

CUMBERLAND PLANNING BOARD MEETING MINUTES
March 19, 2024

A. Call to Order: Chair Bingham noted that Ms. Perry is absent and called the meeting to order at 7:02 pm following a 6:30 pm preapplication workshop for a proposed subdivision on Harris Rd.

B. Roll Call: Present: Peter Bingham - Chair, Paul Auclair, Lorraine Rardin - Vice Chair, Joshua Saunders, Ann Sawchuck, George Turner, Carla Nixon - Town Planner, Bill Shane – Town Manager & Christina Silberman - Admin. Asst. **Absent:** Bridget Perry

C. Approval of the Minutes of the February 20, 2024, meeting: Mr. Saunders moved to approve the minutes of the February 20, 2024 meeting as written, seconded by Mr. Auclair and **VOTED, 5 yeas, 1 abstained (Turner) - motion carries.**

D. Staff Site Plan Approvals: None.

E. Minor Change Approvals: None.

F. Hearings and Presentations:

1. Public Hearing: Amendment to the Zoning Ordinance and act upon recommendations of the Town Council on amendments to Chapter 315 -Zoning Ordinance, Section 21-Town Center District F (6) Hours of Operation, as recommended by the Ordinance Committee.

Chair Bingham introduced the item.

Ms. Nixon provided background on how the Town Center District (TCD) came to be citing two years of work with many meetings to create a report. The proposal is to extend the hours from 9 pm to 11 pm. Ms. Nixon said that a number of residents are here who can attest to what life is like currently with a 9 pm closing and are concerned about extending this to 11 pm.

Mr. Auclair asked who requested this change. Ms. Nixon said there was no formal request, she believes the owner of Rise Pizza communicated to a Town Councilor that business was difficult closing at 9 pm. The Ordinance Committee, which is made up of three members of the Town Council, discussed this and made the recommendation. Town Manager Bill Shane said the Ordinance Committee thought this was a reasonable request and the Planning Board's role is to give feedback and a recommendation to the Council. Mr. Shane said if the Board thinks 11 pm is too late, they can make a recommendation for a change. Mr. Shane said the Council forwards these requests to the Board, as is required, and will deliberate and consider whatever the Board comes up with tonight. Mr. Shane said he thinks this was a right way to make the request having a business owner approach a Councilor who came to the Committee with it.

Ms. Sawchuck asked for the reasoning for the 9 pm end to business hours. Ms. Nixon explained that, knowing they would be serving dinner, 9 pm seemed reasonable and was the latest that would be okay for the abutters to have people getting into their cars, shutting doors, talking in the parking lot, driving off and all those things. Ms. Sawchuck asked if the

things that are being brought up now were brought up at that point when 9:00 pm was chosen. Ms. Nixon replied correct and said the previous owner was able to operate within that time frame. There is a new owner now that has a different style with pizza and a little bar area where people might want to go after a school event and so is asking for the increased hours.

Mr. Turner cited his sixteen years on the Town Council, twenty-two years on the Appeals Board and residency since 1977 and said a lot of thought was given to exactly what would and wouldn't be allowed because of the effect on residential property on Main Street. Mr. Turner said this is a potentially radical change to go from nine to eleven with and emphasize the pub aspect. Mr. Turner added that a lot of people thought that the approval of businesses on Main Street was going to be disaster but the bottom line is, what we have now has worked very well and said the Town has to be very careful about making significant changes.

Ms. Sawchuck confirmed that hours of operation on Route 100 are not limited. Ms. Nixon agreed.

Ms. Rardin said she did a bit of research on what goes on in communities near Cumberland that offer pizza and found two that stayed open beyond 9:00 pm, Pat's Pizza is open till 10 pm every day and Otto's pizza is open till 10:00 on Fridays and Saturdays. Ms. Rardin said other than these two businesses, other businesses across the board closed at 9 pm.

Mr. Saunders said that in prior discussions, the Board discussed that the Town does not have any performance standards when talking about noise with site plan review and other things. Mr. Saunders said that it is his understanding that the Board doesn't have an option to limit the decibels at the property line but this does have that performance standard. Ms. Nixon said it does. Mr. Saunders asked if the Code Enforcement Officer has ever been called out to measure the sound and if the Town has equipment to for this. Ms. Nixon said the Town has debated having a noise ordinance for many years and is considering it again now. The Police Dept. has an instrument to measure noise but Ms. Nixon doesn't believe they have ever had to go out to do this. Ms. Nixon noted that there are also issues with lighting. Mr. Saunders asked where the Town Council stands on noise. Town Manager Bill Shane indicated that this is still being reviewed.

Mr. Auclair asked if the 75 decibels is limited to the TCD. Ms. Nixon replied yes and said there was a lot of concern about how a non-residential use could fit in such a closely placed neighborhood of residences. Ms. Nixon said that unlike any other ordinance with design standards, this was a whole different animal that had to rely on performance standards, not just design standards. Ms. Nixon said the Town looked at the lighting, the noise and the hours of operation and tried to come up with a plan that would work. Ms. Nixon believes that the Code Enforcement Officer has not been asked to monitor the noise.

Chair Bingham read the following letters from residents:

1. To: Carla Nixon and the Planning Board, Re: Allowing late night hours of operation in the Town Center District, If something ain't broke don't "fix" it! Cumberland Center's current 9 pm closing time for businesses was carefully established in order to preserve our mixed use neighborhood's unique character and quality of life for residents and businesses alike. And it's worked well for many years. It's my understanding that only one business, Rise Pizza & Pub, requested the zoning change to the much later closing hour of 11 pm. Why would the Town give favored status to Rise's request so it can serve more as a late night bar and less as a "family friendly" restaurant?! Late night patrons at bars tend to be more intoxicated, less inhibited and generally a rowdier crowd generating more public disturbances, complaints, and police action. Suddenly amending our district's zoning to allow extended hours until 11 pm at all existing

and future businesses would be a shortsighted and misguided change with the potential for serious, negative impacts on our quality of life in our beloved homes, while downgrading our residential property values. Already at Rise Pizza & Pub we've seen intensely bright, unshielded lights installed in violation of the town's ordinance (since improved after town enforcement but still very bright and impacting my home and patio, among others). While town regulations require lights to be shut off at closing, the exterior lights at Rise have been staying on after 11 every night. Extending operating hours later at night will only make this worse. We're already getting more activity and noise later at night at Rise than when Louie's was there. (Jim closed at 9 and his employees were usually out by 9:30 or so.) While currently Rise is required to stop serving food and drink at 9, there have been some nights on occasion when I've heard employees leaving at 10:45 pm. If hours were to be extended to customers until 11 pm, does that mean we could expect employees to be leaving as late as 12:45 am? At Rise, several cars regularly "back in" to park in the far corner of the lot nearest the school where their tailpipes are just twenty feet or so from my condo. As a result, I get stinky exhaust fumes wafting across my patio and in my bedroom window, especially when cars are idling for prolonged periods, a frequent occurrence. I certainly would not like to see this unhealthy situation extended even later than it already is! As neighbors we should not have to endure the sounds of yelling, slamming doors, sound systems, and revving engines late at night, or the smells of exhaust and smoke interfering with our right to be able to enjoy our homes and sleep in peace. Please vote NO on allowing late night hours of operation in the Town Center District! Thank you. -Lee Buffinton, 10 Village Way, Cumberland Center, Maine

