

**TOWN OF CUMBERLAND
PLANNING BOARD MEETING MINUTES
Tuesday, March 20, 2018 - 7:00 pm**

A. Call to Order: Chairman Moriarty called the meeting to order at 7:08 pm and noted that the Planning Board had a joint workshop with the Town Council immediately prior to this meeting which is why there is a delayed start. Chairman Moriarty also noted that the camera operator is not yet present but the Board will go ahead and start the meeting.

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

C. Approval of Minutes of the February 20, 2018 Meeting: Mr. Boivin moved to approve the minutes of the February 20, 2018 meeting, seconded by Mr. Kenny and **VOTED, 6 yeas - motion carries.**

D. Staff Site Plan Approvals: None.

E. Minor Change Approvals: None.

F. Hearings and Presentations:

1. Public Hearing: Preliminary & Final Major Subdivision Review for Higbee Notch - 8 multiplex units at 251 Gray Road, Tax Map U21, Lot 18 in the Village Office Commercial 1 zoning district. Owner: Denise Morgan; Applicants: Denise Morgan, Megan Morgan and Nathan Pelsinski. Representative: Nancy St. Clair, P.E., St. Clair Associates.

Chairman Moriarty introduced the item. The Board heard sketch plan review for the project in August, 2017 and preliminary review in September, 2017. The preliminary review was tabled pending additional information. Tonight the Board is being asked to approve preliminary and final review of the project.

Nancy St. Clair, P. E. of St. Clair Associates said that the applicants are unable to attend the meeting in person this evening and they are watching remotely. Ms. St. Clair said that at the preliminary review back in September the MDEP Stormwater Permit by Rule and the MDOT Entrance Permit were outstanding. The application packet before the Board tonight includes the outstanding permits and some additional responses to staff and peer review comments.

Ms. St. Clair displayed a plan of the project. The project is located at 251 Gray Rd. The site has a narrow strip that accesses Rte. 100. The Piscataqua River forms the boundary on the easterly side of the parcel. The parcel is north of the intersection of Rte. 100/Blackstrap Rd./Skillin Rd. and is on the easterly side of Rte. 100. The site is located in the VOC1 district which allows apartments to be located on this site. The proposal is for two buildings on the property to be constructed in two phases. The first building is a four unit apartment building on the southerly side of the site, lot one, and will be built as part of phase one. The second building will be on the northerly side of

the lot, lot two. Higbee Lane will access the site with a short hammerhead and will be about 105' long. Higbee Lane will be built to town standards and will be paved. Higbee Lane will remain private. There will be a 22' wide gravel driveway with 2' shoulders on either side that will be shared by the two buildings. Parking will be provided in front of each building with two spaces for each unit and the parking spaces will be paved.

Ms. St. Clair said that the applicants propose constructing the project in two phases. The first phase will include the construction of Higbee Ln. with a short hammerhead and the shared gravel access as well as the 8 paved parking areas, the septic system and the well for the first building. Ms. St. Clair pointed out the proposed location of the septic system and well on the plan. Construction of phase 1 will begin this spring after obtaining all permits needed through the Town and is anticipated to be completed by December 31, 2018.

The applicants would like to have approval of the entire project for both buildings as part of tonight's approval. Phase two will be the second 4 unit apartment building with its septic system, well and parking spaces. Construction of phase two is planned for four years from the completion of phase one. The applicants plan to begin construction of phase two by December 31, 2022 with completion by December 31, 2023. This allows a four year period for the applicants to have the first building operational and to gain the revenue from the lease of the apartments in order to fund construction of the second building. Ms. St. Clair understands that this is beyond the typical time window for approval but is requesting that the Board give this consideration. Ms. St. Clair noted that for approval of phase two, the applicants request that there be a condition of approval for a financial capacity letter for phase two be provided at that time such that the building permit cannot be issued until the letter is provided. The financial capacity information that the Board has in their packet tonight fully addresses phase one and the applicants ask that financial capacity for phase two be a condition of approval.

