

**TOWN OF CUMBERLAND  
PLANNING BOARD MEETING MINUTES  
Tuesday, June 19, 2018 - 7:00 pm**

**A. Call to Order:** Chairman Moriarty opened the meeting at 7:09 pm and apologized for the delayed start which was due to a technical issue.

Chairman Moriarty reported the death of Tom Powers, who was a member of the Planning Board who served as Chair, and offered condolences to Tom's family.

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

**C. Approval of Minutes of the May 15, 2018 Meeting:** Mr. Sherr moved to accept the minutes of the May 15, 2018 Planning Board meeting, seconded by Mr. Saunders and **VOTED, 6 yeas, 1 abstained (Auclair) - motion carries.**

**D. Staff Site Plan Approvals:** None.

**E. Minor Change Approvals:** None.

**F. Hearings and Presentations:**

**1. Public Hearing: Preliminary and Final Major Subdivision Review: Orchard Rd. 10 Lot Residential Subdivision, Tax Map R08, Lot 59 and a portion of Tax Map R08, Lot 59 B in the Rural Residential 2 (RR2) Zoning District.** Owner and Applicant: TZ Properties; Representative: William Haskell, P.E., Gorrill Palmer Consulting Engineers.

Chairman Moriarty noted that the Planning Board heard Sketch Plan Review on July 18, 2017 and the Board endorsed a cluster style subdivision. On November 21, 2017, the Board proceeded to Preliminary Subdivision Review and the Board tabled approval due to missing items. Preliminary and Final Subdivision Review is proposed for tonight.

William Haskell, P.E., Gorrill Palmer Consulting Engineers, stated that he is here with two representatives of TZ Properties. Mr. Haskell reported that the parcel is just under 25 acres in the RR2 district. The abutting uses are primarily residential with some undeveloped land and an apple orchard.

Mr. Haskell noted that the wetlands have been delineated by TRC Environmental. Two vernal pools are located on the property which required permitting through Army Corps of Engineers. The vernal pools were not classified as significant and were exempt from DEP permitting. A category two permit was submitted to the Army Corps and was approved. A stream crossing culvert was also approved.

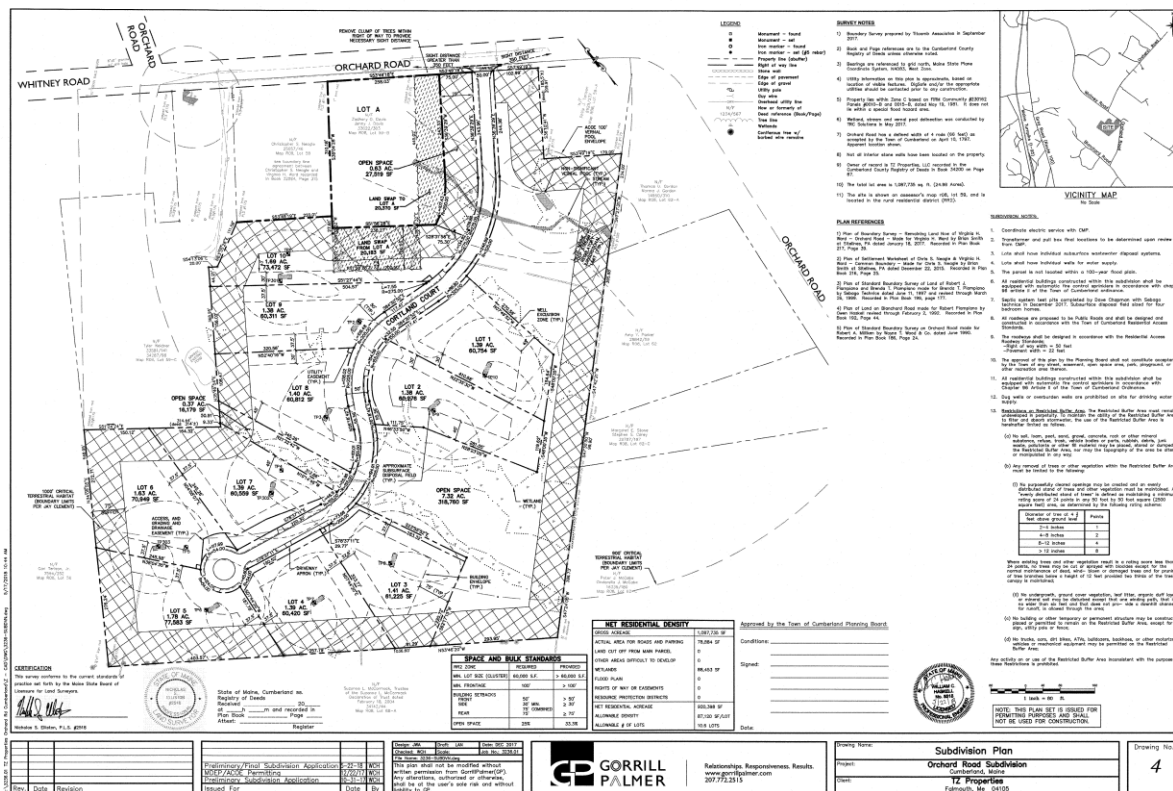
Mr. Haskell said that the subdivision road will be approximately 1500' long with a cul-de-sac. There will be ten lots. There will be about 400' of subdivision road from Orchard Rd. before the lots will start. There will be a 75' perimeter buffer around the subdivision. The sight distance will be more than adequate after some trees and brush are cleared