2. Sent: March 19, 2024 To Carla Nixon, Town of Cumberland, Town Council, Planning Board

I am writing you all out of concern for the proposed change of hours for businesses in the Cumberland Center Business District. Specifically allowing businesses to be open extended hours to 11:00PM. We live on Village Way directly next to Rise Pizza and Pub. Village Way is a community of 6 residential condos that are 55+ age restricted. The only thing that separates us from Rise Pizza and Pub is a wooden fence which is supposed to be maintained by Rise. This has not been done according to the original agreement. (it has some broken posts, which were not replaced but reinforced by using metal poles last fall) We are a residential neighborhood primarily single family homes. Extending hours past 9:00PM would change that whole dynamics. It adds vehicles and all the noises associated with it... revving of engines, trucks, motorcycles, horns, barking dogs left inside vehicles, slamming of car doors, car alarms (the most annoying) and people talking with particularly loud and boisterous voices. The Business District hours were set years ago in a compromise with residents and businesses. Both have thrived in the years that this compromise has been in place. Now making that change would be a detriment to those private residents. We knew the rules when we purchased our condo. Rise knew the rules when they bought the restaurant. Unless everyone in the neighborhood wants the rules to change, they should stay in place as the original agreement states. Please do not allow this late night change based on the request of 1 or maybe 2 businesses. Thank you for listening to two concerned (and elderly) citizens. Jim and Debbie Mallar, Village Way, Cumberland, Maine

3. Sent: Tuesday, March 19, 2024 8:17 AM, To: Carla Nixon, Subject: Town Center District Zone change, Sent by Lori Legere

Good Morning, I recently learned that Rise Pizza and Pub has requested a zoning change to allow it to remain open until 11pm on certain days, 2 hours later than the now 9pm time. I have lived in a condo adjacent to "Rise" (parking lot side) for 5 years and there have not been any issues when it was "Louis". When the new owner took over, they expanded the Bar significantly and now it has the feel of a Bar rather than a family gathering space/ restaurant. The noise, traffic lights and trash this late night will produce is not fair to those of us that were given the information that "the restaurant behind you closes at 9pm". I could live with that and we did got to "Louis" often. If I had been told the restaurant closed at 11pm I most likely would not have purchased it. I wish "Rise" success as I support small local businesses, but they purchased the property knowing the rules in place and now want to change them, which is not what good neighbors do. I request the hours remain the same in the zone, Thank you, Lori Legere, 8 Village Way, Cumberland

4. From: Jessica Privler, Sent: Tuesday, March 19, 2024 8:45 AM, To: Carla Nixon, Subject: Main Street

Good morning, My family and I recently moved to Main Street in Cumberland Center. We love the proximity of the school for our children, the small businesses, the quiet neighborhoods, and the feeling of community. Please keep in mind the residents and our desire to maintain our quiet neighborhoods when considering the proposal for allowing businesses to stay open until 11:00 p.m. It is simply too late for a small town like ours; had we wanted nightlife, we would have chosen Portland. Thank you. Best regards, Jessica Privler, 324 Main St

Chair Bingham opened the public hearing.

Carolyn Currie, 321 Main St., said she lives next to Rise Pizza and Pub with her husband. They have lived there twenty years and have seen lots of changes. The biggest change was to zoning in 2011 from strictly residential to mixed use business and residential. Ms. Currie had serious concern about how it would impact their day-to-day life in their quiet neighborhood. Ms. Currie said she was at ground zero because Louie's Grill was coming in right to her but rather than fight, they got together with the Town and talked about what would

be appropriate and how the Town could make this district work for businesses and residences. Ms. Currie recognized that people wanted to see businesses in Town but she also wanted to sleep at night, enjoy her garden, patio and in-ground pool. Jim Guidi, the former owner of Louie's, moved in and Ms. Currie said they had eleven years with him and he was considerate and accommodating and had low level lights. Ms. Currie said she never called about noise because it was a one-off thing. There is noise when you live next to a parking lot. The extractor fan for the ovens has a low hum and Ms. Currie is curious to know what the decibels are because it is constant while the ovens are operating. Ms. Currie said the biggest issue now are the lights that are absolutely blinding LED lights. Ms. Currie said when she walks through her backyard, she cannot see a thing, she is so blinded by the lights. Ms. Currie said that it would be wonderful if the Board does not accept this and allow businesses to continue to close at 9 pm to give them an hour or two of quiet in their yards without lights, noise and the smoke of cigarettes and pot to have some privacy and peace. Ms. Currie said that they put faith in the Town Council and the Planning Board when the Town made the change to allow businesses and they believed that the Town was looking out for them and this was for the best for all parties involved. Ms. Currie said it feels shocking now to have one business make a request and for the whole district ordinance to be turned upside down. Ms. Currie said there are football games that get out and people who want to have beer at 9:30 at night but maybe Cumberland Center is not the place to have that.

Melissa Gattine, 325 Main St., said she lived here at the time when the zoning changes occurred. Ms. Gattine said that these changes were not a slam dunk and the Town Council voted four to three to approve this. At the same time the standards were put in, the Town also increased the density for residential. Ms. Gattine said the standards are strict because of different things being changed, changes made to increase the density, add affordable/age restricted housing and meeting the request for a café. Ms. Gattine pointed out the word "café" and said if you look in the other districts that allow businesses, they allow restaurants. The TCD does not allow restaurants, it allows cafés. Ms. Gattine doesn't know what the difference is but to her it is a big difference when she hears restaurant vs. café. Ms. Gattine said she has enjoyed Rise, but not to the point that she supports a change like this. Ms. Gattine said this is a really essential change to the spirit of what was discussed back when the district was made. Ms. Gattine said she wasn't happy about the whole thing back when the Town made the changes but she does think that the Town has done a great job. Ms. Gattine noted that Mr. Shane and Code Enforcement Officer Bill Longley have been responsive when she has called. Ms. Gattine is concerned that the abutters were not informed directly that this ordinance change was on the table and said she found out about it through the grapevine and that's not okay with her. Ms. Gattine asked about the Ordinance Committee and how they accept a request like this.