Ms. St. Clair reviewed waiver requests that were summarized on page 8 of her application response dated February 8, 2018. The waiver for underdrains is no longer needed because underdrains have been added. A combination of overhead and underground power is proposed. There is overhead power on Rte. 100. The applicants propose bringing overhead power in for approximately 220' along Higbee Ln. and the shared driveway to a pole and from there underground to a transformer to supply the two buildings with underground power. The applicants request a waiver for the overhead power component. Ms. St. Clair identified the locations of neighboring wells and septic systems on the plan. A waiver was requested for a nitrate study and this waiver is no longer needed. A waiver on the landscape plan was requested. The applicants have provided a landscape/planting plan that was prepared by Ms. St. Clair's office. It is not a formal plan prepared by a landscape architect and Ms. St. Clair hopes that the Board considers this sufficient for the review process. Lighting cut sheets and proposed fixture details have been provided. There is no pole mounted lighting proposed. The applicant does not have a formal photometric plan and is seeking a waiver for this. Originally the applicants sought a waiver for a stormwater management study. The applicants actually did do a study and this information has been provided and reviewed by the Peer Review Engineer. The applicants are seeking a waiver for a slight increase in the peak discharge to the river from the site of less than half of one

percent. The applicants are seeking a waiver for curbing at the entrance to the site from Rte. 100 because there is no other curbing in this area. The last waiver that the applicants are seeking is to allow the sight distance to be consistent with what MDOT has approved.

Chairman Moriarty referred to the pad and enclosure for household waste as part of phase one and asked where this will be located. Ms. St. Clair identified the area on the plan near the hammerhead. Chairman Moriarty asked if there will be a dumpster added during phase two. Ms. St. Clair replied that there is potential for a dumpster and it depends on the applicants' needs at that point. The area will be enclosed with a stockade fence.

Mr. Kenny asked about the proposal for 2' gravel borders. Ms. St. Clair indicated that the plan is for a 22' gravel travel way with 2' shoulders on either side. Ms. Nixon said that this design meets the lowest level for a subdivision road. Ms. Nixon added that there is a provision in the ordinance, Sec. 250-34.D, for byways and a waiver will be needed for this.

Mr. Kenny asked if propane tanks will be above ground or below ground. Ms. St. Clair replied that the propane tanks will be above ground.

Mr. Saunders confirmed that a waiver is not needed for underdrains at this point and Ms. St. Clair said this is correct. Mr. Saunders said that the Board does not need to waive the landscape plan because what has been submitted is consistent with other landscape plans that the Board has received. Ms. Nixon said that typically a landscape plan for a subdivision has perimeter buffering and things like this. What is being proposed is for plantings around the foundation of the building and nothing has been provided for buffering around the site. The Board needs to acknowledge this and determine if it is necessary.

Mr. Kenny asked about buffering for the trash enclosure. Ms. St. Clair replied that there is natural vegetation in the area of the proposed trash enclosure that varies in height but will not fully block the stockade fence.

Chairman Moriarty asked Ms. Nixon if the Peer Review Engineer has recommended all of the waivers except the byways and Ms. Nixon said yes. Mr. Saunders asked if a waiver is needed for stormwater. Ms. St. Clair said there is a slight increase of stormwater discharge at the river so a waiver is needed for this. Ms. Nixon explained that the ordinance does not allow post development stormwater runoff to exceed what the runoff was preconstruction and this project does not quite make it. The MDEP Stormwater Permit by Rule is allowing the project to exceed the preconstruction runoff and the Town Engineer is supportive of this. Ms. St. Clair added that the stormwater waiver request is to allow the increase in peak runoff at the point at which the site discharges directly to the river and the increase is less than 0.5%.

The Board confirmed that there are 6 waiver requests.

Mr. Auclair asked what MDOT's rationale was in allowing the site distance to be reduced from 840' to 501'. Ms. St. Clair said this is associated with the volume of traffic with this entrance and also that the project is at the crest of a hill. The MDOT took a lot of time to approve the entrance permit because they wanted to ensure they were

comfortable with it. Mr. Auclair asked about buffering and the grade change on the parcel. Ms. St. Clair answered that there is 46' of grade change from Rte. 100 to the end of the property at the river. Where the buildings are proposed is 16' - 20' below Rte. 100. This grade change offers additional buffering.

Mr. Auclair asked Ms. Nixon if a 4 year interval until phase two is allowable. The Board reviewed the ordinance requirements for completion of the project. The ordinance gives two years from approval of a final plan for completion and allows for one 6 month extension. Ms. Nixon noted that the applicants could reapply for a new approval which would start a new 2 year period. Ms. Nixon said that most applicants do not want to see their Planning Board approval lapse. Ms. Nixon recommends that the applicants come back to the Board before the 2 years have passed for a six month extension and then seek reapproval before the extension lapses. Chairman Moriarty said that the reapproval process is much easier than the first approval.

