permit. This was permit was extended in December 2005.

Mr. Cimino of True Spring stated that Attorney Clough had done an excellent job explaining the concerns of residents to the Board. Mr. Cimino stated he had been in construction for over 35 years, and has never cleared a site prior to an application for a project. The issue is whether one can clear land without a concept of development which takes away the Board’s control to require buffering etc. This contract zone is an attempt to mine this site. The neighbors have the right to expect development to conform to the Route One Design Guidelines.

Mr. Chase responded that to remove the ledge from this site, one building site at a time, would be cost prohibitive. If the lots are not leveled they will sit undeveloped. There was considerable support from the Council to develop this site which has been idle for years. Removing 25’ from the top of the site will not have a great impact on the noise level from I-295; the existing site is approximately 75 to 80 feet below I-295. There has been 225,000 cubic yards of ledge removed since March 2004. Mr. Chase has done all the ledge removal at Rockwood Senior Housing and there have been no complaints of damage from abutters. The buildings will have the same setback buffer as the SeaFax building. That is a nice looking building; he did the site work for the SeaFax building.

Mr. Phil Gleason, Counsel for Mr. Chase; reminded the Board that it is being asked to make a recommendation to the Council for amendments to the existing contract zone for the property. Site Plan and Subdivision review are not relevant tonight; the Planning Board will have future review of the property. Mr. Clough had good arguments, but he disagreed the change to the contract zone is inconsistent with the Comprehensive Plan and the Route One Guidelines. Mr. Chase has labored with the Council and Town Planner for a plan that is desirable from the Town’s point of view.

Mr. Mohr stated the issue which Mr. Gleason mentioned is that this plan will return to the Board for subdivision and site plan review.

Mr. Foley voiced concern that the next owner will come to the Town for another contract zone to add 60,000 square foot building.

Ms. Shirley Storey King lives on the other side of the project, Middle Road and stated she is not opposed to diversifying the tax base. Ms. Storey-King stated the ridge of hardwoods can be viewed from her driveway, and asked if there would be enough topsoil replaced for trees to grow back.

Mr. Dick Corbin of True Spring stated he has walked the property at a site walk, and there was a plan of what the finished site would look like, residents have problems with the noise, dust, traffic and water run-off from the quarrying operation. They are not opposed to development, but stated if the Board approves this they will be approving a 5-year permit to quarry the land which is not reasonable. How many more years will they have to listen to the blasting? The buffer is a proper buffer.

Mr. Gleason stated before any work can take place, the ledge must be removed, the site plan review process will address buffering etc. Tonight they are simply asking the Board to recommend to the Council the amendments to the existing contract zone.

Mr. Robinson agreed with Mr. Gleason and reminded everyone that the Board is not approving anything tonight; they have been asked to look at this and make a recommendation to the Town Council.

Mr. Carlos Scianno of True Spring stated he was impressed with the Board's respect for concerns of neighbors. He felt the concerns are self evident and suggested the Board look at the site.

Mr. Powers stated everyone on the Board today has been on the site on more than one occasion, as well as the site of True Spring and Hawks Ridge. The Board is aware of the development on Route One.

Mr. Cimino stated to diminish the Board's recommendation to the Town Council is incorrect, he feels the Town Council will listen to the Board's opinion.

The public portion of the meeting was closed.

Mr. Powers stated the Board has a proposal to recommend or not to the Town Council.

Mr. Robinson stated a third option is to not support this as proposed.

Ms. Howe stated she felt the property should be developed within the guidelines of the Office Commercial district.

Ms. Nixon stated if the amendments were not approved, the existing contract zoning agreement is still in effect.

Mr. Couillard agreed with Ms. Howe to not support the amendments to the existing contract zoning agreement.

Mr. Ward stated it would be helpful to have a copy of the existing contract zone to compare the changes. He felt they lacked enough information to vote.

Mr. Ward moved to table the request for an analysis of the original and proposed contract zone to review changes. Mr. Ward's motion failed due to lack of a second.

Ms. Howe moved to not recommend to the Town Council the amendments to the existing contract zoning agreement for Cumberland Foreside Village, Tax Assessor Map R01, Los 11, 11B, 8 and 7.