Town Councilor Shirley Storey-King said she is the Chair of the Ordinance Committee that is a three-member subgroup of the Town Council. Ms. Storey-King explained that a Councilor reported at a Council meeting that the owner of Rise had said it would be nice to stay open later and the Ordinance Committee was asked to discuss this. The Ordinance Committee talked and brought it back to the Town Council as an agenda item and the Council has asked for feedback from the Planning Board. Ms. Storey-King described other ways that ordinance changes are made. Discussion ensued about the notification process. Ms. Storey-King said

that the Town Council will be the final decision maker on this and she promised a notice would be sent to anyone within 200 feet of the Rise business.

Doug Currie, 321 Main St. said he lives next door to Rise Pizza and has been there for 20 years. Mr. Currie said he loves being in Cumberland, it's been a terrific place to bring up their kids. When the Curries first moved in, a woman lived where Rise Pizza is who died and her family sold the property to Jim Guidi who developed it. Mr. Currie said this was a big change. Mr. Currie pointed out that this change would have implications for future house sales in Town. There is a big difference for a business wanting to buy a property if it has to close at nine and a completely different set of rules if a business can stay open until eleven. Mr. Currie said now there is a pizza place directly opposite from Food Stop, which also sells pizza. Mr. Currie said other residents in the area might sell their house and it might be to a business and different businesses might be interested if the opening hours were until eleven. Mr. Currie said in the summer, they spend quite a lot of evenings out back in their nice quiet neighborhood. Mr. Currie said they abut the parking lot of Rise Pizza and get noise from that, but after nine that noise dies down and they can still spend time outside. Mr. Currie said they can hear what's going on in the parking lot from their bedroom in the summer because they have the windows open and any extended hours are going to affect them. Mr. Currie said he is worried about the idea of it being a new stopping point for people after football games and he would imagine that the crowd that comes after a football game are like less likely to be considerate and quiet. Mr. Currie said nine to eleven is more than just a little longer at a time at which everybody else is hoping that noise will go down and things will be peaceful. Mr. Currie asked that the Board not suggest that this go forward.

John Davis, 2 Village Way, said he takes exception with the process, if it took two years to put this in place and this could possibly go to the Council in a week or two, he considers this extraordinarily abnormal. Mr. Davis said if this kind of change is appropriate and the Town thinks it is deserving of its' attention, he hopes the Town would spend a fair amount of time talking with the interested parties and looking at all the ramifications. Mr. Davis said a simple change of hours for Rise doesn't just change that location, it changes everyone who operates a business in the Town Center. Mr. Davis said he doesn't know who will buy Rise Pizza next, and for what and he is inclined to think that if a business owner sees an opportunity with a Council willing to change the hours from nine to eleven, why not to two, why not a 24-hour gas station or convenience store. Mr. Davis said that all those things are possible and if the Town is willing to make this change, it will be willing to make more changes. Mr. Davis said he does object and hopes that the Planning Board will ask that, at the very least, this be considered more extensively.

Tom Arnoldo, 4 Village Way, said he and his wife Chris purchased the property just shortly after Louie's began to create a café next door and they were aware of this. The Arnoldos purchased the property for his wife's mother to live for her retirement and it was, and has been, a great place for her to live. Mr. Arnoldo thanked the neighbors who communicated to them that this potential zoning change was going to happen. Mr. Arnoldo encouraged the Town that in the future, if changes like this happen, more notification is provided ahead of time. Mr. Arnoldo doesn't think that this is a good thing. There haven't been complaints about noise before because Mr. Guidi would try to quiet it down. Mr. Arnoldo said when you increase the value or the capability of the business, and it depletes the value of the people around them, it is shifting the values from one to another. Mr. Arnoldo said sometimes this

can be for the common good but he doesn't think in this case it's going to be for the common good. Mr. Arnaldo thinks the quality of the Town is going to diminish and noted that hours on Route One are different than in Cumberland Center and Route 100 is different.

Town Councilor Ron Copp, West Cumberland, noted that four Councilors are here tonight and he wants to confirm that this was not brought up by the Councilor, this was brought up by the owner of Rise Pizza. Mr. Copp said one thing that has been missed tonight is that the Owner asked for Friday, Saturday and Sunday night only. Mr. Copp said this was sent by the Town Council to the Planning Board for a recommendation.

Town Councilor Bob Vail, Cumberland Center, said that he thinks that the process is working well, the owner of Rise reached out to a Councilor and the Councilor brought it to the Ordinance Committee and the Council. The owner of Rise Pizza was forewarned that there would be much opposition to the change in hours and this is what we're seeing. Councilor Vail stated that it is incumbent on everyone to be engaged in their community. Councilor Vail said democracy is happening here, people's voices are being heard.

Chair Bingham closed the public hearing.

Mr. Auclair said if this were only a commercial district, the change in hours may be fine, but this is residential more than commercial and he is not in support of the change.

Mr. Saunders said he sees no compelling reason to recommend the change at this point. Mr. Saunders noted that the Board often sees and approves changes that impact people and he doesn't want this to be taken as a precedent and there won't be any more changes in the community because changes are going to keep happening.

Mr. Turner said that the Town Council, if they get a strong recommendation from the Planning Board, is very likely to accept that recommendation but he wants the public to understand that the Planning Board's recommendation to the Council is not binding. Mr. Turner said he agrees with most of what has been said in opposition to the change. Mr. Turner envisions of a huge difference between a restaurant with liquor until nine and the extension of hours to eleven. Mr. Turner stated it might work out just fine but might isn't good enough for people living next door who will have property values affected substantially if it doesn't work out.

Ms. Rardin said she concurs with what fellow Board members are saying and doesn't see a compelling reason to support extending the hours to eleven o'clock. This would open the door for every business in the district to operate until eleven o'clock. Ms. Rardin noted that the Planning Board hears a lot of comments from people in the Town about promises that were made, in particular during development of this zone in the Town Center. Ms. Rardin said when people come together as a community and come to a reasonable consensus in what should or shouldn't be done, it is incumbent on the leadership of the Town to honor those promises. Ms. Rardin agreed with Mr. Saunders that things change and there may come a day when the flavor of the Town changes and we have eleven o'clock businesses but she thinks this is not the time for that. Ms. Rardin said she doesn't agree with this particular change at this time.

