

TOWN OF CUMBERLAND PLANNING BOARD MEETING MINUTES
Tuesday, August 16, 2022

A. Call to Order: Chairman Record opened the meeting at 7 pm.

B. Roll Call: Present: Paul Auclair, Peter Bingham, Bridget Perry, Lorraine Rardin, Jason Record, Joshua Saunders & Ann Sawchuck. **Staff:** Carla Nixon - Town Planner, Christina Silberman - Administrative Assistant, & William Shane - Town Manager.

C. Approval of the Minutes of the July 19, 2022, meeting: Mr. Saunders moved to adopt the minutes as written, seconded by Ms. Rardin. Mr. Auclair asked if questions and answers should be recorded in the prepared minutes and he cited some examples. Mr. Saunders said only the motions and votes have to be included in the minutes and the rest of what is noted in the minutes is subjective. Mr. Saunders said if members of the Board wish to have anything added to the minutes, they can move to do so when considering acceptance of the minutes. Mr. Auclair did not suggest any changes to the prepared minutes and the motion was then **VOTED, 5 years, 2 abstained (Bingham & Sawchuck) - motion carries.**

D. Staff Site Plan Approvals: None.

E. Minor Change Approvals: None.

F. Hearings and Presentations:

1. Public Hearing: Sketch Plan Review of a proposed subdivision, located on Tuttle Rd., Tax Assessor Map U11, Lot 4A in the Town Center District (TCD) / Setback Overlay 2 (S2) Zone. Applicant/Owner: William Wyatt. Representative: Tom Farmer, Landscape Architect.

Chairman Record introduced the item. Ms. Nixon reported that a sketch plan review of this project was held previously and the applicant is presenting a new sketch plan.

Mr. Saunders said he doesn't think this would be a cluster subdivision. The TCD zone allows duplex/multiplex and doesn't seem to limit the number of units or buildings, aside from the minimum lot size requirements. Mr. Saunders added that if it is not a cluster subdivision, it doesn't have a 75-foot buffer requirement. Ms. Nixon responded that it is a subdivision and has to meet either the traditional, cluster or conservation style. Ms. Nixon outlined how the developable area and allowed number of units are determined. Mr. Saunders said he agrees with Ms. Nixon's assessment.

Mr. Saunders asked for clarification on the opinion of the Town Attorney in cases where there is a subdivision and a site plan and which standards would take precedent. Ms. Nixon replied that in cases where a project is a subdivision and a site plan, the Board would follow the subdivision standards.

Mr. Auclair asked if the waiver of the 75' buffer is needed. Mr. Saunders replied that even though the project is a single lot, it would be a subdivision based on the number of dwelling units. Mr. Auclair referred to the minimum setbacks for the TCD and asked if

these apply. Ms. Nixon answered that these setbacks do apply to the individual units but not to the whole perimeter of the subdivision parcel.

Chairman Record referenced Ms. Nixon's query to the Town Attorney prior to the May 17th sketch plan review and read from Town Attorney Natalie Burns' reply as follows:

Section 250-44 states that the Planning Board may waive a standard if it finds either an unnecessary hardship will result from strict compliance with the subdivision standards or if there are special circumstances of a particular plan that makes the standard inapplicable. The waiver can't have the effect of nullifying the intent and purpose of the Comprehensive Plan, the Subdivision Ordinance or the Zoning Ordinance. It also can't endanger public safety. The Ordinance defines "unnecessary hardship" as "a substantial burden on the applicant which affects the applicant's ability to achieve a reasonable economic return" on the project.

Ms. Perry asked if there are ordinances regarding building near cemeteries. Town Manager Bill Shane replied that this is covered by State law. Ms. Perry said State Statute 1371-A does not allow for excavation or construction within 25' of the known boundary of a cemetery. Mr. Shane replied that this is unless approved by the municipal officers of the Town. Ms. Perry noted that she is concerned with the proposed 20' buffer at the (cemetery) end of the parcel.

Mr. Shane said he didn't understand how the Planning Board could waive the subdivision buffer but the Town Attorney has said they can. Mr. Shane showed an example of what a subdivision could look like on this parcel with the conventional standards allowing for 22,000 square feet of buildable area with three 26' x 74' buildings. Mr. Shane said he is perplexed about why the Town would allow the proposed project and what benefit there would be to the Town, such as affordable and/or senior housing. Mr. Shane said that if a developer asks the Town to waive a rule, he would like to see some benefit to the community. Mr. Shane added that he does not think this project is consistent with the Comprehensive Plan and does not believe this many units was ever envisioned in the TCD Zone.