from the Town right of way. The speed limit is 35 mph along Orchard Rd. in this location.

Each lot will have individual wells and septic systems. Sweet Associates, which is now Sebago Technics, did test pits for the septic systems. Water testing was conducted on the abutting Davis lot and found the water to be acceptable from their well.

Each lot will have at least 100' of frontage per the cluster subdivision requirements. The plan has been designed to meet the Ordinance.

A DEP Stormwater Permit has been submitted and approved. There are two stormwater treatment facilities for this project to be located in the open space. Mr. Haskell identified the locations on the plan of the proposed subdivision. There will be a wetland crossing with a culvert and this has been through the NRPA process and permitted with Maine DEP.



A cluster subdivision requires 25% open space and this project will have 32.5% open space. Mr. Haskell identified the open space areas on the plan.

Mr. Haskell said that several waivers were requested that have been reviewed by Town staff and the Peer Review Engineer. One is relative to trees 10" in diameter or more and the applicant has requested not to depict these on the plan. There is a waiver request for the high intensity soil survey and for the soil boundaries and names to be shown on the plan. Showing the building locations on the plan is also requested to be waived.

The developer and the owner of the abutting parcel, identified on the plan as lot A, have swapped land on the back side of lot A, which will become part of subdivision lot 10, for land on the side of lot A nearest the proposed road.

Mr. Haskell said that he has had a conversation with Amanda Stearns who lives across from the project. She has concerns about headlights from vehicles exiting the subdivision road. Ms. Stearns is considering putting up a screening fence across the front of her property and has asked if the developer would assist monetarily with this. Mr. Haskell said that he has discussed this with the developer and they are not against this but would like more details. Chairman Moriarty asked if the subdivision road location had been shifted so it would not be located directly across from Ms. Stearns' house. Mr. Haskell replied that the road may have been shifted between the first and second meetings but it would not have been shifted very far.

Chairman Moriarty asked if the land swap takes care of the minimum lot size requirements for lot 10 and Mr. Haskell said yes. Chairman Moriarty asked if the underdrain system permits people to use the surface of the land. Mr. Haskell identified the location of the underdrain soil filters and said people could walk here if they want to but it could be wet during and after a storm.

Mr. Auclair asked if the trees that will be cut to improve the sight distance will affect headlights going across the street. Mr. Haskell pointed out the location of the trees to be removed and said no. Mr. Auclair asked if the trees have been removed. Ms. Nixon said that she and Public Services Director Chris Bolduc have looked at the trees to be removed. Mr. Bolduc has approved the removal of the trees that are in the Town right of way. Ms. Nixon does not know who will be responsible for removing the trees.

Mr. Auclair said that if there were an extension for this project, the Limitation of Approval has a statement saying the project has to comply with the current ordinance. Mr. Auclair asked what would happen if the cluster subdivision is no longer an option. Ms. Nixon said she believes the project would be grandfathered under the current ordinance. Chairman Moriarty asked what happens if the project approval lapses. Ms. Nixon said that then the developer would have to come back with a new plan that will meet the ordinance.

Chairman Moriarty opened the public hearing.

Ms. Nixon distributed copies of an email she received from Chris Neagle with the provisions of the ordinance that Mr. Neagle is questioning.

Chris Neagle, 76 Orchard Rd., pointed out the location of his home which abuts the project. Mr. Neagle said that he is an attorney and served on the Planning Board for a number of years. Mr. Neagle said he saw mention in one of the water studies about arsenic. Mr. Neagle noted that there are two apple orchards on either side of this project and said that his house has an extensive arsenic water filter. Mr. Neagle wants to make sure someone is looking at the arsenic level. Chairman Moriarty said he saw that the arsenic level fell below applicable thresholds. Mr. Haskell concurred.

