**Conservation Subdivision Committee**

**July 25, 2017 Meeting Minutes**

The meeting began at 6:30 pm.

**1. Roll Call: Present:** Mike Schwindt, Alan Blanchard, Paul Auclair, Peter Sherr, Tom Gruber, Meg Coon, Sally Stockwell, Sam York, Carla Nixon - Town Planner, & Christina Silberman - Administrative Assistant.

**2. Adoption of Minutes from the June 27, 2017 meeting:** Minor corrections to the June 27, 2017 meeting were noted to add a statement regarding Mr. Auclair’s membership status that “In the interim, Chairman Schwindt determined that Mr. Auclair may continue serving as a public committee member with voting privileges” and to correct a reference from “Mr.” Nixon to “Ms.” Mr. Auclair moved to accept the minutes as amended, seconded by Mr. Blanchard and **VOTED, 6 yeas, unanimous – motion carries**.

**3. Review of Conservation Subdivision Concept Plan:** This item was delayed because Ms. Nixon had temporarily left the room.

Chairman Schwindt said the next item is that Ms. Stockwell would make a list of things she would like added and would send it out to everyone. Ms. Silberman said she received this from Ms. Stockwell this afternoon and has given everyone a copy. Ms. Stockwell explained that Beginning with Habitat is a State program that helps identify various important plant and animal habitats. Maps are available for each Town with different resources and Ms. Stockwell brought these to the meeting. Ms. Stockwell said there are 4 different maps with information that is relevant to the Committee to think about including in the request for information up front or as components of the open space. Ms. Stockwell shared the maps with the Committee and outlined each map. Ms. Stockwell noted that the maps are not 100% accurate and they are a good start. Ms. Nixon returned to the meeting during the review of the maps. Ms. Silberman noted that smaller versions of several of the maps Ms. Stockwell brought are in the back of the committee members’ notebooks but the print is very small on these.

Mr. York asked if the data is valid and can be relied upon to make decisions and Ms. Stockwell said yes, it is all mapped information based on real field work but it may not be totally complete. When the Planning Board has someone come before them with a development proposal they almost certainly will need to do additional field work to verify what is there. Mr. Sherr agreed and said for example wetlands are mapped typically at 30,000 feet at the State level and identifying the specific boundary is typically determined by a field survey and a developer is required to do this before coming before the Planning Board. Ms. Stockwell said in terms of what the Town may ask applicants to do for the initial sketch plan, the maps should be adequate.

Mr. Gruber noted that there is a designation on one of the maps for town owned properties and asked if there is a designation for land under the jurisdiction of a land trust. Ms. Stockwell said this is one area where often the information is incomplete depending on whether the land trust provides the information to the State. Mr. Gruber asked if there is a map that shows vernal pools. Ms. Stockwell replied that if the vernal pool has been mapped and verified as a significant vernal pool then they are shown on the high value plant and animal habitat map but this work has not been completed yet. Mr. Gruber said that the Town of Cumberland did a good job 3 - 4 years ago to identify vernal pools. Mr. York said the question is whether or not this work has been verified and accepted by the State yet. Ms. Stockwell said that the information has been with Inland Fisheries and Wildlife staff for several years and they have not finalized their review.

Ms. Nixon said that if the Town has noted a potential vernal pool, it is noted with a bright yellow sticker on the folder in the map & lot file. If one of these properties is being proposed for development then the engineer will send out field surveyors to determine whether it is in fact a vernal pool. Ms. Nixon noted that vernal pools can only be identified in the spring and this could be a problem for developers. Ms. Nixon provided a copy of a 4 step process used by the Town of Falmouth. Ms. Nixon said that these maps are very helpful to show vernal pools. Ms. Nixon cited the Solar Way Subdivision and said that there was quite a bit of push back from the abutters to wait until the snow was gone so they could really look at the wetland areas because the Planning Board’s review started in the winter. Ms. Nixon questioned how much time the Town will make a developer wait to get accurate data.

Mr. Sherr said that standards for subdivisions in the ordinance now require developers to identify all natural resources first and he asked if there is anything Ms. Stockwell presented tonight that is beyond the current standards. Ms. Stockwell said she has not looked at this comparison yet and that the Committee needs to do this.