Ms. Rardin referred to the duplexes across from Food Stop and asked how many are there. Mr. Shane replied six units, three duplexes, and these are 55 and older and one or two of the units have affordability requirements. Ms. Nixon added that this project was done with a contract zone agreement before the creation of the Town Center District.

Mr. Shane referred to the historical cemetery abutting the project site and asked how this would be protected from pedestrian access through the cemetery. Mr. Shane said people are not going to walk down to Tuttle Rd. if they want to go to Food Stop or to the school campus.

Tom Farmer, Landscape Architect, said the owner of the property is Bill Wyatt. The applicant is Maine Affordable Properties, owned by Robert Anderson. Mr. Farmer said Mr. Anderson started Maine Affordable Properties about four years ago to bring more affordable, high-quality housing to the area. Mr. Farmer described the location of the 2.55 acre parcel with access off Tuttle Rd. A plan developed by Trillium Engineers for seven single family houses was shown at the first sketch plan. Mr. Farmer said they are no longer interested in this plan. Mr. Farmer displayed a new proposal that will be more

affordable and similar to the Village Way condominiums. Mr. Farmer has not discussed making this project meet the definition of affordable with his client yet.

Mr. Farmer said he found some inconsistencies in the ordinances, especially with buffers. Mr. Farmer said his calculations for the net residential density are for 19 units and the project proposes 18 units. Mr. Farmer said this is considered a subdivision and the standards of the cluster style subdivision seem most fitting. Mr. Farmer said a 75-foot buffer is typical of larger lots and if they were to do this here, the 2.55 acre lot would be left with only .55 acres and he does not think this was the intent of the ordinance for the TCD.

Mr. Farmer said they did their best to increase the setbacks from the previous plan with a setback of 30 feet all around, except along the cemetery would be 20 feet. Mr. Farmer predicted that they could do 25 feet by the cemetery and could add a fence. Mr. Farmer stated access to the school would be nice but they don't expect this to be the typical 2.7 children per household.

Mr. Farmer said they are here to get the Board's feedback and it sounds like the setbacks are a major consideration.

Chairman Record asked if they have done anything to make the senior housing formal. Mr. Farmer said no. Chairman Record asked how they would make the units affordable. Mr. Farmer replied that he would have to look into language for the affordability but these would be more affordable than a typical large colonial with a garage.

Chairman Record asked about the number of bedrooms. Mr. Farmer replied that they would be three bedroom units.

Mr. Bingham stated that he is in favor of concentrating development within the TCD. Mr. Bingham said that the input of the Town Manager carries a lot of weight with him and if the Manager is concerned with the 75' setback then he is concerned also. Mr. Bingham is concerned about the traffic.

Mr. Auclair noted Mr. Farmer's statement that with a 75' perimeter, they are left with .55 acres and this is a small lot. Mr. Auclair noted the letter from the Town Attorney that refers to an economic hardship. Mr. Auclair said that if this weren't a subdivision, then you would follow the TCD setbacks and asked if there is a possibility of building something that isn't defined as a subdivision. Mr. Marden said anything over three lots is considered a subdivision. Mr. Saunders noted a correction that it is anything over two and the third unit triggers a subdivision. Ms. Nixon said she doesn't know if this lot has been split within the last five years which could trigger subdivision. Mr. Farmer said that on his review of the Comprehensive Plan, this is where the Town wants to have more density and growth.

Chairman Record opened the public hearing.

Bob Vail, Town Councilor, Cumberland Center, said he agrees with Mr. Shane's comments. The Town has a Housing Task Force in place right now looking at affordable housing for the community. Mr. Vail noted affordable housing doesn't necessarily mean elderly, it is all inclusive. This is an important issue for the community. Mr. Vail said he

would take umbrage with the cemetery becoming a thoroughfare. Mr. Vail said this is an opportunity for the developer to think outside the box and do something that is an asset for the community. Mr. Vail explained that the economic return is not based on an option a developer may have on a piece of property. Mr. Vail would like to see something meaningful to the community that strikes at the heart of affordability and three bedroom units are probably not the answer.

