

**TOWN OF CUMBERLAND
PLANNING BOARD MEETING MINUTES
Tuesday, December 18, 2018 - 7:00 pm**

A. Call to Order: Chairman Moriarty opened the meeting at 7:00 pm and noted that Jeff Davis is not here tonight and is out of Town on business. This would have been Jeff's last meeting of his three year term. Chairman Moriarty thanked Jeff for his service to the Town. Jeff's place will be taken by Jason Record. Jason's term will begin at the January meeting.

B. Roll Call: Present: Steve Moriarty - Chair, Paul Auclair, Bill Kenny, Joshua Saunders, Ann Sawchuck & Peter Sherr. **Staff:** Carla Nixon - Town Planner, Bill Shane - Town Manager & Christina Silberman - Administrative Assistant. **Absent:** Jeff Davis.

C. Approval of Minutes of the November 20, 2018 Meeting: Mr. Saunders referred to the top of page 8 of the minutes which states "Mr. Perkins said they are interested in conveying the open space into public lands ..." and asked if Mr. Perkins actually said that they want to convey the lands or just that they want to open them to the public. Ms. Silberman replied that Mr. Perkins said convey. Mr. Auclair moved to accept the minutes of the November 20, 2018 meeting, seconded by Mr. Kenny and **VOTED, 5 yeas, 1 abstained (Sherr) - motion carries.**

D. Staff Site Plan Approvals: None.

E. Minor Change Approvals: None.

F. Hearings and Presentations:

1. TABLED ~~Public Hearing: Preliminary Review for Christmas Creek 20 Lot Major Subdivision, Tuttle Road, Tax Assessor Map R04, Lot 10; Representative: Thomas Perkins, P.E. - Dirigo Architectural Engineering, LLC.~~ This item was tabled prior to the meeting.

2. *Public Hearing: Recommendation to the Town Council to amend the Zoning Ordinance Chapter 315, Section 28.4B - Senior Housing Community (SHC) Overlay District to add the lot located at 228 Greely Road, Tax Map R04, Lot 34A.*

Chairman Moriarty introduced the item.

Town Manager Bill Shane explained that prior to the start of OceanView Phase 1, when the Town was developing the senior housing overlay district, this parcel, also known as the Godsoe parcel, was part of the original recommendation. At the time, there were what was thought to be two purchase and sale agreements in play for this parcel so the Town Council and Planning Board said that until the legal issue is squared away they would withdraw this parcel. Mr. Shane indicated that the legal issue has been untangled and now he is back to request that the lot at Tax Map R04, Lot 34A be considered as part of the senior overlay district. This will also require a zoning map change.

Mr. Shane said that he and the Town Planner recently met with Dr. Tom Netland and he would like consideration for his parcel to also be included in the overlay zone. Mr. Shane outlined a map of the senior housing overlay district with the proposed additions. Mr. Shane said that if the Board is uncomfortable with Dr. Netland's request this evening, he can bring it back at the January or February meeting. Mr. Shane said the request is to add the parcel at Tax Map R04, Lot 34 A and if the Board is so inclined to also include Dr. Netland's parcel at R04, Lot 34. Mr. Shane noted that the Town Attorney feels the request is appropriate. The request also includes a right of way portion over the Val Halla Golf Course (Tax Map R04, Lot 41) to connect two parcels.

Mr. Shane identified a parcel that is owned by OceanView that is now under construction as phase 1. As presented by the developer, the Godsoe parcel (R04/34A) will be OceanView phase 2. Phase 2 will have restrictions on it. Mr. Shane explained that this is a very important parcel to the Town that provides a lot of scenic view. There will be no development in the front 300 feet across the entire parcel. The buildings must maintain their current appeal and look. The roof and siding may be changed. The front footprint cannot be extended any closer to Greely Rd. These restrictions will be listed in the ordinance.

Mr. Shane reported that there is an issue that will come up during the public comments. Mr. Doane sold property to OceanView and has concerns about the addition to the overlay district. Mr. Shane provided the following statement. "In discussion with the Town Attorney today, I do not believe the deed restrictions that apply to the former Doane property, which you have before you along with the map, also apply to the Godsoe property. In addition, the Board does not have the authority to intervene in title disputes, such as those involving deed restrictions. The Board is being asked this evening to make a recommendation to the Town Council regarding the extension of the Senior Housing Community Overlay District. Although the extension of the District may result in additional development, there is no plan for such development before you at this time. If and when such a plan is submitted, the Board's role is to determine whether the applicant has made a sufficient showing of administrative standing through some evidence of right, title or interest in the property. Beyond that, the Board's review should not include a discussion of whether these deed restrictions do or do not allow the proposed development." Mr. Shane added that when and if a development plan comes before the Board, the Board can request a legal opinion and the Town will happily provide that as well as having counsel at the Planning Board meeting.