Ms. Sawchuck said extending closing hours to eleven would be a big change. Cumberland is a quiet community and people appreciate that. Extending business hours until eleven is

something Ms. Sawchuck thinks would require a lot of consideration and she is not in favor of the change at this time.

Mr. Saunders moved that the Planning Board recommend to the Town Council to not make the proposed amendments to Chapter 315 Zoning Ordinance, Section 21-Town Center District in regard to the hours of operation, seconded by Mr. Auclair and **VOTED, 6 yeas, unanimous – motion carries.**

Ms. Storey-King explained that the preceding item had been advertised for the next Town Council meeting on Monday night and she said she is going to move to table action on the item at the meeting. The item may be tabled and it could go away forever and never be brought up again. Everyone on Main St. will get a notice if the item moves forward. Chair Bingham said the key is that this is going to be at the next Town Council meeting and people may want to show up to share their thoughts. Ms. Storey-King noted that if the item is tabled, it could go away but it could be that the item is taken up by another Councilor at the next meeting.

2. Public Hearing: Preliminary Subdivision Review of Mineral Springs Subdivision, a residential, affordable housing development with 72 units total including 36 affordable units. Located at 77 Blackstrap Road, Tax Assessor Map R07 Lot 53, in the Industrial Zone and West Cumberland Overlay zone. **OWNER:** B.R. Property, LLC. **REPRESENTATIVE:** Land Design Solutions in association with Sevee & Maher Engineers.

Chair Bingham introduced the item and noted that this is an approved use in this zone and the number of children in the school system is not one of the criteria that the Planning Board can consider. Chair Bingham reported that the Town Attorney has determined that a condominium model is legal in this case. The Planning Board does have jurisdiction over condominium documents and bylaws and the Town Attorney will review these.

Peter Biegel, ASLA - Land Design Solutions, said he has been asked to assist Dave Chase, owner of BR Property LLC, with the design and permitting of the project. With Mr. Biegel is Dan Diffin of Sevee & Mahar Engineers. Mr. Biegel said they were here for a sketch plan meeting last May to introduce the project and get feedback. Mr. Biegel reported that most of the comments heard revolved around traffic, stormwater, wells and septic systems. Mr. Biegel said they have completed a traffic study and worked on stormwater management. A Maine DEP application for the Site Location of Development Permit (SLODA) will receive a high level of scrutiny including the stormwater, septic systems and groundwater. Mr. Biegel reported the site is a gravel pit and material processing yard that is approximately 40 acres. Mr. Chase purchased the property in 2009 and really knows the site well.

Mr. Biegel shared a plan of the project and said the project is in the Industrial Zone and also in the West Cumberland Housing Overlay District. The project is being proposed under the zoning requirements of section 315-28.1 – West Cumberland Housing Overlay District. Mr. Biegel quoted from the ordinance language, “The purpose of the West Cumberland Overlay District is to allow residential uses with a greater density in order to create additional housing opportunities in the existing Rural and Industrial districts, these regulations are intended to encourage the development of affordable housing units by assisting developers in making the provisions of these units economically viable while providing assurances to the Town that the units will maintain a high degree of quality and will remain affordable to the target population

over a reasonable duration of time.” Mr. Biegel said the project has been designed and developed under the Housing Overlay Ordinance and the permitted uses are single family, duplex, multiplex and accessory dwelling units. The project is proposing all single family detached homes with a condominium style that is one large lot with seventy-two homes. Mr. Biegel further described the project. Mr. Biegel said another requirement of the ordinance is public water. The Town has been working with Gorrill Palmer Consulting Engineers on a water main extension that would come up Blackstrap Rd. that this project would tie into. A criteria for this zone is the requirement for 10% open space and the project proposes 65% open space that is shown in green on the plan.



Mr. Biegel said that there is an affordability factor and the proposed project contains seventy-two single-family, detached homes. Thirty-six of the homes will meet the affordable criteria that's been set forth by the Town of Cumberland. An agreement prepared by the Town will be signed by the Developer outlining the agreed upon terms for the affordable homes. Part of that agreement includes affordable eligibility to moderate income families making up to 120% of the area median income. Mr. Beigel said that the duration of the terms of this affordability agreement with the buyers will be in effect for a period of thirty years and the affordable covenants and restrictions set forth in the agreement will run with the property binding all subsequent owners for that thirty-year time period. Mr. Biegel said that these houses are for people to buy and live in, however, if the developer has marketed the unit in good faith for 180 days and has not found a buyer, the unit may be rented for up to two years to a qualified renter. A qualified renter is a person making 80% of the area medium income so even if they

are not able to sell the unit in 180 days, they will need to rent that unit and it still remains in the affordability pool.

Mr. Beigel said the proposed subdivision roads, shown in gray on the plan, include two road sections with a total of 2,822 linear feet. The roads will be constructed to Town standards and the developer anticipates they would be accepted by the Town once they are completed. A sidewalk is proposed on one side of each of the proposed road sections. The project proposes nineteen visitor parking spaces distributed in five different locations so that everybody who has guests has a fairly convenient place to park. Mr. Beigel described walking paths, open space and street lighting. Two fire hydrants are proposed.

Mr. Biegel said the project will utilize private subsurface wastewater disposal systems. A conference call has been held with the Maine Department of Health and Human Services Subsurface Wastewater Unit and the Maine DEP to discuss the septic systems and make sure that the system sizing and area calculations are correct. A groundwater and hydrologic study has been completed by Sevee and Mahar Engineers for the design of the septic systems. All utilities will be underground.

Mr. Biegel said that the proposed affordable homes, shown in orange on the plan, are a mix of one-story ranch and two story modified colonial homes and do not have garages. The market rate homes are anticipated to be a mix of two story modified colonials with a one or a two-bay garage. All of the homes will have a full basement and a 12 x 12 moveable shed to provide storage outside. Mr. Biegel noted that this being a condominium type development, a homeowners' association (HOA) will own all the land. A buyer will own the house. The area shown in white on the plan around the houses is a reserved common element for a yard area that's owned by the HOA but is for the owner's private use.

Mr. Beigel provided an overview of the traffic impact study. Mr. Biegel referred to stormwater management and said the project has been designed to meet Chapter 500 of the Maine Department of Environmental Protection stormwater management law and is currently being reviewed as part of SLODA permit application that was submitted to DEO. Mr. Biegel described the proposed landscaping. A basketball court and swing set play area and a multi-purpose lawn area is planned. Mr. Biegel said there will be a pond and approximately 4,455 linear feet of gravel walking paths.

