

**Land Use Committee  
Town of Cumberland  
Council Chambers – Town Office  
June 26, 2014 – 6:30 p.m.  
Minutes**

**I. Call to Order: Chairman Moriarty called the meeting to order at 6:30 p.m.**

**II. Roll Call:**

Present: Steve Moriarty, Chair, Adrienne Brown, Catlin Byers, Beth Fitzgerald, Tom Foley, Chris Franklin, Peter Gagne, Lynda Jensen, John Lambert, Bob Maloney, Sally Pierce, Jeff Porter, Sally Stockwell, Bob Waterhouse, Peter Sherr, Chris Neagle, Peter Bingham Council Liaison, Shirley Storey-King, Council Liaison

Absent: James Orser

Staff: Carla Nixon, Town Planner, Pam Bosarge, Administrative Assistant

**III. Minutes of Previous Meeting – June 3, 2014**

Mr. Sherr moved to approve the minutes of June 3, 2014 as amended.

Mr. Foley seconded.

VOTE: 14 in favor – 1-abstain (Porter)

**IV. Survey Subcommittee:** Steve Moriarty, Sally Pierce, Bob Waterhouse, Chris Franklin, Jeff Porter

Mr. Moriarty asked if there was anyone else who would like to serve on the survey subcommittee.

Ms. Fitzgerald asked when the committee would meet.

Ms. Nixon suggested meeting prior to this meeting at 5:00 or 5:30 pm.

Mr. Waterhouse stated that is a good idea.

**V. Office Commercial North and South**

Mr. Moriarty stated the second item on the agenda is to discuss the uses in the Office Commercial South (OCS) & Office Commercial North (OCN). The Committee was handed a sheet with comparison uses in OCN, OCS and Cumberland Foreside Village a Contract Zone. Currently in the Cumberland Foreside Village is Exactitude, the top lots are not developed. The Contract Zone (CZA) with David Chase owner of Cumberland Foreside Village has a few different uses than allowed in the OCS district. The contract zone allowed Lot 1 to have retail, but this lot is the lot where Exactitude is located.

- Comparison of Uses: Mr. Moriarty stated the OCN allows multiplex and duplex dwellings, this would include the Rockwood Condominium Development, and there are condominiums in the Low Density Residential district which is on the right of the OCS as you enter Cumberland from Falmouth.
- “Associated Retail”: Mr. Moriarty continued stating the charge for this committee from the Town Council is whether to expand the uses in OCS and OCN to include “Associated Retail” and “Restaurants” as defined by guidelines.

Mr. Sherr stated he served on the Comprehensive Plan Update Committee and the issue of concern was retail.

Ms. Storey-King who also served on the Committee agreed.

Ms. Nixon reviewed the location of each district on the zoning map; stating there has been discussion on whether to have one combined OC district.

Mr. Moriarty stated current uses in the corridor include the Friend's School, and True Spring and Granite Ridge Condominiums in the Low Density Residential (LDR) district across from the OSC district. The OCS and OCN zones don't meet on the zoning map as there is no land on the left side next to the turnpike heading north until after the exit onto King's Highway.

Ms. Jensen asked if there were no lots to develop in the OCN should we discuss that zone.

Ms. Nixon stated there is one lot owned by Flash Holdings, LLC next to Norton Insurance, who has the lot under contract.

Mr. Foley stated he had talked with the realtor who said the lot was for sale, and it would have a shared driveway with Norton Insurance.

Ms. Neagle stated we should consider all zones whether or not there is a current use, properties change, and expand the area should be considered as a whole.

Mr. Franklin asked if Norton could subdivide the lot.

Ms. Nixon stated they would need to come back to the Planning Board.

Mr. Moriarty stated ten years ago all of the development in the OCN and OCS did not exist; this is a testament to the Town Manager, Town Council and Planning Board to broaden the tax base with commercial development where it is appropriate.

Mr. Lambert asked if the TIF district still existed.

Mr. Moriarty stated yes, up to Twin Brook; the first TIF district was allowed for recreational uses.

Mr. Moriarty asked for comments or thoughts on permitted uses in the OCN.