Mr. Boivin asked what the driver for having overhead electric service is instead of going underground all the way in from Rte. 100. Ms. St. Clair said this is because of cost and minimizing the amount of trenching needed due to ledge on the site. The underground power will go for approximately 80 to 100'. Mr. Boivin said that there would be a transformer at the end of the road and he has seen these come off the pedestal. Mr. Boivin thinks the transformer will be very close to the road and asked how it will be protected. Ms. St. Clair said they will place the transformer based on the handbook requirements and there will be some plantings around it. The site will be maintained by the applicants who will plow their own property and will be aware of the transformer. A snow storage area will be located at the end of the site as shown on one of the plans. Ms. St. Clair said the transformer will be tucked out of the way and the snow plowing will be straight down.

Mr. Boivin said that the well placement for lot one seems to be in a tough spot. Ms. St. Clair described the well location and noted that the well location has been shifted from what is shown on the Board's plan due to the HHE-200 data for the neighboring septic.

Mr. Boivin asked about site development for lot two. Ms. St. Clair replied that development for phase two will include the second building, the paved parking area for the second building, the sidewalk and plantings associated with the building and the well and septic for the second building.

Mr. Boivin asked if there was an issue with the access road. Ms. St. Clair said that the grading was an issue but the design has been revised. Mr. Boivin commented that some site work was done before. Ms. St. Clair said the prior landowner brought in some fill to level off the site and there is a gravel area to get down into the site that is pretty steep. The plan is to level off the steep area with a fair amount of fill. Ms. St. Clair said that test pits have been done and there is currently a mix of fill and there is nothing that appears to be problematic.

Chairman Moriarty asked Ms. Nixon if she agrees that the project is ready for both preliminary and final approval consideration and Ms. Nixon replied that she does agree and there is nothing outstanding.

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

Mr. Saunders moved that due to the unique aspects of this site and this project that the Board waive the requirement for underground utilities to allow for approximately 220' of overhead power, seconded by Mr. Sherr and **VOTED, 5 yeas, 1 opposed (Boivin) - motion carries.**

Mr. Saunders moved that due to the unique aspects of this site and the project that the Board waive the requirement for the lighting and photometric plan given that cut sheets have been provided, seconded by Mr. Sherr and **VOTED, 6 yeas, unanimous - motion carries.**

Mr. Saunders moved that given the unique characteristics of this site and this project that the Board waive the requirements of the stormwater management plan to allow for the minor increase in peak flow in proximity of the site to the river, seconded by Mr. Sherr and **VOTED, 6 yeas, unanimous - motion carries.**

Mr. Saunders moved that due to the unique characteristics of this site and the project that the Board provide a waiver for curbing at the site entrance, seconded by Mr. Kenny and **VOTED, 6 yeas, unanimous - motion carries.**

Mr. Saunders moved that due to the unique characteristics of the site and the project that the Board provide a waiver of sight distance to allow the sight distance to be as approved by the Maine Department of Transportation, seconded by Mr. Auclair and **VOTED, 6 yeas, unanimous - motion carries.**

Mr. Saunders moved that due to the unique characteristics of the site and the project that the Board provide a waiver for the requirement of byways along the entrance road, seconded by Mr. Auclair and **VOTED, 6 yeas, unanimous - motion carries.**

Chairman Moriarty reviewed the proposed findings of facts. Amendments to the proposed findings were made. Mr. Saunders moved to adopt the proposed findings of fact as amended, seconded by Mr. Auclair and **VOTED, 6 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 applicant has provided a preliminary soils investigation stating the soils are suitable for on-site septic systems. The land slopes approximately 16' -20' from the entrance at Rt. 100 to the location of the proposed buildings. The easterly end of the parcel abuts the Piscataqua River.