Chairman Moriarty stated that there is no proposal pending or filed with the Town at this time and yet there is a name for it, OceanView 2. Mr. Shane said this is correct. Chairman Moriarty said in looking at the sketches, there is a question on the connectivity between Tuttle Rd. and Greely Rd. through the two larger parcels and asked will there be a vehicular connection. Mr. Shane said that the vehicular connection will come through OceanView 2 but there will not be any access out to Greely Rd. Chairman Moriarty asked if the Godsoe home and associated buildings will be part of OceanView. Mr. Shane replied yes.

Mr. Auclair said that given that OceanView owns lot 34A he understands the potential future connection to the senior overlay and he asked what connection lot 34 would have

to the senior overlay district. Mr. Shane said that is to be determined, the land could be sold to OceanView. The Netlands could develop an access road to the back parcel on their own and it gives them flexibility. The same senior housing overlay ordinance language will apply.

Mr. Saunders said that the portion of Val Halla, Tax Map R04, Lot 41, needs to be included in the Board's recommendation and Mr. Shane said that is correct.

Mr. Sherr noted that the ordinance revisions refer to appendix A & B, which are the plans, and asked if the language being recommended in section F, should be appendix A, B & C. Mr. Shane agreed that all three appendices should be included in the language.

Chairman Moriarty opened the public hearing.

Rick Doane, Catalpa Ln., said he understands the narrow scope of the conversation tonight. Mr. Doane said he actually supports the restrictions on access to Greely Rd. that are part of this approval. The problem Mr. Doane has with the proposal is that it inherently forces traffic back across the property that his father sold to OceanView. Mr. Doane and his wife Hilary are abutters to OceanView and his father is also an abutter to OceanView. The deed restrictions in place for the property speak to a maximum of 50 single family homes and associated improvements. Mr. Doane said the crux of the concern is that all of the traffic for 45 cottages is slated to come back across this property. Mr. Doane said that the Netland parcel might be used for additional units and subsequently this traffic would likely come back across. Mr. Doane believes there is an enforceable right to restrict what comes across the property that was his dad's former parcel if it does not conform to the requirement that it be associated with the 50 units on that land.

Mr. Doane said he has had good interaction with OceanView for the most part until this issue arose. Mr. Doane said that the Town Manager's summation of the Town Attorney's position is that the restrictions on what OceanView constructs elsewhere don't follow from his dad's former parcel. Mr. Doane said he agrees with this and is not seeking to tell OceanView how many units they can build, however, he distinguishes between this and the traffic flowing back across the parcel. Mr. Doane said that there is language that gives OceanView certain rights for adjoining parcels but the Godsoe property is not an adjoining parcel. Mr. Doane said that this is the position that the attorney who wrote the deed took. Another attorney Mr. Doane has consulted with has the same opinion.

Mr. Doane said he feels that the Board's recommendation on this matter at this time will fuel what is already a disagreement and seemingly destined to be litigation. Mr. Doane asked that the Board consider tabling this matter or recommend against it.

Mr. Auclair asked if traffic were limited to maintenance vehicles or golf carts, would that affect Mr. Doane's opinion. Mr. Doane said that everything is on the table. Mr. Doane has proposed to OceanView that in return for an agreement limiting construction on the Godsoe property to 45 units the Doanes would agree to let the traffic come across the property. OceanView is unwilling to do that. Mr. Doane said that with the specter of the

Netland acreage coming into the mix, it appears that OceanView doesn't feel constrained by the language so the Doane's feel that they have to take a defensive position.

Mr. Auclair commented that as a possible future resident of OceanView, his concern is if you could get from Greely Rd. to Tuttle Rd., in a shorter way than going all the way to Middle Rd., there would be a lot of traffic and this is something that will weigh on his opinion.

Penny Asherman, 12 Hemlock Dr., said that the view shed along Greely Rd. is really important. She appreciates the Town's effort to try and protect it and maintain the rural feel of the Town. Ms. Asherman said that the Land Trust would support this.

Casey Hughes, 250 Greely Rd., said that he is sorry to see this piece of property go but he understands development, the tax benefits and less strain to the school. Mr. Hughes said he has read through some of the details and a four story building on the property seems excessive. Mr. Hughes said that the view shed on the Godsoe side says 300 feet and that doesn't get it back very far and he would like to see it protected. Mr. Hughes does not want to see a road go through. If a bike trail comes out on Greely Rd., there is no place to walk, no break down lane and it is dangerous. Chairman Moriarty said he shares the concern with a road connecting two major arteries but he doesn't know anything about a 4 story building. Mr. Hughes said it is in the senior housing language. Mr. Shane pointed out that the language allows for a building of 40 feet.

Chairman Moriarty closed the public hearing.

Ms. Sawchuck said she shares the concern about traffic and traffic that might dump onto Tuttle Rd. because there are other developments proposed down the road. Ms. Sawchuck asked if the Board has considered the impact on Tuttle Rd. of this additional traffic. Chairman Moriarty replied that the topic came up at one of the Christmas Creek hearings but he does not think there is any study and no formal consideration.