Steve Pardue, 367 Tuttle Rd., said he is an abutter to two sides of this proposed development. Mr. Pardue said he purchased his home in 2017 and there was talk about what could be developed here when they took a piece of his property to add to the neighboring property. Mr. Pardue said he was told that anything that would split this into a subdivision would need a 75' perimeter buffer and he has a reasonable expectation that this would be honored. 18 units would be 144 (vehicle) trips in and out of the development daily and Mr. Pardue said this is too much traffic. Mr. Pardue asked the Board to preserve the buffer intended for subdivisions.

Joe Campbell, 359 Tuttle Rd., said he didn't mind the previous plan with the single family dwellings but this proposal seems like a lot and is pushing the envelope. This project would have 54 bedrooms with thirty to forty cars going in and out. Mr. Campbell said he is not opposed to somebody building on the lot and loves the idea of having a place where people that have a hard time affording a place can get into. Mr. Campbell said he is concerned with the density and scale of the project.

Chairman Record closed the public hearing.

Mr. Saunders said buffers along certain boundaries are more important than others. Mr. Saunders would consider a buffer of 25 feet along the cemetery and is okay with the buffer on the high school side. The buffer near the residential uses is more important to Mr. Saunders and he likes the cluster approach. Mr. Saunders said Mr. Shane brings up a good point in terms of weighing the development as a whole and the pros and cons to the community. Mr. Saunders asked if there were some sort of affordability guidelines that the developer is willing to commit to that would then allow them to have more units.

Mr. Auclair noted the Board has not discussed emergency vehicle's ability to turn around. Mr. Auclair stated this is too much for this small area. Mr. Auclair is opposed to the plan with the proposed buffers and the traffic concerns. Mr. Auclair said there has to be some compromise and referenced other's comments about affordability. Mr. Auclair thinks something much less aggressive could be accepted by some of the Board.

Chairman Record said the 75' buffer is important. Chairman Record's view is, if the Board is to support something that is denser, it should be aimed at senior or affordable housing. Chairman Record said three bedroom units would likely have a lot of kids. The traffic in and out onto Tuttle Rd. would be huge. Chairman Record said having the open space being aggregated for the backyards is not the intent of what open space is supposed to be. Chairman Record said he doesn't think a hardship applies; the lot could be sold with one to three houses for a fair amount of money.

Ms. Nixon asked if any conceptual drawings have been done showing how many units can fit and still honor the 75' perimeter buffer. Mr. Farmer said he has not looked at this yet. Ms. Nixon said that she thinks this is what the Board was asking to be done.

Ms. Rardin said her concern is for the density with the parking, snow storage and the common open space.

Mr. Bingham referred to an apartment complex next to the former Doc's Café and said these have worked well. Mr. Bingham noted that the Town wants to concentrate development within this district. Mr. Bingham said something can be done here and he recommended the applicant work with Town staff.

Chairman Record said parking and safety are important and noted the Fire Chief's comment that the plan was tight. Chairman Record said the 75-foot buffer has been there and holding to the ordinance is important.

2. Public Hearing: Amendment to an approved site plan for Lakeside Concrete Cutting, Inc., located at 6 Environmental Dr., Tax Assessor Map R01, Lot 11-3 for revisions to the water service and to relocate the dumpster pad and shed. Owner: Lola in Pearls, LLC. Representative: Joseph J. Marden, P.E., Sitelines Civil Engineers Land Surveyors.

Chairman Record introduced the item. Ms. Nixon reported that the building is currently under construction. The main reason for this amendment is that the water line connection that has been constructed is not where the Portland Water District approved it and they want it to be taken out and relocated. The Town reached out to the water district and requested that they not require the line to be relocated because it would disturb the buffer along Rt. 1. Ms. Nixon said the Town learned today that the Portland Water District granted the applicant's appeal to leave the water line where it is. The other amendment requests are for the relocation and enlargement of a dumpster and for the placement of a concrete pad for propane tanks and associated re-grading.

Chairman Record said the amendment seems fairly simple however, there are people in the audience tonight that are interested in how these amendments may affect abutters.

Joe Marden, P.E. of Sitelines, said he is here on behalf of the applicant with some minor changes. Mr. Marden reviewed the project for a 15,000 square foot building with public water/sewer, gas and sixty parking spaces approved in June 2021. Mr. Marden said there are minor changes with the water connection and they are not changing the location. A dumpster pad and shed relocation is shown on the plan and a concrete pad has been added for the availability of propane gas. The water district requested a hydrant, previously planned within the project, to be located along U.S. Route 1. Mr. Marden said relocating the hydrant needed some grading and he outlined other minor grading revisions.