The plan shows mapped wetlands along the river which identify the limits of the Special Flood Hazard Area. The upland area within 250' of the wetlands along the River is subject to the Shoreland Overlay District. The limits of the mapped Shoreland Overlay District are shown on the plans. No work is proposed adjacent to the river and all proposed buildings are located outside of the required 100' building setback in the Shoreland Overlay. State and local health and water resource rules and regulations will be adhered to in the design of the stormwater management and subsurface wastewater disposal systems. 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; Proposed well locations have been shown on the plan. The applicant submitted well database information from the Maine Geological Survey that shows the yield of wells in the area as being satisfactory. 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; Erosion Control Notes and Details have been provided in the plan set and meet the requirements of the Ordinance. The Town Engineer has reviewed and approved these notes and details. 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 8/17/17 is on file. It shows that the 8 residential apartment units can be expected to generate a total of 53 trip during a typical weekday. The posted speed limit on this portion of Route 100 is 50 MPH. An MDOT Entrance permit is on file. 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. A preliminary soils investigation, dated 6-13-17 and conducted by Mark Hampton, L.S.E., is on file that shows passing test pit locations. These locations are shown on the plan as is the location of the two proposed septic systems. 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; The addition of 8 new residences 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.

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 by the Town Planner and the Town Engineer. A waiver was granted to allow 2' gravel shoulders to serve as byways. With the approved waiver, the Board finds that 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 traffic expert and a licensed soils scientist. Financial capacity is evidenced by a letter dated August 21, 2017 from Cumberland County Mortgage stating that the applicants have the financial capacity and capabilities to finance a four unit dwelling. The applicant intends to finance the construction of the second building once the units in building 1 are rented. Evidence of financial capacity will be provided at that time to the Town Planner and Code Enforcement Officer when the building permit application for second building is requested. 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 river on the parcel. No work is proposed adjacent to the river and all proposed buildings are located outside the required 100' building setback in the Shoreland Overlay. 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; Passing test pit locations are shown on the plan. Adequate separation between existing and proposed locations of septic systems and wells of 100' have been met. 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 Map # 230162 0010B as being in Zones C (area of minimal flooding) and A (Areas subject to inundation by the 1-percent-annual-chance flood event). Based on the information provided, the standards of this section have been met.

14. **Stormwater.** The proposed subdivision will provide for adequate storm water management; The applicants have obtained a waiver from the requirement of submitting a stormwater management plan. With the granting of the requested waiver, the Board finds that 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 have been mapped by a Mark Hampton, L.S.E and are shown on the plans. 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] The parcel backs up to the Piscataqua River. This is shown on the plans and no work is proposed adjacent to the river. Based on the information provided, the standards of this section have been met.

The Board reviewed the proposed conditions of approval. Ms. Nixon noted that number one and two of the proposed conditions of approval can be taken out leaving 12 proposed conditions of approval.

Mr. Saunders said that the limitation of approval needs to be modified to be consistent with the phased approach. Ms. Nixon said that the Board does not need the limitation of approval because the project is not a site plan. Mr. Saunders asked if the Board needs to reference the timing of the phasing as a condition of approval or is it inherent. Ms. Nixon said it is inherent as part of the ordinance.

Mr. Saunders moved to approve preliminary and final major subdivision review for Higbee Notch, 8 multiplex units at 251 Gray Road, Tax Map U21, Lot 18 in the Village Office Commercial 1 zoning district subject to the standard condition of approval and the 12 recommended conditions of approval, seconded by Mr. Boivin and **VOTED, 6 yeas, unanimous - motion carries.**

Standard Condition 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 minor 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.

Conditions of Approval:

1. A 25' wide landscaping easement shall be provided to the Town for the frontage along Rte. 100. This shall be shown on the final plan and the written easement shall be provided to the Town Planner prior to the preconstruction conference.
2. All outstanding fees shall be paid prior to the issuance of the building permit for Building #1.
3. Evidence of financial capacity shall be provided prior to the issuance of a building permit for Building #2.
4. A performance guarantee in an amount acceptable to the Town Manager and Town Engineer shall be provided prior to the preconstruction conference. In addition, a check for 2% of the cost of public improvements shall be provided prior to the preconstruction conference.
5. A preconstruction conference shall be held prior to the start of construction.
6. All clearing limits shall be clearly flagged by the applicant and inspected and approved by the Town Engineer prior to the preconstruction conference.
7. There shall be no indoor or outdoor storage of any hazardous materials.
8. The applicant shall obtain a sign permit from the Town of Cumberland that shows consistency with the Route 100 Standards.
9. The applicant shall comply with all state and local fire regulations.