Mr. Neagle stated restaurant or food service has been addressed at the Planning Board and he is not opposed to retail uses.

Mr. Foley asked about timber harvesting as a permitted use.

Mr. Lambert agreed timber harvesting is a dated concept, cutting trees increases noise pollution, highway noise is a big issue in the Wildwood neighborhood.

Ms. Storey-King stated there is some tree protection on both sides of the highway, and the Beautification Buffer along the top of Interstate 95.

Ms. Nixon read the definition of Timber Harvesting – *The cutting and removal of trees from their growing site and the attendant operation of cutting and skidding machinery, but not the construction or creation of roads. "Timber harvesting" does not include the clearing of land for approved construction.*

Mr. Sherr stated timber harvesting is a sustainable practice to maintain trees with a forest management plan.

Mr. Porter suggested removing timber harvesting as a permitted use.

Mr. Bingham stated historically 15 years ago the area was all timber.

Mr. Neagle stated there is not enough timber in the district to warrant any change; if you own your own land you can cut the trees, why delete the use.

Ms. Storey-King stated her Aunt owned one of the large parcels in the area and asked if she could she cut her trees.

Ms. Nixon reviewed the Ordinance stating timber harvesting is allowed in all residential zones.

**Mr. Porter moved to remove timber harvesting as a permitted use in the Office Commercial North (OCN district).**

**Ms. Jensen seconded.**

**Discussion on the motion:**

Mr. Lambert stated if a property owner can cut up to six acres without a permit, why have the use.

Ms. Nixon stated if cutting is for commercial harvesting a timber harvesting a permit is required; stating it could be convoluted to take out the use, if you owned a lot on Route One you could have a forester harvest timber.

Ms. Byers clarified that if a lot is to be developed for subdivision purposes the land can't be altered prior to approval.

Ms. Nixon stated yes.

**VOTE: 11- in favor  
3 – Opposed**

Ms. Nixon asked about the use of Motels, stating today motels are sometimes used for transient housing and are undesirable, the use has been removed from the Route 100 corridor.

Ms. Stockwell asked the difference between a motel and hotel.

Ms. Nixon stated a motel would have drive-up outside entrances; a hotel would have a main entrance into a lobby with better supervision.

Mr. Moriarty reviewed the Ordinance definitions:

- *Hotel and Inn: A building containing individual sleeping rooms or suites, each having a private bathroom attached thereto, for the purpose of providing overnight lodging facilities to the general public for compensation and in which access to all rooms is made through an inside office or lobby.*
- *Motel: A building containing rooms which are rented as a series of sleeping units for transients, each sleeping unit consisting of at least a bedroom and bathroom.*

Mr. Lambert agreed anything promoting 24-7 traffic would be an inappropriate use.

Mr. Neagle stated there may be problems with motels in lots of places, and he respects Ms. Nixon's opinion; but he has never seen an issue with motels, and the Route One Guidelines increase the cost of the development. Bar Harbor has some gorgeous motels; he would support the use with Design Guidelines.

Ms. Stockwell stated she has stayed in motels and doesn't associate them with the same image; she has friends who have family visit who need places to stay.

Mr. Lambert asked why the use was allowed.

Mr. Moriarty stated there are several historical anomalies in the zoning ordinance.

Mr. Neagle stated we can't have exclusionary zoning, it is against the law.

Mr. Moriarty stated any recommendations from this Committee will be receive legal review prior to being submitted to the Planning Board and Town Council.

The Committee discussed excluding uses in a community and whether all uses were needed in town.

**Mr. Lambert moved to remove Motels and Hotels as a permitted use in the OCN.**

**Ms. Jensen seconded.**

**Discussion on the motion:**

Ms. Stockwell stated lot size would limit the size of a Motel or Hotel.

Mr. Lambert stated Norton's lot is big enough for a Hampton Inn.

Ms. Stockwell stated a hotel is not typically a noisy use.

Mr. Moriarty stated light pollution, storm water run-off and other types of items would be considerations in the use.