Mr. Neagle said he is not familiar with the Army Corps process for vernal pools. Mr. Neagle asked if the DEP process was followed and if the Army Corps did an onsite

inspection to measure egg masses, etc. Mr. Haskell said that TRC went out with a wetlands scientist last year during the critical time period to measure the egg masses. Based on the things that TRC found in the 2 vernal pools, TRC determined that the two vernal pools were non-significant per DEP standards. The Army Corps does not differentiate between significant and non-significant and they treat all vernal pools regardless of MDEP's standpoint. MDEP said that the vernal pools are exempt because they are non-significant and MDEP has no jurisdiction. Mr. Haskell met with Army Corps regarding what they need to do for the vernal pools. One vernal pool has a 100' envelope and the other has a 750' envelope. Mr. Haskell said that they had to do calculations to show the Army Corps that no more than 25% of the area within the 750' envelope would be cut. The Army Corps has approved the permit. Mr. Neagle said that he does not believe that there is an exemption with MDEP and he is going to look into this. Mr. Neagle noted that he has not seen the vernal pool report that was done and he has not seen anything from MDEP in writing saying the vernal pools are exempt.

Mr. Neagle said another issue is with the buffers. At the November Planning Board meeting it was said that there would be no-cut buffers. Mr. Neagle said he found 3 copies of the buffer covenants on the Town website and they all allow for selective cutting in the buffer which is not what was said in November. Mr. Neagle said that he is opposed to this.

Mr. Haskell responded that they did get permits from both DEP and Army Corps and both touch on the vernal pool issue. Mr. Haskell will review the language in the covenants. The Town ordinance requires a 75' buffer around the perimeter of the subdivision and this will be a no-cut buffer. If any of the documents indicate otherwise, Mr. Haskell will make sure they are corrected.

Mr. Neagle said he wants to make sure the developer creates a no-cut buffer. Mr. Neagle said he reviewed the materials on the website and didn't see anything from DEP about the vernal pools. If there is something from DEP regarding the vernal pools, Mr. Neagle would like it to be sent to him.

Mr. Neagle is concerned with lot 10. Mr. Neagle cited the Subdivision Ordinance section 250(26)(A) that states "The lot size, depth, width, shape and orientation and the minimum building setback lines shall be appropriate for the location of the subdivision and for the type of development and use contemplated". Mr. Neagle said that according to his calculations there is about 7,300 square feet of space to build a house, create a yard and have a septic system. Mr. Neagle said he does not think this meets the intended purpose of a lot. Mr. Neagle said if you look at the other lots, there is a lot of space. Mr. Neagle said that if the Board thinks that a 7,300 sf building site on a 60,000 square foot lot is appropriate than he disagrees. Mr. Neagle is opposed to lot 10 and said that it is up to the Board, not Town Staff, to review the information and make a determination of whether the standards have been met. Mr. Neagle noted that there are no proposed findings on any of the standards, even though they are required under the ordinance. Mr. Neagle said he doesn't know how the Board can determine that this is appropriate for the type of development and use contemplated.

Justin Wood, 16 Apple Blossom Way, noted that he looked at this property and has walked it but bought a home nearby on 5 acres. Mr. Wood asked if the developer plans

to clear the property aside from the buffer. Mr. Wood also asked what kind of house plans there are and what the market value will be for the homes.

Mr. Haskell replied that relative to cutting, the intent is not to clear cut the entire lot. There will be clearing for the house envelopes, driveways, the road and septic systems. Mr. Haskell said that he does not know what the market value will be for the homes to be built. Zarah Derhargopian of TZ Properties said he estimates that the house lots will be in the \$110,000 to \$120,000 range. Mr. Derhargopian said he has no way to know what someone may want to build for a house.