Mr. Biegel shared photo simulations, prepared by John Gutwin of Pepperchrome, of what the project will look like.



Dan Diffin, PE - Sevee & Mahar Engineers, said he is helping Mr. Chase and Mr. Biegel with the civil engineering and his company is doing the hydrogeology on this project to review of the groundwater at the site and potential impacts from the development. Mr. Diffin shared information from a year's worth of work that was performed to complete a comprehensive hydrogeologic evaluation of the property. Mr. Diffin said they found that groundwater flows from the northwest to the southeast and generally toward the interstate. The groundwater is not moving in the direction of Upper Methodist Rd. and any of the private wells. Mr. Diffin noted that the project will not exceed limitations or thresholds for stormwater runoff at the property line for quantity or quality. They will not be changing groundwater direction as a result of the septic systems. The nitrates at the property line will be below the required ten milligrams per liter. Mr. Diffin noted that this was confirmed in the field through the excavation of roughly seventy test pits.

Mr. Auclair said that last month the Board heard a proposal for development at Skillin Rd. and Route 100 and he thought it was reported that the groundwater flows northwesterly. Mr. Diffin said he had a conversation with the Hydrogeologist about this and groundwater in the area goes in that direction but the other project was at a local high point where that water went back towards the lake. Mr. Diffin is confident that the information is accurate for this parcel. Mr. Diffin reported on the stormwater management plan.

Chair Bingham asked how far below the surface the groundwater was found. Mr. Diffin replied that at some point on the site, the groundwater was right at the surface and in another area the groundwater is at or within a couple feet of the surface. Chair Bingham said each building has a full basement and with a potential for flooded basements and he asked if there are seventy-two sump pumps going, where does that water go. Mr. Diffin said because of the groundwater, the buildings will have to be elevated and the whole site is going to be raised up as part of this work because they need the septic systems to be a certain distance away from the groundwater. Mr. Diffin said a lot of material will be moved around and brought into the site to raise the elevations so that the basements are outside of the groundwater table and there will be foundation drains around the outside that will be free draining. Mr. Diffin noted that the pond shown on the plan is not really for stormwater but is an aesthetic feature. Mr. Diffin provided some information on the traffic study.

Mr. Saunders asked if the septic systems will be common elements. David Chase replied that the septic systems will be the responsibility of each homeowner and will be individually owned and maintained by each owner. Mr. Saunders asked if any reclamation required in ordinance section 315-49 is going to be done when bringing in the fill. Mr. Biegel said yes. Mr. Saunders said in the traffic study it was said that they met sight lines but they suggested that vegetation along Blackstrap Rd. be cut back and then maintained and he asked if that will be included. Mr. Biegel replied yes.

Ms. Rardin asked if the four houses along Upper Methodist Rd. are part of the development and HOA. Mr. Biegel replied yes.

Mr. Turner asked about common space and if the twenty-five acres is part of the common space with each owner having interest in it. Mr. Biegel said yes, there is reserve common area for a yard around each unit with limited common elements for the utilities and these are defined in the homeowners' documents. The homeowners will own the open space.

Mr. Auclair asked about the driveways and where someone would park a second car. Mr. Biegel said every driveway is wide enough to park two cars side by side and is at least twenty-five feet long.

Ms. Sawchuck said this looks like an amazing transformation of the gravel pit and asked how high the developer is going to raise the site. Mr. Biegel said this is shown on the grading plan. Ms. Sawchuck asked if the developer has done a transformation like this before. Mr. Chase replied that he just completed a sixty-eight lot subdivision behind Harmon's Hamburgers in Falmouth. Ms. Sawchuck asked if Mr. Chase has developed a gravel pit. Mr. Chase said this will actually be easier. Mr. Chase noted that a lot of the water table is at about 248 feet and most of the footing elevations will be right around 250 which is 2 feet above the water table.

Chair Bingham asked how the pond drains. Mr. Diffin described the overflow plan.

Chair Bingham asked about buffering for the existing house above the pond. Mr. Chase said this house sits about seventy feet higher than the pit and there is no tree that he can plant to screen it. Chair Bingham asked about buffering for people living along Upper Methodist Rd. Mr. Biegel said there is existing vegetation and they will not be clearing any of that. Chair Bingham suggested some supplemental plantings for a buffer on Upper Methodist Road. Chair Bingham asked what the developer anticipates the monthly condo fees will be and noted that after year five, there's substantial follow-up work to be done. Mr. Chase said he is guessing the condo fees will be south of \$150 a month and he will provide a complete budget. Chair Bingham said there should be some kind of a capital reserve fund so the owners aren't hit with special assessments. Mr. Chase said he does not disagree, but this is a "houseaminium" project and people are going to be responsible for the exterior facade of their own houses, yards, roof, siding, painting and all that. Chair Bingham said he is talking about the common area, one of the things that he read requires that after year five there are substantial things that have to be done with the common drainage system and this is going to be an expenditure. Mr. Diffin said the stormwater maintenance is going to be fairly typical and the intent is to have the road and storm drain infrastructure in the road taken over by the Town. Mr. Diffin said the condo association will be responsible for storm drains outside of the right of way and the gravel wetland for cleaning, maintenance and if a pipe does fail or a catch basin does break down. Mr. Diffin said this is not usually after five years, it is usually much longer.

Chair Bingham read a letter from David Payne.

*From: David Payne Sent: Tuesday, March 19, 2024 10:22 AM To: Carla Nixon Subject: Mineral Springs Subdivision
I am unable to attend the meeting tonight but could you please pass along my concerns to the planning board? I personally do not think this is a great location to be putting homes in, adding that much waste water on top of the aquifer is not a great idea in my opinion. I know it has been approved by the DEP but as someone that utilizes that aquifer for my water I am not in favor. Especially since I don't see the Town or Water District ever bringing water to my neighborhood. My other concern is with the water main extension, I am not sure how the water district can say they can provide water for the additional homes, the existing main ends with the Turnpike on Blackstrap. The water pressure at the Fire Station is very low and I know of businesses and residential homes on that line that regularly lose water. If the water district can't provide to the existing customers how do they think they can add that many homes. It might look good on paper but in reality it will not be feasible unless they have plans to make some changes prior to the homes being completed.
Thanks, David Payne*

Mr. Diffin reported that they spoke with the Water District and the Water District did not express any concerns with getting the water to this area.