Mr. Auclair said that he is in favor of adding the property, lot 34A, to the overlay but he is not in favor of later approving development with a connection (to Greely Rd.).

Mr. Saunders said that there is a restriction within 300 feet on Greely Rd. and the front façade. Mr. Saunders asked if there was any consideration for the restriction to go to the front façade of the building instead of just 300 feet. Mr. Shane said that the corrals are outside of the 300 foot preservation area and he thinks the corrals could be taken down and kept as grazing areas. Mr. Shane said that they couldn't add any building structures to the front. Mr. Saunders asked what would be allowed between the 300 foot preservation area and the front of the buildings. Mr. Shane said nothing would really be in front of the buildings but there are plans for in back of the buildings. Mr. Saunders said that there is no buffer, other than distance, that will be allowed from Greely Rd. and you can see from Greely Rd. to the buildings without hindrance. Mr. Saunders asked if this parcel isn't OceanView, and there is no connection between the two parcels and no connection from Tuttle Rd. to Greely Rd. could there be senior housing units here that exit onto Greely Rd. Mr. Shane said access to Greely Rd. would have to be through one of the abutters which would be difficult but not impossible. Mr. Saunders, referring to the driveway in from Greely Rd., said that you can't improve the road to allow for additional

traffic. Mr. Shane replied no, the intention is that a connection to Greely Rd. would not be allowed.

Mr. Saunders expressed concern with doing this for the benefit of one developer. He recognizes that OceanView has right, title and interest. Mr. Saunders asked if anyone else could develop this property if they don't have a connection to get out onto Tuttle Rd. Mr. Shane said that would be extremely difficult. This parcel was looked at in tandem with the Doane property when this was before the Board months ago. When OceanView came before the Board with their first submission this plan was outlined as a concept and part of a master plan. Mr. Saunders agreed that from the very beginning they have talked about this (Godsoe parcel) being included in the overlay district.

Mr. Shane said that part of the Planning Board's recommendation could be to extend the easement and the developers could present their case to the Council if they feel there is some type of problem with that restriction.

Chairman Moriarty said he is opposed to a throughway between Greely Rd. and Tuttle Rd. Chairman Moriarty is inclined to recommend extension of the senior overlay district for lot 34 A. He is not there yet with Dr. Netlands parcel because it is new to the game and there is not much information. Chairman Moriarty would rather hold on lot 34, not necessarily recommend against it, but not include it in a positive recommendation tonight.

Mr. Kenny asked if the Board can table the lot 34 recommendation. Chairman Moriarty said he believes so. Mr. Saunders added that it doesn't even have to be tabled, just not included in the recommendation. Chairman Moriarty agreed.

Mr. Saunders moved to recommend to the Town Council to amend the Zoning Ordinance Chapter 315, Section 28.4B - Senior Housing Community (SHC) Overlay District to add the lot located at 228 Greely Road, Tax Map R04, Lot 34A and a portion of Map R04, Lot 41 as depicted on the maps presented this evening with added reference to appendix C as presented this evening and to recommend that the Town Council consider extending the 300 foot preservation area to extend to the front facades of the existing buildings on the Godsoe property, seconded by Mr. Auclair. The Board further discussed the preservation area. Mr. Kenny noted that he will be voting against this only because he is not in favor of moving the preservation line back. The motion was then **VOTED, 5 yeas, 1 nay (Kenny) - motion carries.**

3. Public Hearing: Recommendation to the Town Council to amend the Official Overlay Zoning Map to add the lot located at 228 Greely Road, Tax Map R04, Lot 34A, to the Senior Housing Overlay (SHC).

Chairman Moriarty introduced the item and noted that this motion will have to correspond with the previous item. This item relates to the modifications to the Town zoning map.

Chairman Moriarty opened the public hearing. There were no comments. Chairman Moriarty closed the public hearing.

Mr. Saunders moved to recommend to the Town Council to amend the Official Overlay Zoning Map to add the lot located at 228 Greely Road, Tax Map R04, Lot 34A as well as a portion of Map R04, Lot 41, as depicted on the maps this evening to the Senior

Housing Overlay, seconded by Mr. Auclair and **VOTED, 6 yeas, unanimous - motion carries.**

G. Administrative Matters/New Business:

Jason Record is the new Planning Board member and his term will begin on January 1st.

At the next meeting the Board will elect officers for the next calendar year.

The Board will resume their workshop after the meeting adjourns.

H. Adjournment: Mr. Auclair moved to adjourn the meeting at 7:54 pm, seconded by Mr. Saunders and **VOTED, 6 yeas, unanimous - motion carries.**

A TRUE COPY ATTEST:

Stephen Moriarty, Board Chair

Christina Silberman, Administrative Asst.