Mr. Haskell added that the developer does not intend to cut in the buffers unless there is a safety issue with dead or dangerous trees. Chairman Moriarty said that there is a difference between “no cut” and “forever wild” and that “no cut” does allow for removal of dead wood that poses a hazard. Mr. Saunders noted that on the general notes of the plan, there are restrictions of the buffer area that reference a point system that seems to imply that trees could be cut. Mr. Saunders said the note is unclear. Mr. Sherr agreed with Mr. Saunders and said the note does not imply “no-cut” and he reads it as saying as long as 24 points are maintained, there could be cutting. Mr. Haskell said this is similar to shoreland zone cutting and he believes the language is from the Town ordinance. Mr. Neagle agreed with the Board and said he is unclear on what can be done. Mr. Neagle is against the removal of mature trees that will be between him and his neighbor and he hopes that the developer will agree to a no cut buffer. Mr. Haskell said they intend to comply with the ordinance and he will double check this. Ms. Nixon said she does not believe that the ordinance allows for a point system. The homeowners’ document states the buffer area must remain undeveloped in perpetuity but then refers to a point system which is something found in shoreland zoning. Ms. Nixon recommends that the Board require this language be removed from the homeowners’ document to be consistent with the ordinance. Mr. Saunders added that it is also noted on the plan. Ms. Nixon said this will need to be corrected to be clear that there is a no cut buffer except for dead or dying trees.

Mr. Neagle cited ordinance language for a cluster subdivision which says that there shall be a buffer area of at least 75 feet designed to eliminate potential adverse impacts. The buffer shall consist of trees, fencing or a combination of some or all of these and where possible, existing trees shall be preserved in buffer areas. Mr. Neagle said that the Board should find that it is possible to keep the existing trees and therefor the developer has to.

Chairman Moriarty closed the public hearing.

Mr. Auclair noted that in terms of the vernal pools, page 89 of the Board’s materials has some Department of Inland Fisheries comments. Mr. Auclair said he recalls previously reading something about erosion control and the plan at that time was for construction to begin in the spring of 2018, which has passed. Mr. Auclair asked if this is an issue. Mr. Haskell said that this will not be an issue. Mr. Haskell noted that there are some things that will cause a delay in construction. The Army Corps requires that a stream crossing culvert be constructed between July 15<sup>th</sup> and Sept. 30<sup>th</sup>. There is another restriction, due to the northern long eared bat, that tree clearing cannot be done until the end of July. Mr. Haskell said that the erosion control plan has been written in

accordance with the Town ordinance. DEP has the appropriate language for construction any time of the year. Mr. Haskell said there will not be a lot of plantings and spring or fall are the best times for this.

Mr. Auclair said there are 5 waiver requests listed in the Board's packet and asked if these have changed. Mr. Haskell said originally there were 4 waivers requested.

Mr. Saunders said that in response to Mr. Neagle's concerns with lot 10, lot 10 is not significantly different in width and length than lot 9. The big impact is the 75' buffer which results in a smaller building envelope on lot 10 but the lot itself is not very different than the other lots. Mr. Saunders said that the small building envelope is an issue for the developer to deal with.

Chairman Moriarty reviewed the waivers. The Town's Peer Review Engineer recommends approval of the waivers.

Mr. Kenny asked if they are not doing the soil scientist test, have the well and septic separation issues with the abutters been considered. Mr. Haskell replied that the waiver request is for a high intensity soil survey requirement and they have done the required test pits for each septic system on each lot and have provided information on the wells. The abutters' wells and septic systems will not be an issue.

Chairman Moriarty said he is a little vague on what the waiver on temporary markers in the field is for. Mr. Haskell said he is unclear about this. Ms. Nixon said that temporary markers are monuments that are put in prior to the final monumentation. While the project is being developed, temporary markers can be put in place for the different lots. Ms. Nixon noted that the surveyor will lay out each lot and the building envelopes. Ms. Nixon explained that temporary markers are not really done anymore and this is something the Board may consider removing.

Mr. Saunders moved that due to the particular nature of the lot and the project that the Board waive the requirement for trees of 10 inches of diameter or more to be shown, seconded by Mr. Auclair and **VOTED, 7 yeas, unanimous - motion carries.**

Mr. Saunders moved that due to the particular nature of the property and the project that the Board waive the requirement for a high intensity soil survey, seconded by Mr. Auclair and **VOTED, 7 yeas, unanimous - motion carries.**

Mr. Saunders moved that due to the particular nature of the property and the project that the Board waive the requirement for soil boundaries and names to be superimposed on the plot plan, seconded by Mr. Auclair and **VOTED, 7 yeas, unanimous - motion carries.**

Mr. Saunders moved that due to the particular nature of the property and the project that the Board waive the requirement for Building locations to be shown on the plan, seconded by Mr. Auclair and **VOTED, 7 yeas, unanimous - motion carries.**

Mr. Saunders moved that due to the particular nature of the property and the project that the Board waive the requirement for temporary markers in the field, seconded by Mr. Auclair and **VOTED, 7 yeas, unanimous - motion carries.**