Chair Bingham opened the public hearing.

Bob Couillard, Lower Methodist Rd., referred to the water issue years ago in the area and said the contaminants did make it under the turnpike to his well. Mr. Couillard is concerned that all the septic systems will eventually flow under the turnpike and impact the wells on the other side. Mr. Couillard said that you can't tell him that the water will be clean on the other side of the turnpike and he asked why the Town would extend the water line when the project is right over the aquifer and they could tap into the aquifer. Mr. Couillard asked about water for the four proposed houses on Upper Methodist Rd. Mr. Diffin said the water district is not extending a water main down Upper Methodist Rd., the Developer will be tying into the main that is being added and will bring it down to service the houses. Mr. Diffin said that they have done a very comprehensive evaluation, which is in the meeting packet, which demonstrates that pollution will not reach past the property line. Mr. Diffin noted that this is in front of DEP right now going through review with the State Hydrogeologist to confirm their calculations.

Ms. Nixon noted that Al Palmer, PE – Gorrill Palmer Consulting Engineers, is present and did the Town's Peer Review work. They have discussed having peer review of the hydrogeologic report that was done by Sevee and Maher.

Lorna Copp, Upper Methodist Rd., said Mr. Chase has been a good neighbor and she would love to see this stay as a gravel pit. Ms. Copp said it is ironic that there are two fifty-foot setbacks, one by the turnpike and one by the cemetery, and nobody in either of those places is going to care about buffers. Ms. Copp said it would be nice if the fifty-foot setbacks were near the houses. Ms. Copp referred to the four proposed houses along Upper Methodist Rd. and asked how these can get the setbacks of the condominium development when the neighbors wouldn't be allowed to have those setbacks. Ms. Copp said this doesn't seem right. Ms. Copp said they live halfway down Upper Methodist Rd. and overlook the pit and can't see it. Ms. Copp said right now it looks pretty and she would prefer that they don't touch anything in front of her house. Chair Bingham said the Board is sensitive about buffers and he thinks they'll need to check with some of the neighbors to make sure they're comfortable. Mr. Biegel said this project is part of the West Cumberland Housing Overlay District and meets all the zoning requirements in that district. Mr. Biegel said these are not individual lots and the way the ordinance is written, there needs to be a fifty-foot buffer around any non-residential use. Ms. Copp said she has a big concern about water pollution.

Janine Gorham, 25 Forest Ln. asked if the word condominiums is used so the developer can build the homes closer together. Ms. Gorham asked if the pond will be fed by the ground water, dug deep enough and how it will be maintained. Mr. Chase said because all of the houses are on one common lot it is called a condominium subdivision. Chair Bingham said because it's one common lot, there is only a twenty-five foot setback around the perimeter. Mr. Chase said all of the houses on the subdivision roads will meet a twenty-five foot setback, outside of this, there is a couple hundred feet of buffer to the nearest house, with the exception of the four houses on Upper Methodist Rd. Mr. Chase said right now you can drive across the pond and it is all grave. Mr. Chase said there is no inlet or outlet and no maintenance. The pond should be really nice because it's a gravel-based pond and is usually crystal clear. Ms. Nixon asked how deep the pond will be and what about the concern of children wandering into it. Mr. Chase said there will be a five to one safety slope all the way around the pond and it will drop off one foot for every five feet. Ten feet out, the pond will be two feet deep and will probably be choked with cat o' nine tails. Mr. Chase noted that there is

water everywhere and if we had to put a fence around every body of water, what an ugly country it would be. Mr. Chase said he is sympathetic to the safety concerns but it is a body of water, like Forest Lake and Casco Bay, and people should watch and educate the kids.

Lily Copp, Goose Pond Rd., asked about the traffic impact if each house will have two cars. Mr. Diffin replied that traffic reports are put together based on very similar developments across all different types of areas. The traffic report came from The Institute of Transportation Engineers and they estimate the number of peak trips coming out of a development like this independent of how many parking spaces there are. Ms. Copp expressed concern that the Town will be spending money on a roundabout and then all these cars will be added and the Town will need a traffic light. Mr. Diffin said he is not designing the roundabout but generally roundabouts are intended to accommodate more traffic with the intent of serving developments like this. Ms. Rardin noted that the Town is waiting to see about federal funding for the roundabout and this was confirmed.

Jason Copp, Goose Pond Rd., said Mr. Chase has been a good neighbor for years he has no complaints. Mr. Copp grew up in the area and said he knows the area pretty well. Mr. Copp lived through the wells being polluted and saw the pollution travel beyond the turnpike. Seventy-four septic systems on the water table is a lot. Mr. Copp said he owns a gravel pit on the other side of the road and there is three feet of standing water in his pit right now. Mr. Copp said he is a firm believer if you own the property, you should be able to do what you want with it but it shouldn't impact the people around it. The future of this Town depends on making decisions that make sense. Mr. Copp said it's not just the people around the site that will be affected, people in the downhill side are going to be affected. Mr. Copp thinks the Town needs to make decisions as a group that make sense and don't impact people negatively in the future.

Matt Dobson lives at the last house on Upper Methodist Rd., #83. Mr. Dobson said his driveway goes downhill and he is probably level with the bottom of the pit. Mr. Dobson is concerned about his dug well. Mr. Dobson said he drives large trailers for his business and if cars park on Upper Methodist Rd., he can't get his trailer down the road. Mr. Dobson asked if these houses proposed on Upper Methodist Rd. are going to be set back far enough so people can get off the road so large vehicles won't stick out in the road. Mr. Biegel said there is probably forty feet off the edge of the pavement so there should be no reason why vehicles parked in the driveway should be in the road. Mr. Dobson asked if a sidewalk would go down to the houses on Upper Methodist Rd. Mr. Biegel said there are no plans for a sidewalk to those houses. The sidewalk will be around the internal subdivision drives only.

Councilor Shirley Storey-King asked if someone will monitor the fill to ensure that there are no forever chemicals or polluted soils. Ms. Storey-King said she is concerned with septic systems impacting wells, especially downstream, and she would like to see pre and post well testing and yearly testing after for a certain amount of time.

Al Plamer, Gorrill Palmer, said there is no requirement in the Town ordinance relative to testing of imported material for any type of contaminants. Mr. Palmer said the pond in the northeast corner is intended for borrow. There is nothing to prohibit the Planning Board from considering a requirement on material imported into the site. There is nothing in the ordinance requiring testing of wells. Mr. Palmer noted he has worked with the Town on several projects for well testing for various elements. Mr. Palmer stated that they could work

with the town on a testing program with Sevee and Maher relative to the downstream properties for baseline testing so that the values prior to construction are known with a follow up at a reasonable period, a year to two years after construction.