10. A blasting permit, if needed, shall be obtained from the Town Code Enforcement Officer prior to blasting.

11. The final plan which shall be signed by the Planning Board and recorded at the Registry of Deeds, shall show the location, dimensions and fencing of the trash containment area. This area is to be reviewed and approved by the Town Planner and Town Engineer.

12. The final plan, which shall be signed by the Planning Board and recorded at the Registry of Deeds, shall show the addition of check dams at the downstream limits of proposed drainage systems to minimize channelization of stormwater runoff and prevent eroded soil from entering water bodies and freshwater wetlands.

The Board recessed for a 10 minute break and the meeting resumed.

2. Public Hearing: Preliminary Major Subdivision Review for OceanView at Cumberland – 52 dwelling units plus 1 community building. Tuttle Rd., Tax Map R04, Lots 4B, 4D, 4E & 5. Applicant: Ocean View at Cumberland, LLC / John Wasileski. Representative: Frederic Licht, P.E, LSE.

Chairman Moriarty introduced the item.

Chris Wasileski, OceanView at Cumberland, LLC, noted that they have covered some of the neighborhood and road alterations with the acquisition of the Laurence S. Allen property. The new aerial overlay plan was displayed that shows the current layout and design in response to review and Board comments. There is a new trail overlay plan. Mr. Wasileski displayed sample unit elevations for the schoolhouse cottages neighborhood in the Town of Falmouth that is the model for this project. Mr. Wasileski described potential amenities and benefits of the project to the Town of Cumberland.

Rick Licht, Licht Environmental Design, outlined the changes to the plans since the prior submission. Some of the curves on the access road have been softened slightly to help protect the buffer. The “eyebrow” access way in front of the first 3 units has been removed. Minor adjustments to some of the unit locations have been made in response to review comments. The 100’ stream buffer is now shown on the drawings.

Mr. Licht said that he believes that all of the review comments have been addressed. Mr. Licht noted that Ms. Nixon had a question about right, title and interest and a complete package of right, title and interest has been submitted. The MDOT permit for the entrance has been received.

Mr. Licht displayed the trail map and outlined the location of the snowmobile trail. The applicants have collaborated with Town Manager Bill Shane, the Lands and Conservation Commission & Trails Subcommittee and the Sno Skimmers club to work out the method for how this trail will exist. A draft license for the trail is proposed, not a formal easement. This license gives protection to the residents should there be any issues with misuse of the trail. Mr. Licht noted that OceanView has a long history of working collaboratively with the community in providing trails that are open to the public. Mr. Licht said that there will not be a formal license for use of the rest of the trails and the public can access these by permission.

Mr. Licht showed the current landscaping plan and noted that the roadway will be located on top of the Allen’s current driveway. The original plan had shown two areas where infill planting was proposed on Mr. Doane’s property. The applicant now

proposes looking at these areas as a private agreement with Mr. Doane and not as a condition of subdivision approval. The roadway will not remove any vegetation from the current buffer except for a couple of trees near the entrance from Tuttle Rd.

Mr. Licht said that Mr. Doane owns two lots next to the proposed project. Mr. Doane would like there to be curb cut from his property onto the OceanView access road in case Mr. Doane's lot is developed in the future. OceanView is agreeable to this and will show this on the final plan. Mr. Licht said he will investigate whether the utilities should come from this curb cut or come off Tuttle Rd. This curb cut would service up to 2 units. OceanView would provide rights and easements for the use of the section of the roadway up to the curb cut.

Mr. Licht said that road names had been submitted and some of these will be revised.