Chairman Moriarty reviewed the proposed findings of fact. Mr. Saunders moved to adopt the findings of fact as amended, seconded by Mr. Kenny and **VOTED, 7 yeas, unanimous - motion carries.**

## **PRELIMINARY AND FINAL MAJOR SUBDIVISION REVIEW - FINDINGS OF FACT**

### **Chapter 250 - Subdivision of Land**

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

- 1. Pollution.** The proposed subdivision will not result in undue water or air pollution. In making this determination, it shall at least consider:
  - A. The elevation of the land above sea level and its relation to the flood plains;
  - B. The nature of soils and subsoil and their ability to adequately support waste disposal;
  - C. The slope of the land and its effect on effluents;
  - D. The availability of streams for disposal of effluents; and
  - E. The applicable state and local health and water resource rules and regulations;

***The property is located a minimum of 390 feet above sea level and is not within a zone A 100 year floodplain; Test pits show that soils are capable of disposing of wastewater; the site does not contain excessive slopes; the existing stream will not be used for disposal of effluents; The subsurface wastewater disposal systems and well locations will conform to all applicable state and local regulations.*** Based on the information provided, the standards of this section have been met.

- 2. Sufficient Water.** The proposed subdivision has sufficient water available for the reasonable foreseeable needs of the subdivision; ***The lots will be served by individual wells, a hydrogeologic study was submitted. Based on the information provided, the standards of this section have been met.***

- 3. Municipal Water Supply.** The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be used; ***The subdivision will not utilize a municipal water source. Based on the information provided, the standards of this section have been met.***

- 4. Erosion.** The proposed subdivision will not cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results; ***The applicant has submitted an erosion and sedimentation control plan that has been reviewed and approved by the Town Engineer and MDEP. Based on the information provided, the standards of this section have been met.***

- 5. Traffic.** The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed; ***A traffic study dated October 2017 was submitted by the applicant. The forecasted trip generation is less than the 99 trip ends during a peak hour that would require a Maine DOT Traffic Movement Permit. The Town has approved the removal of several small trees to the north of the exit location which will provide the necessary sight distance in that direction. Based on the information provided, the standards of this section have been met.***

**6. Sewage disposal.** The proposed subdivision will provide for adequate sewage waste disposal and will not cause an unreasonable burden on municipal services, if they are utilized; ***The project will utilize private septic systems. The applicant has submitted a report by Sebago Technics that concludes "the wastewater disposal system will not result in an increase of NO<sup>3</sup>-N concentrations above 10mg/L in groundwater at the subdivision perimeter study. This report has been reviewed and approved by the Town Engineer. Based on the information provided, the standards of this section have been met.***

**7. Municipal solid waste disposal.** The proposed subdivision will not cause an unreasonable burden on the municipality's ability to dispose of solid waste, if municipal services are to be utilized; ***Cumberland provides curbside trash collection and recycling through a contracted waste hauler. The addition of 10 new homes will not cause a burden on the municipality's ability to dispose of solid waste. Based on the information provided, the standards of this section have been met.***

**8. Aesthetic, cultural and natural values.** The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline; ***Letters are on file stating that the subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat or rare and irreplaceable natural areas. Based on the information provided, the standards of this section have been met for preliminary approval.***

**9. Conformity with local ordinances and plans.** The proposed subdivision conforms to a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the municipal reviewing authority may interpret these ordinances and plans; ***The plans have been reviewed and approved by the town planner, the town engineer and town department heads. Based on the information provided, the standards of this section have been met.***

**10. Financial and technical capacity.** The subdivider has adequate financial and technical capacity to meet the standards of this section; ***Technical capacity is evidenced by the use of the following experts: a professional engineer, a licensed land surveyor, a licensed site evaluator, licensed geologist and a wetland scientist.***

***Financial capacity: The applicant has provided a letter dated May 10, 2018 from UBS Financial Services stating that the applicant had a credit line account with \$700,000 available.***

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

**11. Surface waters; outstanding river segments.** Whenever situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38 chapter 3, subchapter I, article 2-B, the proposed subdivision will not adversely affect the quality of that body of water or unreasonably affect the shoreline of the body of water; ***The proposed subdivision will not adversely affect the quality of the mapped wetland or unreasonably affect the shoreline of the stream on the parcel. The proposed stream crossing and wetland impacts have been reviewed and approved by MDEP and the U.S. Army Corps of***