Ms. Perry asked for confirmation on the size of the concrete pad. Mr. Marden confirmed it is 8' x 18'.

Mr. Auclair asked for clarification on the number of dumpster pads. Mr. Marden replied that there is one dumpster pad with two dumpsters. Mr. Auclair referred to a review comment about keeping the dumpsters from sliding off. Mr. Marden explained that they

plan to have an 8' fence on the front of the dumpster pad and keep the other three sides open. Mr. Marden said the comment was to add some bollards to the back side of the pad to keep the dumpsters from creeping back and these can be added.

Mr. Saunders noted that there was no pad for the propane tank previously and it is proposed within a snow storage area and asked if they thought about this and if it may need a plan revision. Mr. Marden replied that the pad is designed so you could still push down the main aisle and there is still storage area. Mr. Saunders asked if relocation of the dumpster pad is critical or if it can remain in the current location. Mr. Marden said keeping it in the current location is an option. The relocation is for two reasons, it works better for flow of the site and it would be further away from the abutter to provide less impact to them.

Mr. Auclair referred to a condition of approval in the original approval that the clearing limits were to be flagged and asked how it happened that the lot was clear-cut to the abutter's lot. Mr. Marden said he did not represent the project at that time and cannot answer.

Mr. Bingham said in the proposed findings of fact, there appear to be a lot of loose ends and asked if there are still a lot of loose ends. Ms. Nixon said there are some outstanding issues with this project.

Chairman Record opened the public hearing.

Dr. Sean McCloy, Integrative Health Center of Maine, 15 Skyview Dr., read a statement:

Good evening. My name is Sean McCloy and I'm the owner of Integrative Health Center of Maine located 15 Skyview Drive. I'm here with Jim Ascanio, the owner of the other condominium on our property. I'd like to thank all the members of the planning board and town employees who work so hard for our community. I am proud to call myself a citizen of Cumberland, having built a home here in 2018 and then building our Medical Center in 2019. We were especially happy to cosponsor the recent Bicentennial celebration.

I come to you tonight with a complicated situation that, I believe, has some reasonably easy solutions. Members of the planning board should have received my letter explaining the matter in detail. In brief, we never received notification from the town regarding the project before the original planning board meeting in June 2021. This was due to a data system error on the town's part, and has since been corrected. However as abutters to lot 3, we never had a chance to review the project or speak before the board. We first learned of the project when we received a notice from the blasting engineer in November. Since then we have been working with Mr. Peters, the owner of Lakeside, as well as the town to come up with solutions to our concerns. This process has become increasingly frustrating and we are happy to have a chance to finally address our concerns before the board.

I first met Mr. Peters in February, hoping for a nice chat to learn more about his business and to introduce myself as a neighbor as well as to offer any assistance I could in the construction process. He had never received the covenants of the subdivision Association so I offered to send those over to him. We expressed mutual displeasure at how much of the mature forest had been removed between our two lots, creating a negative visual impact for both of our businesses. I suggested a budget-neutral solution of moving plantings from along the route 1 side to the border between lots two and three as long as the town planner approved. He was amenable to these changes.

He also told me that his company would receive regular 18 wheeler tractor trailer truck deliveries, and that his plan was for these trucks to drive out through our property. He indicated these deliveries would be between three and six per week. I asked him if the trucks could instead turn around on his property and exit via Route one. He said this would be technically possible though more inconvenient for his business. He noted the common easement on the subdivision plan. When we ended the meeting I said I hope we can come up with a better solution that would work for everyone.

I told Mr. Ascanio and Scott McLeod, his partner, about this meeting. Our primary concern was the 18 wheeler tractor-trailer trucks driving through our parking lot. We have a very busy medical practice and some of our patients use mobility devices such as walkers. As a family practice we have many young patients using our facility as well. Anybody with children knows that they don't always listen and despite our best efforts can dart out between cars. Regular heavy truck traffic driving directly through our parking lot creates an obvious safety hazard. All it would take is a momentary lapse in concentration for a horrible and irreversible accident to occur.

Additionally, when we built the parking lot to the specifications approved by the town we never anticipated regular 18 wheeler truck traffic over the asphalt surface. The hydrogeology under that parking lot is especially wet. When we began excavating on the site we discovered free-flowing water coming from the lot above us. The asphalt is essentially floating on a sea of mud in the spring. While the surface has stood up to normal passenger vehicle traffic we are concerned that massive damage would quickly occur with heavy truck traffic.