Chair Bingham asked how many wells they are talking about. Mr. Diffin replied that because of the direction of the groundwater, it would be wells that are on the other side of the interstate with the closest one about 300 feet away. The wells along Upper Methodist Rd. aren't within the flow regime. Mr. Diffin said when it comes to testing, they would rely on the State Hydrogeologist to comment on that. Oftentimes the State does require monitoring when they think there is a potential for future issues. Mr. Diffin said if the State doesn't require testing, it means they don't think it is going to be an issue and this is what Sevee & Maher found in their report. Mr. Diffin said they don't anticipate any impacts to offsite wells.

Ms. Rardin asked if this development is in the well advisory zone. Ms. Nixon replied yes. Ms. Rardin noted discussion during review of the Rusty Lantern project about a possible requirement for annual testing for that project but this was not decided. Ms. Rardin said she assumes if the Board required testing this would fall to the HOA once the project is completed. Mr. Diffin said he wants to differentiate between storage of petroleum products vs. septic systems, they're very different animals when it comes to groundwater pollution. Mr. Diffin said nitrates are a concern with developments like this but when fuel gets into the water this is a really big deal. Mr. Diffin noted that nitrate is taken up over distance which is why being so far away from the property line is important.

Town Manager Bill Shane said the Town has gone through great pains with their projects to do a safety check. The types of well testing that people are asking for here are pretty small potatoes. Mr. Shane can provide a drawing for the next meeting showing a radius around the project to decide which homes should be tested. The aquifer has over five billion gallons of water and the project site will generate about 21,000 gallons at most on a daily basis. The well advisory zone was due to an unfortunate incident of somebody trying to pollute the aquifer back in the 80s/90s. Mr. Shane reported that the protection zone has been removed from this area. Mr. Shane suggested, as part of their next presentation, they review how groundwater moves and flows. Mr. Shane reported that the Town is in the process of bidding out the water line extension across the turnpike and hopes to know about the roundabout project by the time this project returns to the Board for final approval.

Councilor Ron Copp commended Mr. Chase and said he has a great track record and is a man of his word. Mr. Copp referred to the location for the fire hydrants said it would be advantageous to have one closer to the top toward Upper Methodist Rd. to provide fire protection in both directions.

Chair Bingham closed the public hearing.

Mr. Biegel said they take no exception to a lot of the peer review comments and shared their responses to some of the comments. Mr. Biegel referred to the expiration of approval and said this project is going to have a four or five year buildout and it wouldn't be a bad thing to have the Planning Board write in a time frame so the developer does not have to come back to the Board for extensions. Chair Bingham asked Ms. Nixon to give this some thought before the next meeting.

Ms. Sawchuck asked about peer review of the hydrogeology work. Chair Bingham said Gorrill Palmer has a Hydrogeologist. Ms. Nixon said a peer review of the hydrogeology will be done.

Mr. Saunders moved to table the preliminary subdivision review of Mineral Springs Subdivision, a residential, affordable housing development with 72 units total including 36 affordable units, located at 77 Blackstrap Road, Tax Assessor Map R07 Lot 53, in the Industrial Zone and West Cumberland Overlay zone, seconded by Mr. Auclair and **VOTED, 6 yeas, unanimous – motion carries.**

G. Administrative Matters/New Business: None.

H. Adjournment: Mr. Auclair moved to adjourn the meeting at 9:53 pm, seconded by Mr. Turner and **VOTED, 6 yeas, unanimous – motion carries.**

A TRUE COPY ATTEST:

Peter Bingham, Planning Board Chair

Christina Silberman, Administrative Asst.

CUMBERLAND PLANNING BOARD WORKSHOP MINUTES March 19, 2024 – 6:30 pm

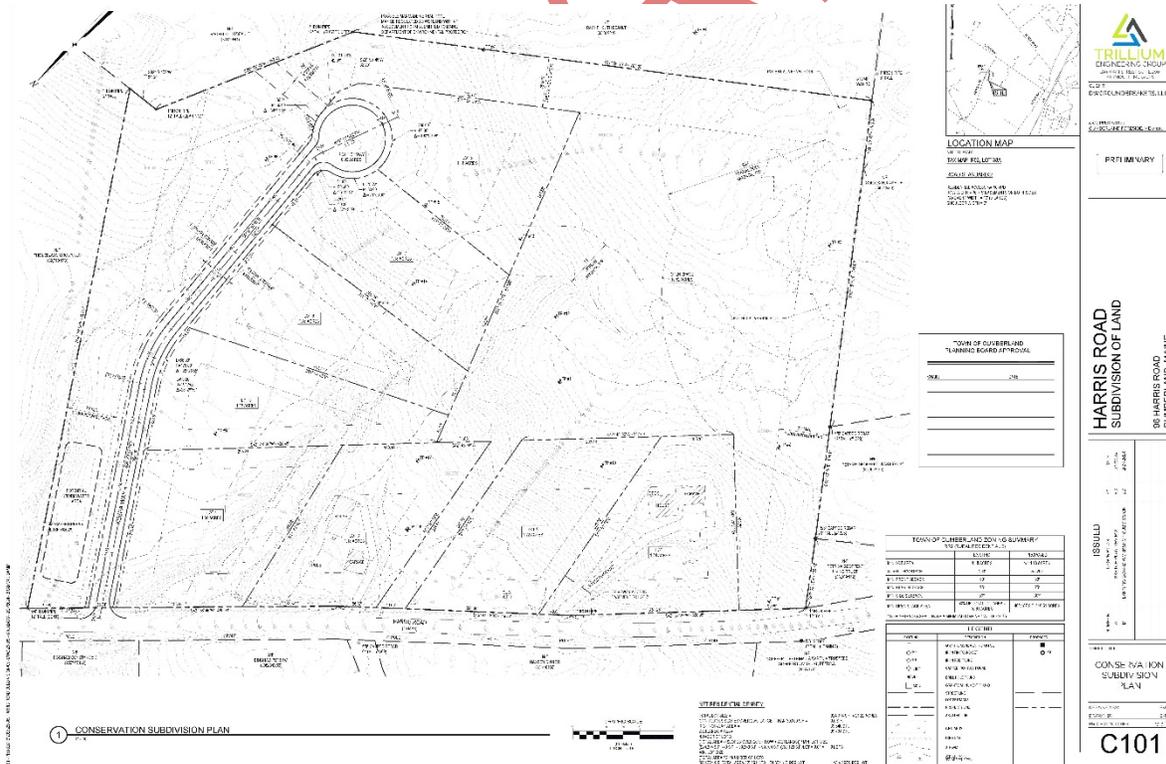
Present: Peter Bingham - Chair, Paul Auclair, Lorraine Rardin - Vice Chair, Joshua Saunders, Ann Sawchuck, George Turner, Carla Nixon - Town Planner, Bill Shane - Town Manager & Christina Silberman - Admin. Asst. **Absent:** Bridget Perry.