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

**12. Ground water.** The proposed subdivision will not alone, or in conjunction with, existing activities, adversely affect the quality or quantity of ground water; The soils have been found to have capacity to support sub surface waste water disposal systems. ***The proposed subsurface waste disposal systems will conform to the Maine Subsurface Wastewater Disposal Rules. A Groundwater Impact Study conducted by a Maine Certified Geologist, has been reviewed and approved by the Town Engineer. Based on the information provided, the standards of this section have been met.***

**13. Flood areas.** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one foot above the 100-year flood elevation; ***The parcel is shown on FEMA floodplain maps as being in Zone C (area of minimal flooding). Based on the information provided, the standards of this section have been met.***

**14. Storm water.** The proposed subdivision will provide for adequate storm water management; ***A stormwater management plan was submitted as part of the application packet and has been reviewed and approved by the Town Engineer. A Stormwater Permit from MDEP is on file. Based on the information provided, the standards of this section have been met.***

**15. Freshwater wetlands.** All potential freshwater wetlands, as defined in 30-A M.R.S.A. §4401 (2-A), within the proposed subdivision have been identified on any maps submitted as part of the application, regardless of the size of these wetlands. Any mapping of freshwater wetlands may be done with the help of the local soil and water conservation district.

***All wetlands within the proposed subdivision are outlined in the project plan set. Based on the information provided, the standards of this section have been met.***

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

Chairman Moriarty reviewed the proposed conditions of approval. Mr. Sherr suggested adding two conditions of approval, one on the written correspondence from DEP on the vernal pools and another one to change the language on the plan and in the covenant to remove what is in there regarding the point system language and replace it with no disturbance in the 75' buffer except for removal of dangerous trees.

Mr. Davis asked if the open space will be cut. Mr. Haskell replied that there will be some cutting in the open space for the stormwater features but other than this, there is no intent to do anything other than what may need to be done for safety issues.

Mr. Kenny moved that the 9 conditions of approval be approved, seconded by Mr. Boivin and **VOTED, 7 yeas, unanimous - motion carries.**

**CONDITIONS OF APPROVAL:**

1. Statement of values for required improvements for all lots to be submitted prior to releasing the plat for recording.
2. A performance guarantee in a form and amount acceptable to the Town Manager shall be provided prior to the pre-construction conference.
3. A blasting permit, if required, shall be obtained from the Code Enforcement Officer.
4. If significant modifications are necessary to accommodate future building plans on a lot, then a revised groundwater impact study should be prepared by a qualified Professional Engineer or Certified Geologist licensed in the State of Maine and submitted to the Town.
5. Clearing limits shall be flagged and approved by the peer review engineer prior to the preconstruction conference.
6. The trees that have been identified for removal to enhance sight distance to the north of the entrance/exit shall be flagged and removed prior to the start of work.
7. A pre-construction conference is required prior to the start of work.
8. Developer shall change the homeowner document and the note on the plan to remove reference to a point system that allows trees to be removed and instead specify that the 75 foot buffer is a no-cut butter with the exception of dangerous trees.
9. Confirmation needed from MDEP that the Department does not have jurisdiction on the vernal pools located on the site or that the plans have been permitted.

Mr. Saunders moved to approve Preliminary and Final Major Subdivision Review for Orchard Rd. 10 Lot Residential Subdivision, Tax Map R08, Lot 59 and a portion of Tax Map R08, Lot 59 B in the Rural Residential 2 zoning district subject to the Standard Condition of Approval, the Limitation of Approval and the nine (9) Conditions of Final Approval, seconded by Mr. Auclair and **VOTED, 7 yeas, unanimous - motion carries.**

**STANDARD CONDITIONS OF Approval:** This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted by the applicant. Any variation from the plans, proposals and supporting documents, except de minimis changes as so determined by the Town Planner which do not affect approval standards, is subject to review and approval of the Planning Board prior to implementation.

**LIMITATION OF APPROVAL:** Construction of the improvements covered by any site plan approval must be substantially commenced within twelve (12) months of the date upon which the approval was granted. If construction has not been substantially commenced and substantially completed within the specified period, the approval shall be null and void. The applicant may request an extension of the approval deadline prior to expiration of the period. Such request must be in writing and must be made to the Planning Board. The Planning Board may grant up to two (2) 1 year extensions to the periods if the approved plan conforms to the ordinances in effect at the time the extension is granted and any and all federal and state approvals and permits are current.

The Board recessed for a five minute break then the meeting resumed.