Chairman Moriarty referred to the trail shown in red and marked as "A" on the plan that is the existing snowmobile trail and said he understands that this will revert to a pedestrian only trail and Mr. Licht agreed. Chairman Moriarty said the snowmobile trail will be replaced by the trail shown in green that is roughly parallel to the lower border of the property shown on the map. Chairman Moriarty asked if the trail will be open to pedestrian users in the off season. Mr. Licht said yes, it is proposed as a multipurpose trail. Chairman Moriarty referred to the license agreement for the new snowmobile trail and asked who the license would be granted to. Mr. Licht said that the license will be granted to the Town. Chairman Moriarty asked what will happen with the license if there is inappropriate behavior or a problem somewhere along the trail. Mr. Licht replied that OceanView would have the right to revoke the license. The process would be that OceanView would work to mitigate the issue in a collaborative approach. OceanView's legal counsel Scott Anderson said that he has been working with OceanView, the Town and the snowmobile club. A license agreement has been drafted that is under review by the Town and has been provided to the club and the Trails Committee. Mr. Anderson said that OceanView is committed to trying to make sure that all the different uses can coexist and be used year round. Terms, conditions, rules and regulations have been drafted such as slower speed, certain hours of operation, no stopping/picnicking, dogs needing to be on leashes, etc. so folks know what the use of the trail will be. The license agreement is set up with a provision that if there are any concerns about any of the uses then OceanView would meet with the Town to try to come up with changes to address the issues. Ultimately if something cannot be addressed than OceanView maintains the right to make changes to the use of the trail. The goal is to have a formal agreement with certain uses identified and a process to resolve any disputes.

Chairman Moriarty noted that with the proposed snowmobile trail there are a couple of bridge crossings that will need to be constructed and he asked if OceanView is working with the snowmobile club on the cost for this. Mr. Anderson said that permits will be needed for some of the work both on the OceanView property and the Town property. OceanView will do its permitting, the Town will address their permitting and both will collaborate on the plans. OceanView has agreed to fund the cost of the clearing and improvements on the Town's property in addition to doing the work on their own

property. The plan right now is for OceanView to fund the improvements. The final details have not yet been worked out.

Chairman Moriarty clarified that the license agreement will not pertain to the other internal trails on the OceanView property and Mr. Anderson said this is correct.

Mr. Auclair said that it looks like units 5, 6, 7, & 8, based on the scale, will be about 10' from the snowmobile trail and he asked if this will work. Mr. Licht replied that there will be 30 to 40' from the closest unit to the snowmobile trail. OceanView wants the greatest distance possible from the trail to the units and there will be some landscaping as well. Mr. Auclair said that Mr. Allen is building a house on his lot near the front and he asked if the trail will be an issue there. Mr. Licht said that he cannot speak for Mr. Allen but understands that Mr. Allen is working with the snowmobile club to relocate the trail close to the property line away from the house. This will be worked out by the time the final plan is done. Mr. Saunders noted that the Allen property is not on this project. Chairman Moriarty replied that the snowmobile trail on this project is vitally dependent upon the portion of the trail that crosses the Allen property. Mr. Licht said it is imperative that all of the parties work together to make the snowmobile trail happen.

Mr. Saunders confirmed that the northerly area of landscaping to be removed from this project is not on OceanView property. Mr. Licht said that this area is completely on Mr. Doane's property.

Chairman Moriarty said that the Board granted one waiver at the last meeting. There were two other waivers that were either tabled or withdrawn and he asked for the status on these. Mr. Licht said that these items will be provided for final approval. Chairman Moriarty said that there is no need for the Board to consider these.

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

Chairman Moriarty asked when the applicant expects to be back for final approval, assuming preliminary approval is granted tonight. Mr. Wasileski replied that they will be back when they have the Dept. of Environmental Protection approvals in hand along with the ability to serve letters.

Mr. Sherr asked to hear from the Town about the discussions with the trail to ensure that the Town is satisfied with the license agreement. Mr. Sherr said what if people start complaining and don't like the snowmobiles and OceanView revokes the license, what would the plan be to keep snowmobile connectivity? Mr. Shane said that he doesn't know if the Town can force any applicant to require a trail. OceanView has bent over backwards to work with the Town. Mr. Allen has had a trail across his property for years and has worked with the club and will continue to do so. An easement is too much of an encumbrance for the property owners. Mr. Shane said that the license Mr. Anderson came up with is very fair. OceanView has a good track record with public access across their properties and they are committed to working with the Town. Mr. Shane added that OceanView has committed to providing over \$10,000 to help with costs. Mr. Shane said he is excited about making the proposed snowmobile trail a year round trail. This trail will also allow people living near Val Halla to walk to Town Hall, which they cannot do now.

Mr. Sherr said he does not have a problem with the applicant's request to remove the landscaping for the Doanes from the plan but he would like to hear from the Doanes about this. Rick Doane, 4 Catalpa Ln. said that OceanView is accommodating his request to take the landscaping into a private realm. Mr. Doane does not want to encumber the properties with a formal easement and it is his preference to work with OceanView through a letter agreement to selectively landscape where it makes the most sense.