We brainstormed some possible solutions and attempted to meet with Mr. Peters. Over the next couple of months Mr. Peters became very challenging to communicate with, not returning emails or phone calls. His attorney and engineer did not show up to a planned meeting between the town, Lakeside, and the owners of 15 Skyview Dr. in late February. Our attorney had an increasingly difficult experience getting any communication from his attorney. I have always felt the best way to solve a problem is to get the lawyers out of the room and communicate clearly. Perhaps this is naive, but in that vein we still attempted to meet directly with Mr. Peters in April. He no-showed for that meeting as well but we were able to reach him on the phone.

He basically dismissed all of our concerns and told us that it was our fault we did not construct the parking lot up to standards that would accommodate heavy trucks. He also said that the truck drivers do not work for him and he would have no control over where they choose to drive. We proposed installing, at our expense, an unlocked gate between our two properties that would allow emergency access but otherwise discourage regular traffic. He flat out said "if you put in a gate I will sue you." In the end we came to a gentlemen's agreement in which he said he would do his best to direct truck traffic in and out of route 1, but no promises. He said he would allow us to install, at our expense, a sign saying "no trucks allowed 5 miles an hour" at the border between our two lots. He also agreed to modify the landscaping plan to create a mature vegetative buffer between the two lots.

I emailed a summary of this to Mr. Peters the next day in April and asked him to acknowledge agreement to this plan, but I have yet to receive any further communication from him.

I have had a chance to carefully review The June 2021 planning board video and the minutes from that meeting. His civil engineer seems to indicate that it would be feasible for trucks to enter and exit via Route one with the original approved plan. Now we have a new plan before the board. My concern with the proposed changes are as follows:

1. As the town has explained to me, the original intention of the common easement on the subdivision plan was for vehicular and pedestrian access to lots two, three, four, and five directly from Skyview Drive. This was to minimize traffic impact from vehicles entering and exiting on

Route one. This plan seems to have changed when Belted Cow built its property on lot five with direct access to Route one. Now lots three and four have direct access to Route one as well, and have no necessity to use the common easement anymore. New language is included in this proposed amendment that solidifies the intention of Lakeside to drive heavy trucks across the common easement and over our property on a regular basis. We would like this new language struck from the proposed changes. In addition we think the planning board and the town, along with the developer, should revisit the whole situation of the common easement as it is no longer necessary.

2. If the dumpster pad is moved to the opposite end of the parking lot will this create an impedance to truck traffic entering and leaving via Route one? This is a question for the Sitrine and town of Cumberland engineers.

3. If the dumpster pad is moved, will new parking spaces be installed where the old pad was to have been located? It seems that a tractor-trailer truck could easily drive part way into the common easement "stub" then back into the side parking lot, then leave via Route one. However if vehicles were parked where the old pad is located this might create an impedance to this maneuver.

4. Can the landscaping plan be modified to allow for installation of a mature vegetative buffer between the two lots? As an integrative medical center we highly value the natural beauty and relative serenity on our lot, being surrounded by mature vegetation. I am already seeing a financial impact on my business as practitioners do not want to rent the rooms that overlook this new industrial complex view.

It is *unfortunate* that the town never notified us of this project in the first place. It is *unfortunate* that the language regarding the common easement is brief and legally ambiguous. It is *unfortunate* that we have already incurred heavy legal expenses and multiple professional and personal hours of labor simply to protect our property and safety. It is *unfortunate* that Mr. Peters has not been a better communicator and corporate neighbor. I would like to quote Mr. Peters from the June 2021 planning board meeting. "You have a beautiful town and I respect it. I want the building to be a positive impact on the community and the residents and I share the same values. We're not trying to disrupt any residents or bring the property value down." So far Mr. Peters actions have not matched these sentiments. His operations will directly harm our business as well as create an avoidable safety hazard.

Fortunately he now has an opportunity to take some simple, achievable, budget-neutral steps to protect and help his new community.

I am very grateful to all of you for listening so closely. I hope you can help us all come to a positive solution. Thank you and be well.