***2. Public Hearing: Recommendation to the Town Council to repeal and replace Section 250 – Subdivision Ordinance, to include conservation subdivision option.***

Chairman Moriarty introduced the item and explained that the Town Council appointed a subdivision ordinance study committee which met over a period of time. Chairman

Moriarty indicated that Mike Schwindt is present and he served as Chair of the Conservation Subdivision Committee after Bob Waterhouse passed away. The Board has had a number of workshops with the Committee. The Board has reviewed what a conservation subdivision is. The proposal is to recommend that in the Rural Residential 1 and Rural Residential 2 zones that there be two types of subdivisions available, the conservation subdivision and the traditional subdivision. Ms. Nixon worked with the Town Attorney on proposed procedural changes to the subdivision review process. The proposed changes are so numerous that the Town Attorney recommended doing away with the old subdivision ordinance and replacing it with a new one.

The Board has before them tonight a new version of section 250 of the Cumberland Code titled Subdivision of Land. This item is for the Planning Board to make a recommendation to the Town Council on the change to the Subdivision Ordinance. The Planning Board cannot pass or adopt the ordinance. The Board can only make a recommendation to the Town Council. The Town Council will have free hand at accepting or amending the proposal.

Ms. Nixon noted that the Planning Board has gone through the draft ordinance line by line with the Conservation Subdivision Committee. Ms. Nixon recommended that the Board scan through the proposed ordinance headings and answer any questions. Chairman Moriarty reviewed the proposed ordinance headings.

Ms. Nixon said that section 250-3 has a new item Q that has been added. Mr. Saunders commented that the first sentence of item M in this section does not make grammatical sense. Ms. Nixon will review this and correct it. Chairman Moriarty questioned item Q(4) for net residential acreage and said the term is defined under the definitions section but the two references do not correspond. Ms. Nixon distributed new language she drafted to address this and reviewed it with the Board. The Board agreed to remove subsections b and c under the definitions section for net residential acreage and made other changes to ensure both of the references are the same.

Mr. Saunders referred to section 250-3(Q)(5)(b)(vi) regarding the 75' buffer and said he does not like the term "eliminate" because that is a very high standard. Mr. Saunders asked if this is saying someone can add stuff to the buffer, saying that it is a no-cut buffer or saying both. Mr. Sherr said that the Board can have an applicant add to the buffer. The Board agreed to change the words "...eliminate potential adverse impacts..." to "...mitigate adverse impacts..."

Chairman Moriarty suggested revised language for section 250-3(Q)(5)(b)(vii) regarding existing trails because as written, it includes within the primary conservation area of a proposed subdivision trails that are outside of the proposed subdivision. The Board agreed to new language to read "Existing trails that connect with existing trails on Town owned lands or with existing trails on abutting land in a conservation easement".

Chairman Moriarty opened the public hearing.

Mike Schwindt, Chairman of the Conservation Subdivision Committee, referred to the bottom of page 5 of the proposal and said that there was a section here dealing with protecting the open space that was reviewed by the Town Attorney and accepted at the March 22<sup>nd</sup> meeting. Mr. Schwindt said at one time it was moved to section 9 but he

does not see it included anywhere in the proposal. Mr. Schwindt referred to page 6, item 6 and said he agrees with eliminating potential adverse impacts. Mr. Schwindt noted that there was also a phrase at the end of this paragraph dealing with getting rid of invasives and this is not in the proposal.

Mr. Schwindt suggested adding language allowing existing trails to be rerouted through the buffer. Chairman Moriarty indicated that he has spoken with John Jensenius of the Lands and Conservation Commission's Trails Subcommittee and his concern is if the Town automatically includes existing trails, a landowner might be inclined to discontinue the use of the trail as a means of preserving or enhancing the value of the property in question. Whereas, if the trails automatically must be primary conservation areas because they connect on adjacent Town owned or conservation protected land, it could diminish the value of the land. This is a dilemma. Mr. Saunders said that the Board would have the opportunity to waive this. Mr. Schwindt expressed concern that people will not be willing to sign an easement to open the trails let alone take the risk of getting a waiver and this could impact the Town's ability to create the trails. Chairman Moriarty asked if Mr. Schwindt thinks an existing trail ought to be a primary conservation area or if nothing should be said about it. Mr. Schwindt replied that if it will mess up the ability to make new trails, it should be taken out, unless the trail can be rerouted through the buffer.

Mr. Auclair said it seems to him that the Committee was in agreement that the section should be included and he wondered if they are over thinking this. Mr. Schwindt said that Mr. Jensenius is the one talking with the landowners and he is very concerned about this. The Board decided to go with Chairman Moriarty's suggested language regarding the trails.