Chairman Schwindt said that a need for the definition of “natural resources” was discussed in May and this has not been defined yet. Mr. Sherr suggested that we start with what is currently happening now and is mapped and defined as a natural resource then see if there is anything that is not included that would be beneficial to add to the list. Ms. Stockwell said that the Committee should verify that what is under the water resources and riparian habitat and high value plant and animal habitat is included. New pieces to add will probably be found under the undeveloped habitat blocks, connectors and conserved lands. Connectivity of existing conserved lands will be helpful in planning any new open space in a way that maximizes the benefit. Ms. Nixon said there is a term of “prime agricultural land” that is based on soil types and this is something to look at.

Chairman Schwindt returned to discussion of items in the minutes of the last meeting that need to be followed up on and noted that Ms. Stockwell requested maps showing different scenarios. Ms. Nixon showed an example of a traditional subdivision plan of a recent Planning Board sketch plan review of a proposed subdivision on Orchard Rd. that has a lot of wetlands. Ms. Nixon shared a copy of a plan that Judy Colby-George, the Town’s GIS person, laid out for this parcel as what the Town may want to see in a conservation subdivision plan. The committee discussed the conservation plan.

Chairman Schwindt said another item was to check ordinances in other towns with a conservation subdivision to see what they have for open space percentages. Ms. Nixon said she did not find many other towns with conservation subdivisions but she did find Falmouth and Freeport’s ordinance. Ms. Stockwell said Standish has one as well. Ms. Nixon said that in Freeport they determine the amount of open space by taking the conservation land plus the unbuildable land and then divide this amount by the underlying zone lot size. Ms. Nixon said that Randall Arendt’s books talk about taking out 50% of the buildable area and 80% of the non-buildable area. Falmouth’s ordinance is very convoluted and Ms. Nixon could not determine how they figure out lots. Ms. Nixon shared Falmouth’s and Freeport’s definitions of primary and secondary conservation areas. Ms. Nixon said that use of the terms primary and secondary conservation areas do appear to be industry standards.

Mr. York said he has not seen anything yet about whether it is optional for the developer to make the land that is set aside public. Ms. Nixon said the ordinance leaves this up to the developer. The land could be given to a homeowner’s association or to a land trust but a lot of the local land trusts don’t really want these small pieces. If the Town wants these lands held by another entity, it would have to be added to the ordinance. Mr. York said the greater good would to be to make it available for a use appropriate for the type of land that it is. Mr. York said that if land is not buildable, it could be used for recreation but the question is whether it will be public or private and this should be taken into account. Mr. Auclair said he thinks it would be unfair to owners to require that the open land be made public and he would be against this in general. Mr. Blanchard asked if the land is held by the homeowner’s association, does it stay in the tax base. Ms. Nixon said yes, the taxes are shared amongst the lot owners. Mr. Blanchard noted that if the land is public, it would be taken out of the tax base. Ms. Nixon said the open space could be made public but still owned by the homeowner’s association. The open space land would have to be given away to a tax exempt organization in order for it to come out of the tax base.

Mr. Sherr said that if there are subdivision type alternatives, like the traditional, and a developer will only get 5 lots in a conservation type then the developer will choose the traditional. There will need to be an incentive, like a bonus density to get more lots, for a developer to choose a conservation type. Mr. Sherr said that maybe Falmouth figured this out and that is why they only allow a conservation type now. Ms. Stockwell said that she thinks Standish requires conservation subdivisions in the more rural areas and then has two other options in the rest of the community. Ms. Stockwell said she doesn’t know if New Gloucester has a conservation subdivision but in order to preserve more open space in the rural areas, they have a system where a developer could build in the town center and then contribute funds towards purchasing or protecting open space in the rural areas. Mr. Blanchard said he likes the principal of choice and if land is taken away to build on, which could be very beneficial depending on the land, there has to be some way for the developer to be made whole. Ms. Stockwell said this is where the lot size will matter. Mr. Sherr noted that one lot can make or break a project for a developer.

Chairman Schwindt said another item was to add an application procedure section in the draft ordinance and Ms. Nixon has done this. Ms. Nixon was going to check the definitions in the Town’s ordinances for consistency and Ms. Nixon said the Committee can do this as they go through the draft. Chairman Schwindt said there needs to be a definition for “open space”.