Mr. Couillard seconded.

VOTE: 3 in favor (Robinson, Howe, Couillard)
1 abstain (Ward)

6. Public Hearing – Recommendation to the Town Council for a contract zoning agreement to allow a religious institution at 99 Gray Road, Tax Assessor Map U17, Lot 11A in the Local Business District (LB), Fogel-Molin Cumberland, LLC, Owner, Rachel Cooney, Representative.

Ms. Nixon presented background information as follows: In February, the Board voted to add religious institutions as a special exception use in the LB zone. This was in response to a request by the Chinese Gospel Church who has a property on Route 100 under contract (the Norstar Communications building). When the request went to the Council, they did not support the zone change because they did not want to open up the entire zone for churches (loss of tax revenue) but the Council was sympathetic to the proposal and so suggested the applicant try contract zoning instead. Ms. Nixon stated she had reviewed the Comprehensive Plan and found no reference that would seem to support the CZA for the church, while there are several references that support the Chase proposal. The proposed contract zone allows the part of the church that will be rented to Atlantic Communications to be taxed (not exempt as a religious institution).

Mr. Sidney Thaxter, representative for applicant stated the property will be split for taxation purposes. The church portion will be exempt and the rented portion will be taxed. The only change they are requesting from the current zoning is the side setback. They will be installing a handicapped ramp and are asking relief from the 20' side setback requirement on Deer Run Road. The church will share the taxes at 50% and analyzed by the Town each year based on the usage.

Mr. Robinson stated with all due respect to Ms. Nixon's comments he feels that a church provides a public benefit, and would have preferred a zoning amendment, but does not object to contract zoning, and will support sending this recommendation to the Town Council.

Ms. Howe stated she is entirely sympathetic with the church, and thought it was compatible to add as a permitted use in the Local Business zone. This does not present the type of public benefit that has been previously been the criterion for allowing contract zones. In the past her sense of contract zoning was there had to be something that was listed in the Comprehensive Plan as a public goal that could only be achieved by having the contract zone; such as a contract zone for Dr. Hanson's carriage house, which might have afforded an opportunity for affordable housing. The Kennedy proposal had over 55 housing and the possibility of affordable housing for other residents of the town. On Chebeague the Recreation Center was developed as a contract zone, which was a large scale fundraising effort by the community. It was placed next to the school to allow the

school to use the facility for gym classes, etc. This zone seems appropriate for a church, but as a permitted use, not through contract zoning.

Mr. Couillard agreed; and suggested that the recommendation to the Town Council include a note that the Planning Board does support the concept of churches in the Local Business zone.

Mr. Ward asked if the proposal would be going to the Board of Appeals next?

Ms. Clooney stated they have not been to the Board of Appeals; if the zoning change had been approved, their next step would have to be to receive a special exception from the Board of Appeals.

Mr. Ward also missed that they were purchasing the entire building, but continuing to lease out a good portion of it; based on those two points as much as he is against contract zoning, he would support the contract zone for this case.

Mr. Powers stated he thought the community would benefit from the establishment of the church. He stated that the addition of churches as a permitted use to this zone would have very little impact on the Town's tax base.

Mr. Powers moved to recommend to the Town Council that they reconsider the Board's original recommendation for a modification of the zone to include "religious institutions" as a permitted use by special exception.

Ms. Howe seconded.

VOTE: 4 in favor (Robinson, Howe,
Couillard, Powers)
1 opposed (Ward)

F. Administrative Matters

- 1. Mylar to be signed for R& N Woods subdivision.** The mylar required minor changes.
- 2. Apple Grove Subdivision -** Mr. Terison has e-mailed and asked to have his subdivision approval at 68 Orchard Road rescinded. The mylar was not recorded; the applicant was in the process of meeting the conditions of approval

G. Adjournment

Mr. Robinson moved to adjourn. Mr. Ward seconded. VOTE: Unanimous

Meeting adjourned at 10:00 p.m.

A TRUE COPY ATTEST:

Thomas E. Powers, Board Chair

Pam Bosarge, Board Clerk