Ms. Nixon apologized that the language to address invasive species was not included in the proposal. Ms. Nixon suggested replacing the last sentence under section 250-3(Q)(5)(b)(vi) as follows, "Where possible, existing trees and vegetation must be preserved in the buffer areas, except that vegetation classified as being an invasive plant may be removed."

The Board discussed the missing language regarding maintenance of open space. Mr. Schwindt shared a copy of the missing language. Mr. Sherr suggested adding the missing language under section 9 and make the current language that is in the proposal as 9(a) and adding the new language as 9(b). There was general consensus of the Board to do this and to strike the word "forest" from "forest management plan". Ms. Nixon will make the necessary changes.

Chairman Moriarty referred to section 250-5(D) and noted that this a placeholder for a definition of Conservation residential development. Ms. Nixon previously drafted language to insert here that is similar to the Traditional residential development and the Board agreed to insert her proposed language.

Ms. Nixon said that the rest of the proposal is probably 99% existing language that has been shifted around and is procedural material.

Mr. Auclair said that if a developer thinks the market and the property is perfect for a conservation subdivision than the requirement to present a conservation subdivision

plan seems reasonable. If a developer knows that the market is for more space and distance from the next house and the developer wants to do a traditional subdivision, the requirement is that the developer has to present a conservation subdivision plan. This is the same requirement with the cluster subdivision. Mr. Auclair asked if it is reasonable to require a conservation subdivision plan even if the developer wants to do a different plan. Mr. Auclair knows that the Town prefers the conservation subdivision. Mr. Auclair said that he doesn't know what the cost will be to develop the plan but it seems unreasonable to require a developer to spend money on a plan they do not want to do.

Mr. Saunders said that sketch plan reviews in the past are simply a plan and not a full blown application. Chairman Moriarty noted that the proposal does away with sketch plan review and replaces it with a staff level plan review and then a workshop. The kind of plan necessary for a workshop would not be a detailed, engineered plan. Ms. Nixon noted that all plans shall show the natural features of the property regardless of whether the developer is doing a traditional or a conservation style. Ms. Nixon said the Town would not ask a developer to engineer drainage or roadways or show the building envelopes. Mr. Auclair said if the process is as simple as this then he would not have a problem.

Mr. Boivin said a preference is being stated (for conservation style) and he disagrees with that.

Chairman Moriarty asked if this item will be on the Council's agenda for Monday and Ms. Nixon said no. Ms. Nixon said she thinks that the Council will set a date to have this on an agenda in July. Ms. Nixon said she will get a revised copy out to the Board.

Ms. Nixon noted that this proposal takes everything to do with subdivisions out of the Zoning Ordinance and puts it in the Subdivision Ordinance. The Board's recommendation for the new subdivision ordinance requires minor amendments to the Zoning Ordinance as well. Mr. Sherr asked if these amendments will come to the Board. Ms. Nixon said she feels that these amendments can go right to Council. Mr. Sherr said that if these amendments are going to be presented to the Board then he would want to wait for the revised proposal but if the Zoning Ordinance changes can go straight to Council, he suggests that the Board approve their recommendation tonight on the proposal as amended.

Chairman Moriarty closed the Public Hearing.

Mr. Saunders moved that the Planning Board recommend to the Town Council to repeal and replace Section 250 - Subdivision Ordinance to include a conservation subdivision option as presented and amended tonight and to make necessary changes to the Zoning Ordinance based on the changes to the Subdivision Ordinance, seconded by Mr. Sherr and **VOTED, 6 yeas, 1 opposed (Boivin) - motion carries**. Mr. Boivin noted that he would like to strike the two preferred option statements.

Chairman Moriarty thanked Mr. Schwindt and the entire Conservation Subdivision Committee for their good work and long hours. The proposal will now move on to the Town Council.

**G. Administrative Matters/New Business:** Chairman Moriarty said the next meeting is July 17<sup>th</sup>. Chairman Moriarty expects that there will be consideration of an amendment to the subdivision for Village Green to add 4 house lots on the July agenda. Ms. Nixon said that OceanView will most likely will be back for July too.

**I. Adjournment:** Mr. Saunders moved to adjourn the meeting at 9:35 pm, seconded by Mr. Sherr and **VOTED, 7 yeas, unanimous - motion carries.**

A TRUE COPY ATTEST:

\_\_\_\_\_  
Stephen Moriarty, Board Chair

\_\_\_\_\_  
Christina Silberman, Administrative Asst.

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