**4. Continued Review of Draft Conservation Subdivision Ordinance:** The Committee picked up where they left off in review of the draft ordinance using the revised 7/24/17 draft starting with section 6.2.4.A.3. Mr. Auclair asked if use of the terms primary and secondary conservation areas has been resolved. Ms. Nixon said these terms are used elsewhere and are key concepts. What the Town puts under these areas is up to the Committee. Ms. Nixon said she thinks we should keep these terms. Ms. Nixon said she looks at whether an ordinance goes above and beyond where other Towns would go. The more we stick with how other towns do things, the more defensible it is. The Committee has to be mindful of whether the ordinance goes too far and if it commits a taking of someone’s property value. Mr. Sherr proposed keeping the primary and secondary references and have the primary items be must have items and the secondary items be the ones to consider adding that are not required by law but add value.

Chairman Schwindt stated that there is nothing in the ordinance that gives precedence or greater value to the secondary areas than to any other type of land. Mr. Schwindt proposed using a greater point value or credit for the secondary items to be set aside. If secondary items are used, a developer could get credit of 1 acre for 1 acre and if land is used that is not primary or secondary, a developer could get credit of .9 acres for 1 acre. This would give an incentive to use the secondary areas. Ms. Stockwell said she thinks the primary and secondary lists are very important and suggested the primary list include what is unbuildable plus whatever other conservation lands the Committee thinks are really important to make sure they are set aside.

Ms. Nixon referred to Freeport’s ordinance and said they have a four step design process that looks different than Falmouth’s. Freeport gets into primary and secondary areas in their step 2 for location of house sites and their ordinance says “house sites shall be tentatively located using a proposed open space as a base as well as other relevant data from the site analysis map such as topography or soils. House sites should generally be located not closer than 100’ from primary conservation areas and 50’ from secondary conservation areas taking into consideration potential negative impacts of residential development on such areas as well as potential positive benefits of such locations to provide attractive views and visual settings for residences.” Ms. Nixon said that this is more of a global view of a piece of land to say this is very important and house lots could be here, but should not be here. Mr. Auclair said he likes the idea of the different distances. Ms. Coon said that Freeport has a list of secondary areas that are defined by different zones in the town so secondary areas may be different in the village open space than in another area. The Committee talked about adopting a conservation subdivision policy as optional in one area that may be more dense and required in an area that has more desirable features. The Committee agreed to keep the reference to primary and secondary conservation areas.

Chairman Schwindt asked if there should be a value placed on the secondary areas compared to the non-primary and non-secondary groupings. There could be a factor applied or an adjustment to setbacks for a developer to go with setting aside the secondary areas compared to other land if there is greater flexibility. Ms. Stockwell referred to Falmouth’s delineation of common open space in their 4 step plan under step 1A.4 and 1A.5. After primary areas are set aside they go to secondary areas and rank the different things that are possible to include in the open space. The highest value to lowest value areas are ranked and added up until it meets the percentage requirement. Mr. Auclair said he thinks that the current language is too simple. Ms. Nixon will compare and contrast the 4 steps from Freeport’s and Falmouth’s ordinance and put something together that might work for Cumberland. Mr. Auclair said that we would like to see the developer encouraged to incorporate as many of the secondary features as possible and if the Town can come up with a carrot to drive this that is great. Ms. Stockwell said that the 4 step process makes a lot of sense. Ms. Nixon encouraged Committee members work on the language as well to see how they would like to see it put together.

A definition of significant wildlife habitat is needed in order for the Committee to decide if secondary area item a should be considered as a primary area. Chairman Schwindt questioned how secondary area item d is written. The Committee recommended this language be revised to reference breast height instead of a drip line and Ms. Nixon will review this. Ms. Stockwell referenced secondary area item c and said that one acre of contiguous forest area is too small but she doesn’t know what the right number should be. Ms. Nixon noted that secondary area item h for existing views/characteristics is very important. Chairman Schwindt noted the word adjoin should be adjoining in item h.

The Committee agreed to change 50% to 75% in 6.2.4.A.5 and to add “to another common open space area” at the end of the first sentence.

The Committee agreed to strike the first sentence in 6.2.4.A.6 and to change “non-adjoining” to “all” in the remaining sentence.