Chair Bingham opened the preapplication workshop for a proposed 8 lot conservation subdivision off Harris Road, tax map R03 lot 38A, in the RR2 zone.

Chair Bingham disclosed that he and his wife own one hundred feet of road frontage across from the project and he feels he can give the project a fair evaluation. Mr. Auclair moved that the Planning Board allow Chair Bingham to participate in the workshop and do not find that there is a conflict, seconded by Mr. Turner and **VOTED 5 years, 1 abstained (Bingham) - motion carries.**

Ms. Nixon stated that the proposed subdivision is in a rural residential zone where the preferred subdivision style is a conservation subdivision. The Town ordinance says that a developer should come to the workshop with both a traditional and a conservation style subdivision plan. Ms. Nixon noted that developer Eric Dube, PE, of Trillium Engineering Group is representing this conservation subdivision proposal.

Eric Dube, PE - Trillium Engineering Group, outlined a proposal for an eight-lot conservation subdivision off Harris Rd. and answered questions from the Board.



Mr. Bingham read a letter from abutter Colleen Higgins.

Hello Planning Board members, I will be unable to attend today's Planning Board meeting since I will be working, but I am very concerned about the Harris Road Subdivision project that is the subject of your preapplication workshop. Back in the 80's, that side of the road was zoned for 2 acre house lots and my side was for 4 acre lots due to all the wetlands. Previous lots were grandfathered at that time. I realize the contractor has asked for a conservation subdivision--perhaps as a way around the zoning requirements. However, the wetlands are still there and should preclude the developer from subdividing at this density. The wetlands and associated stormwater management are my biggest concerns. The proposed roadway for the 5 new homes will abut the stream, sending all the runoff into the stream that traverses my property downstream. The culvert is medium sized but may not be able to handle all the new runoff from all the new pavement. The culvert that empties into my property is almost occluded at the opposite side of the road and has some erosion under the pavement near that. Please see attached pictures. That whole area will need to be addressed and improved if this goes as proposed. Please require the developer to demonstrate how runoff will be adequately managed to avoid impacting downstream properties, and include conditions of approval to ensure ongoing proper maintenance of all stormwater control systems after the project is constructed. Recently, the home on the lot directly to the NE of the subject property was demolished and rebuilt. Since then, flooding has increased substantially on my property, which I believe is from the work done on that lot given that it sits at a higher elevation than mine, and before the rebuild. I have attached pictures. My driveway has only flooded over twice since I've lived here since 1977, until this year. Once dry, the flooded area leaves a lot of silt laying on top of the soil. Also, my basement is flooding with each of the rainstorms this year, which is not normal. I don't know who approved the permits for the groundwork across the road, but it has already impacted my property and I am concerned about what will happen with substantially more development next door. Also, if you could give me the name of what department I should follow up to ask about the approved groundwork on that lot, I'd appreciate it. I also have concerns about the increased traffic flow from the homes that will be built on these new lots. Since the road was made as a throughway, traffic increase and speed has never been followed up on as promised by the Town officials, that I'm aware. I am also concerned about the new lighting associated with the road and/or future development on these lots, and request that the Board require conditions of approval to ensure that any new lighting doesn't impact wildlife, birds and the current neighbors. This whole project will change the character of this neighborhood and is very disappointing. I realize "progress" can't be stopped but perhaps it can be lessened or spread into the current wood area more, which could reduce visual and character impacts to the neighborhood. My final concern is that some of the exhibits that are in the application package are based on old information and should really be updated to better show accuracy. They should reflect that there is already one large home being built in the back attached field with the possibility of a second, meaning that in reality there are a total of 7 new homes in the fields. The Board should consider the cumulative impacts of this subdivision combined with other development on adjacent lots and ensure stormwater, traffic and safety, wildlife, lighting, and character impacts are fully mitigated. Finally, will this workshop be recorded? If so, where can I access it? Please also include me on all future public notices about this project. Thank you for listening,
Colleen Higgins, Lot 40



Chair Bingham said the Board will want to hear more about stormwater and with the new houses going in, there is a legitimate concern. Chair Bingham asked about a plan for a snow pile on the property. Mr. Dube replied that they are talking about regular road plowing and snow storage in general, there will not be a snow pile. Mr. Dube provided more information about the proposed lot layouts and the stormwater plan.

Chair Bingham invited the public to ask questions and share comments at the podium.

Adam Lee, 10 Harris Rd., asked if this is past Mrs. Day's field. Chair Bingham said it is on the other side of Mrs. Day's driveway (58 Harris Rd.).

Denny Gallaudet, 67 Range Rd., noted that he represents the Lands & Conservation Commission (LCC) and the open space will be prime farmland and this is wonderful and is a high priority for the Commission. Mr. Gallaudet asked if the developer has plans for the management of the open space. Mr. Dube said there are no specific plans yet and they need to converse with the LCC to come up with plans, whether it's trails, maintenance or something else.

Chair Bingham referenced Ms. Higgin's concern about the culvert on Harris Rd. and asked if they will make sure that the culverts are properly sized. Mr. Dube replied that the intent of stormwater control is to release stormwater at a slower rate than it is now. They do pre- and post-analysis. Mr. Dube said that by State law, the release of the stormwater cannot be greater than the rate now and noted that the culvert on Harris Rd. is Town owned. Chair Bingham suggested Ms. Nixon check to see if Public Works wants to look into this. Chair Bingham asked about the water supply for the addition of new wells. Mr. Dube said they could do well tests if the Board wants this added as a condition. Mr. Dube noted that two wells exist now and the project adds six new wells.

Chair Bingham said the next step is for the project to come back to the Planning Board for preliminary approval and everyone will have another chance for comments. Chair Bingham explained that people can access the same information that the Board sees from the agenda posted on the Town website.

Mr. Auclair asked that the applicants address the issues from the abutter's letter at the next meeting on this project.

Ms. Nixon asked when they would come back for preliminary review. Mr. Dube replied as soon as they can.

The workshop closed at 7:00 pm.