Sean McCloy, Integrative Health Center of Maine, 15 Skyview Drive Condominium Association

Town Manager Bill Shane reported that he presented a memo to the Planning Board based on his conversations with the Town Attorney regarding the 40-foot common access easement on the approved subdivision plan. Mr. Shane reported that unless notes (on approved plans) are rescinded, and the Planning Board approves it, those notes stay in effect right from the first amendment. Mr. Shane said the 40-foot easement is for vehicular and pedestrian access across the back of the lots. It was envisioned that the 2,000 foot stretch of roadway that exists between Casco Bay Dr. and Skyview Dr. should have an interconnection. Mr. Shane said the Town Attorney agreed that the

easement is in effect. Mr. Shane said tractor-trailer trucks were not presented as part of any traffic circulation plan intending to use the common easement.

Mr. Shane stated that the Town is putting Lakeside Concrete on notice that tractor-trailer trucks, service trucks and all vehicles that are not considered typical passenger or emergency vehicles shall be prohibited from the use of the common access easement until proper review through a site plan amendment process can be done by the Planning Board. Mr. Shane noted the Town Attorney was very clear in helping him craft his preceding statement. The Town Attorney said the Planning Board has not been able to review what impact would happen to any of these lots along this common easement.

Mr. Shane said the Town is not going to propose to eliminate the common access easement, this is not in the Town's rights, it is in the rights of the owners. The Town has not thoroughly vetted whether the common access easement can be used for anything more than what it was originally proposed for, for pedestrian access and passenger vehicles to pass through. Mr. Shane encouraged the Board to not deliberate on this. Mr. Shane noted that when you look at the current amendment of the plan, you won't find note 30 (regarding the common access easement) but it doesn't go away. The note is still in effect and still impacts the burdening of the common access easement.

Mr. Saunders asked if it is the Town's position that whatever the common access easement allowed for, or did not allow for, at the time this plan was originally approved is the same now. Mr. Shane said he does not believe the Planning Board ever received any analysis that showed tractor-trailer trucks going out to Skyview Dr. Mr. Saunders commented that there isn't anything in the amendment that is asking for access to the common easement and the Board is not being asked to approve access. Mr. Shane said that in the application packet before the Board tonight, there is a reference to the common easement that there are no restrictions. Mr. Shane continued that it is the Town's position that the use of the common easement has not been brought to the Board to show that there are safety measures in place to protect pedestrians and passenger or emergency vehicles.

Ms. Rardin referred to the proposed finding under 1.4.3 for driveways between parcels that indicates this driveway is for use by personal vehicles and not large trucks. Mr. Saunders replied that he has a problem with adding this as a finding of fact because it was not in the original approval. Mr. Shane said this is because the Board was not asked to make this finding. Mr. Saunders replied that he is not saying the proposed finding is inaccurate, but the Board is being asked to make a finding on something that is being contested that the Board has no knowledge of.

Ms. Nixon said there are two problematic issues. One is the applicant is asking to relocate the dumpster and this could impact the ability to maneuver trucks in and out from US Route 1. Two is that she was clear in talking about the circulation plan that trucks needed to be able to go in and pull back out to US Route 1 and there was no discussion at that point about trucks going across Dr. McCloy's property. Ms. Nixon feels that the fact that this has been added as a finding is appropriate.

Mr. Saunders said he is not taking the position that the driveway should be intended for use of tractor trailer trucks. Mr. Saunders said he is not convinced the Board ever made a finding on whether or not tractor trailer trucks could use that common easement and the Board is not being presented with anything that changes his mind as to whether it should be used or not. Mr. Saunders said he is happy to let the Town take whatever action the Town feels it needs to take but the Planning Board is not the Town. Mr. Saunders said he is not sure if he wants the dumpster moved, it could prohibit internal traffic flow. Mr. Saunders added that the Board does not know anything more about that common easement and what is allowed any more than when they first heard the project and he doesn't see why that finding of fact is changing from what was originally approved.

Ms. Nixon reported that the applicant never communicated that they were going to do anything other than come in and out off Route 1. Ms. Nixon said now an issue has come up and it is appropriate that the Town try to clarify what was presented and approved by the Board. Ms. Nixon said it was never the intention that this passageway be used for large trucks and this would be a gross overburdening of the easement.

Ryan Peters, Lakeside Concrete, thanked Mr. Shane & Ms. Nixon for their support and help with correcting the Portland Water District water line issue. Mr. Peters referred to the dumpster relocation and said he is happy to leave it where already approved. The plan was to move it away from the neighbor who is very particular about what they want on the property line. Mr. Peters referred to truck traffic and said he suggested that the abutters wait until the building is occupied to see what the traffic will be like. Mr. Peters noted that there is no loading dock and there will not be a lot of deliveries. Mr. Peters gave examples of the deliveries they would receive. Mr. Peters said when he bought the lot, they had the easement and two different ways to get in and out of the lot and to be told now that they only have one way to get in and out is not appropriate. Mr. Peters noted that this is a commercial subdivision and commercial traffic should be expected.