Mr. Saunders said he has no problem removing the landscaping area that is not on the OceanView property. Mr. Saunders said that he would rather see a note that the area of landscaping proposed to be removed from the plan that is on the property be reviewed by the Town Planner. Mr. Sherr said that he recalls the applicant saying that there is existing vegetation and buffering in this location now and the plan is to leave the existing buffer as it is. Mr. Licht concurred. Mr. Sherr indicated that he is fine with the two areas of landscaping discussed being addressed privately between Mr. Doane and OceanView.

Chairman Moriarty said the trail map shows the cart paths along the golf course and he asked if these are off limits to pedestrian use when the course is open. Mr. Shane said yes, and there are accommodations for crossings in two locations. Mr. Wasileski pointed out the location of a golf cart path connection on the plan. Mr. Wasileski pointed out the location of another trail marked "D" on the plan where OceanView will add some utility stubs to enhance the water service of the current golf maintenance center that will also allow residents with carts to access the club and other golf cart trails. Mr. Shane said that the trail marked "D" would have the least impact on the golf club, it goes to the maintenance facility and is a very wide, paved service access road and it would be easy to accommodate pedestrian access.

Mr. Kenny asked if there is a plan to move one of the tee boxes. Mr. Wasileski said that the tee box that will be relocated is hole #6 and they have received feedback from Toby Young at the golf course about this.

Chairman Moriarty reviewed the proposed findings of fact.

Mr. Saunders moved to adopt the findings of fact as written, seconded by Mr. Kenny and **VOTED, 6 yeas, unanimous - motion carries.**

PRELIMINARY 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 parcel is above sea level and not within a floodplain. The project will use public water. A groundwater impact assessment was provided by the applicant and reviewed and approved by the Town Engineer. 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 subdivision will be served by public water. A letter dated from the Portland Water District stating ability to serve will be submitted for final plan review. Based on the information provided, the standards of this section have been met for preliminary plan approval.

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 utilize a municipal water source. A letter dated from the Portland Water District stating ability to serve will be submitted for final plan review. Based on the information provided, the standards of this section have been met for preliminary plan approval.

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 is consistent with the current Maine Erosion and Sediment Control Best Management Practices. This plan has been reviewed and approved by the Town Engineer. 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 was performed by Maine Traffic Resources and reviewed and approved by the Town Engineer. An MDOT Entrance permit is required for final plan submission. Based on the information provided, the standards of this section have been met for preliminary plan approval.

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 public sewer. A letter indicating there is sufficient capacity is on file from both the Portland Water District and the Town of Falmouth. The Town Manager will provide evidence of the availability of the required number of sewer user permits for final review. Based on the information provided, the standards of this section have been met for preliminary plan approval.

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 52 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 from the relevant state agencies 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.

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 by the Town Planner, the Town Engineer and town department heads and are in sufficient conformity with all local ordinances and plans for preliminary plan approval. All outstanding issues will be addressed for final review. Based on the information provided, the standards of this section have been met for preliminary plan approval.

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 traffic engineer and a licensed soils scientist. Evidence of financial capacity will be provided for final plan review. Based on the information provided, the standards of this section have been met for preliminary plan approval.

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 wetlands or unreasonably affect the shoreline of the stream on the parcel. Plans include a MEDEP 75' stream setback to protect the resource. 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 plans have 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. 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] There is a stream on the property which is depicted on the plans. Based on the information provided, the standards of this section have been met.

Mr. Saunders moved to approve preliminary major subdivision review for OceanView at Cumberland, 52 dwelling units plus 1 community building, Tuttle Rd., Tax Map R04, Lots 4B, 4D, 4E & 5, seconded by Mr. Sherr and **VOTED, 6 yeas, unanimous - motion carries.**

G. Administrative Matters/New Business: Chairman Moriarty reminded the Board that they did agree earlier tonight to meet in a workshop session prior to the next meeting on Tuesday, April 17th at 6 pm to review the Conservation Subdivision procedural ramifications.

I. Adjournment: Mr. Boivin moved to adjourn the meeting at 9:21 pm, seconded by Mr. Auclair and **VOTED, 6 yeas, unanimous - motion carries.**

A TRUE COPY ATTEST:

Stephen Moriarty, Board Chair

Christina Silberman, Administrative Asst.