The Committee agreed to revise 6.2.4.B.5 to add “unless otherwise prohibited” at the end of the first sentence. Ms. Stockwell commented that 6.2.4.B seems to be a mix of what should be included in the open space and what kinds of activities are allowed in the open space and she finds this confusing. Ms. Stockwell said items 1 and 2 are things that should be included in the open space. Ms. Stockwell said she does not think the Town wants to have active recreation areas as part of the open space. Ms. Nixon said a swimming pool or tennis court are things that might be included in a development and Ms. Stockwell questioned if this should be in the open space or part of the developed portion of the parcel. Mr. York said it could be something simple like bocce ball but a tennis court would take up a lot of space but he thinks it should be allowed. Ms. Nixon said active recreation is limited to 10% of the open space and can’t be in the primary areas and this could be amended later if it becomes a problem. The Committee agreed that items 1 and 2 should be removed from section 6.2.4.B and included in the list of conservation areas. Section 6.2.4.B.4 should have “for example birdwatching and picnicking”. Section 6.2.4.B.3 should state “Walking or bicycling provided they are …”. Section 6.2.4.B.6 should be revised to remove “and such activities are not conducted within primary conservation areas.”

Ms. Stockwell asked if 6.2.4.B items 7 & 8 should be included as open space or are they part of the developed portions of the project. Ms. Stockwell said that what we are trying to do by requiring open space is that it not be continuously altered and should be left in a natural state unless there are active recreation areas. Mr. York said if there is a settlement pond it would be taking up space that should be in the developed portion. Ms. Nixon explained that ponds are structural and the ordinance says non-structural. Easements for drainage would be for water to flow over a lot. Ms. Nixon clarified that easements can be placed in the open space. Mr. Sherr said he does not read #8 as drainage and underground utility lines are in the open space and it means that there might be an easement across the open space to access a drainage structure that is outside of the open space. Ms. Nixon agreed. Ms. Stockwell said if there is a major subdivision road with drainage ditches on either side, these ditches are on each lot and there are easements to allow water from one property to drain to another. Mr. Sherr said an easement may also be needed for the open space if there is drainage from the open space and the open space can create stormwater. Ms. Nixon said she does not think these things would add up to a lot. Ms. Nixon suggested leaving these in the ordinance for now and the Committee can come back to it.

The Committee looked at section 6.2.4.C and noted that item 3 is already covered and should be removed. Ms. Nixon will revise item 4 to be called a deed restriction. Mr. Auclair asked if there needs to be anything about firearm target practice or if this is allowed in town and Ms. Nixon will check on this.

The Committee looked at section 6.2.4.D. Chairman Schwindt said he put a note in item 1 to tie facilities to permitted use and he will do this. Chairman Schwindt said in item 2.a he has italicized “any facilities” to be added. Ms. Nixon questioned what 2.b would be. Ms. Stockwell said this section mostly refers to a homeowners association and asked if the Committee wants to reference other options for ownership. Ms. Coon said the homeowner’s association is the most common ownership and another option could be expressed. Ms. Coon will rewrite sections 6.2.4.D items 1 & 2 to clarify them. Ms. Stockwell said she has heard that when there is turnover in ownership, there is not always the same understanding or commitment to the owner’s joint responsibilities and asked how this is addressed. Ms. Coon said that this is a homeowner’s association management issue and when there is a real estate transfer the association usually has a resale certificate in which everything is spelled out and the owner has to sign off on this. Ms. Stockwell said she has heard it is hard for association owners to police each other. Ms. Nixon said the alternative is to say the Town will enforce it and the Town won’t do this. Ms. Stockwell asked if it would be helpful to have a periodic report from the association to the Town and Ms. Nixon said no, the Town can’t do this.

The Committee reviewed section 6.2.4.E. Ms. Nixon said the Town Attorney will review this information.

Ms. Nixon said she has drafted a 4 step design process. Ms. Nixon provided Falmouth’s 4 step process and will email Freeport’s 4 step process to the Committee.

**5. Next Steps:** There is some follow up work to be done by the Committee members. The next meeting will be August 22, 2017 at 6:30 pm.

Ms. Nixon noted that the Town Manager would like to have an ordinance presentation ready for the Town Council by fall.

Ms. Stockwell said that the Committee did not discuss the information Ms. Nixon sent about how much land area should be conserved. This will be carried forward until the next meeting.

Mr. York asked if the Committee could be provided with information sooner so they have more time to look at it before the next meeting and Ms. Nixon said she would do her best.

**6. Adjourn:** Mr. Auclairmoved to adjourn at 8:40 pm, seconded by Mr. Blanchard and **VOTED** all in favor.