Mr. Saunders asked if the dumpster were to remain in the approved location, would they still like to have the size increase. Mr. Peters replied yes and noted there are two dumpsters; one for general debris and one for asbestos. The asbestos dumpster is an enclosed dumpster with a 7' x 7' door on the back so a fence can't be there. Mr. Peters explained how the dumpster will be used and noted that they have to be able to park behind it and open the door. Mr. Saunders asked if the dumpster can be screened on the side of the abutter towards Route 1 leaving the other two sides open. Mr. Peters said that the two long sides of the dumpster can be screened but the two short sides cannot be screened.

Mr. Saunders asked about the preferred placement of the shed. Mr. Peters said they would like the shed in the new location. Mr. Saunders asked if the dumpsters stay in the original location, would this affect the location of the propane tank and snow removal. Mr. Marden replied that there would be no impact but snow removal could be trickier.

Mr. Auclair referred to the clearcutting and to landscaping comments and asked if there is anything that could be done between the sites. Mr. Peters said they cut all the trees on their side of the property line and the abutter cut all the trees on their side. Mr. Peters

said that the project has a landscaping budget but he is not inclined to split the landscaping costs with the abutter after the way he has been treated. Chairman Record said this is outside of the Board's purview. Mr. Peters said the common access easement is between property owners and has nothing to do with the Town in his opinion. Chairman Record said when the Board reviews things, it is based on the information they are given and any easement generally has limits. Chairman Record said this is likely a civil matter.

Town Councilor Bob Vail, Cumberland Center, said he finds the acrimony between the abutting property owners and their lack of communication disturbing and urged the Board to table this and have a site walk.

Brittany Peters, Lakeside Concrete, referred to discussion of the previous item where the Board felt that the 75 foot setback was important for the Town to stick with and it is also important for the Town to stick with having the easement to allow for the two accesses for the property in and out on both sides. Ms. Peters said this is how they bought the property this is how it should stay.

Mr. Shane said the Town has agreement that there is a 40' easement for pedestrian and passenger use and what was not clear and not presented in the application to the Planning Board is that larger trucks would burden the easement. Mr. Shane said that had this been done, the Planning Board could have deliberated on that. Mr. Shane said that the way it is now being presented, that the easement would be used by larger vehicles, is not what was originally imagined or allowed.

Ms. Peters asked if it is correct that the easement is not to be used by any large truck no matter who receives a delivery; there should be no 18 wheelers through the easement ever. Ms. Nixon replied that this was not part of their site plan application. Ms. Nixon added that on the site plan, one of the findings made was that there was safe, adequate circulation for the proposed use. Ms. Nixon noted that the Town knew the trucks needed for Lakeside Concrete would be large and she specifically made sure the trucks could maneuver on the property. Nothing was ever said about bringing these vehicles out through the easement. Ms. Nixon said if it was said that there would be use of the large vehicles across the easement then the Board would have had the chance to consider this. Ms. Nixon cited the Standard Condition of Approval as follows: "The 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, which do not affect approval standards are subject to review and approval by the planning board prior to implementation." Ms. Nixon said use of the easement by large trucks was not part of the original approval and the applicant needs to come back and ask for it. Mr. Peters said the communication between lots was something the Town wanted and the Town didn't want traffic entering onto Route 1 from each individual driveway and this is evident.

Mr. Marden noted that none of the changes requested at this time have anything to do with access easement traffic and he doesn't think it is appropriate to note it in the

findings. Mr. Marden requested that the comment in the findings of fact regarding the truck traffic be removed.

Dr. McCloy said he appreciates Mr. Peter's intention of moving the dumpster to help alleviate unsightliness and asked if the dumpster is moved, will this impact truck traffic. Mr. Marden answered it should have no impact. Dr. McCloy said if this is the case, they have no problem with moving the dumpster. Ms. Nixon said she would like the Town Engineer to validate that the truck turning movements would not be infringed upon.

Tom Foley, Ture Spring Farm Condominium Association, referred to the meeting minutes from the original proposal and noted under item J regarding noise, the finding states that deliveries would be in limited to daylight hours. The proposed finding now lists delivery times as 7 am to 7 pm. Mr. Foley said 7 pm can be beyond daylight hours. Chairman Record said this was changed because "daylight hours" is ambiguous. Mr. Auclair said that the minutes from last year mention their hours with employees arriving between 5 and 7 am. Mr. Auclair said he doesn't remember if the Board agreed to this and he wants to make sure of this when they come to the findings of fact. Mr. Foley said he wants to ensure they are consistent with good practices along the corridor and hoped to alleviate any confusion.

Mr. Auclair referred Chairman Record's comment about getting into the weeds regarding landscaping and noted that the Route 1 Design Standards under landscaping has a paragraph that refers to a border around parking lots and that parking lots should be designed and landscaped to create a pedestrian friendly environment. Mr. Auclair said the Route 1 Design Standards are very specific with what the Town hopes to achieve so it is appropriate and is part of the Ordinance. Chairman Record agreed and explained that he doesn't want to become a mediator.

Chairman Record closed the public hearing.

Ms. Sawchuck said there was no disclosure of a plan to run large trucks through neighboring parking lots when the plan was brought to them. Ms. Sawchuck said this impacts the traffic circulation and parking findings. Ms. Sawchuck said she thinks this needs to change because the finding was incorrect. The Board is now aware of this because the abutters have brought it to the Board's attention. Ms. Sawchuck said she thinks the Board needs to fix this problem and the Board probably could not reach a decision tonight. Ms. Nixon said that it is important that the Town Engineer look at the traffic circulation impacts of relocating the dumpster and she thinks tabling the matter is appropriate. Mr. Saunders said the Board could approve this with a condition of approval pending the Town Engineer's review.

Mr. Saunders reiterated that the Board does not know what the common access easement says and he is not comfortable changing findings of fact for an unrelated amendment. Mr. Saunders said he will not vote to change the findings of fact that are not related to the amendment.

Mr. Bingham said there are so many open items that he is not adequately prepared to vote on this.

Ms. Perry said she doesn't think the Board has enough information and a lot of information came in beyond the deadline and for these reasons, she agrees that this should be tabled.

Mr. Bingham moved to table the item, seconded by Mr. Saunders and **VOTED, 7 yeas, unanimous - motion carries.**

Chairman Record requested that this is all ironed out when it comes back before the Board. Chairman Record said he thinks part of the reason that this was tabled is because the Board doesn't want to make a problem worse.

Mr. Auclair referred to Councilor Vail's recommendation that the Board have a site Walk. Chairman Record said he is open to one but not sure this is needed.

Mr. Marden said there are a number of items they had requested with this amendment and said it wouldn't make sense for them to go forward with the circulation plan if the Board is against it. Chairman Record said Mr. Marden should work with Ms. Nixon.

3. Public Hearing: Recommendation to Town Council on proposed amendments to the Cumberland Code of Ordinances, Chapter 315 - Zoning, Section 63 - Signs to ensure consistency with State guidelines for temporary, off-premise, non-commercial signs.

Chairman Record introduced the item. Mr. Shane explained that this change to the Sign Ordinance comes under the Board's purview to make a recommendation to the Town Council. The amendment is to be consistent with State requirements. Mr. Shane said it is a simple request and the Ordinance Committee recommended it come to the Planning Board for their input and recommendation.

Mr. Saunders said the amendment eliminates the time limit and doesn't add another time limit. Mr. Shane replied that the time limit would default to be the same requirements as the State. Mr. Saunders clarified that the time restriction is in the amended Maine Statute and the Town is eliminating conflicting language. Mr. Shane said that is correct.

Mr. Bingham moved to recommend that the Planning Board approve recommendation of the proposed amendments to the Cumberland Code of Ordinances, Chapter 315 - Zoning, section 63 - Signs to ensure consistency with State guidelines for temporary, off-premise, non-commercial signs, seconded by Mr. Auclair and **VOTED, 7 yeas, unanimous - motion carries.**

G. Administrative Matters/New Business: Mr. Auclair said he will be away at the September meeting.

H. Adjournment: Mr. Bingham moved to adjourn the meeting at 9:12 pm, seconded by Mr. Auclair and **VOTED, 7 yeas, unanimous - motion carries.**

A TRUE COPY ATTEST:

Jason Record, Planning Board Chair

Christina Silberman, Admin. Asst.

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