**Mr. Porter moved on the motion to cease comments.**

**Ms. Jensen seconded.**

**VOTE: 14- In favor  
1 Opposed**

**Vote on the motion to eliminate Hotels and Motels as a permitted use in the OCN district.**

**VOTE: 7 in favor  
9 Opposed**

**The Motion failed.**

**Ms. Stockwell moved to eliminate Motels in the OCN district.**

**Mr. Lambert seconded.**

**Discussion on the motion:**

Mr. Sherr stated Design Standards would increase the value of the use, and eliminate the use of housing transients; he is not in support of eliminating the use.

Ms. Brown asked about the use of Bed and Breakfasts.

Ms. Nixon stated they are not allowed in the District.

**Vote on the motion:**

**VOTE: 7 in favor  
9 Opposed**

**The motion failed.**

Mr. Foley asked about the use of Registered Dispensaries and why we would want them.

Ms. Storey-King stated we can't prohibit the use; so on advice of the Town Attorney to be proactive; this area was designated as an area with the most control. There are only two undeveloped lots and the Town owns one.

Mr. Moriarty stated back in the 80s a federal law required all towns to allow mobile homes in some area of the town. The town created two Mobile Home Park Overlay Districts.

Mr. Gagne asked the definition of Contractor's Space.

Mr. Moriarty read the definition: Contractor's Space – *A facility consisting of one or more individual units for contractors to utilize for storage, inventory and prefabrication of materials associated with construction.*

Mr. Neagle asked if Duplex and Multiplex should be allowed in the OCS, the condos at Granite Ridge and True Spring are across the street in the Low Density Residential District.

The Committee reviewed the uses in the Office Commercial South OCS district.

Ms. Nixon stated in the third column (contract zone) residential dwelling units, single family or multiplexes are allowed on the upper lot only. Ms. Nixon stated the traditional thought in planning is that people in houses don't want commercial development nearby.

Mr. Foley who lives at Granite Ridge stated he supported Exactitude.

Mr. Neagle stated that Mr. Foley provided the Planning Board with positive, constructive comments during the site plan review.

Mr. Waterhouse asked about combining the OCN and OCS districts into one district, there are only two uses not allowed in districts, Registered Dispensaries and Duplex and Multiplex dwellings.

Mr. Bingham stated he did not want Registered Dispensaries in the OCS district.

Mr. Neagle disagreed.

**Mr. Neagle moved to add duplex and multiplex dwellings to the OCS district.**

**Mr. Lambert seconded.**

**Discussion on the motion:**

Mr. Porter voiced concern that this is a limited commercial area, which has attracted some very beneficial businesses to Town, do we want to lose the commercial use.

Ms. Stockwell agreed, stating there are not a lot of commercial areas in town and asked how adding residential uses would affect the whole town.

Mr. Moriarty agreed stating it could deplete future commercial development.

Mr. Lambert asked the difference in residential care facilities and assisted living.

Ms. Nixon stated it is specified in the language in the contract zone, but they are basically the same.

Mr. Lambert stated multiplex dovetails with independent living which is part of this type of facility.

Ms. Nixon stated residential and duplex is not an allowed use in the OCS district.

Mr. Franklin agreed with Mr. Porter the commercial zones are meant to offset the residential tax base.

Mr. Moriarty agreed with Mr. Porter the commercial applications in front of the Planning Board have set a trend as to types of commercial development in the Route One corridor.

Mr. Neagle stated he will vote against his motion.

Mr. Foley stated the town is just beginning to see commercial development, this is a prime location with the new turnpike connector in Yarmouth, and the location is twenty minutes from the airport, monument square, and Brunswick and thirty-five minutes to Lewiston-Auburn.

**VOTE: Unanimous – Opposed**

Mr. Moriarty asked about the use of timber harvesting as a permitted use in the OCS district.

Ms. Storey-King stated there is the Eisenhower buffer at the top of the ridge which can't be cut.

Ms. Stockwell stated commercial lots cut for timber do not help with noise mitigation.

Mr. Waterhouse asked what noise.

Mr. Lambert stated Route 1, Middle Road and Interstate 295 all create very loud highway noise.

**Mr. Porter moved to remove timber harvesting as a permitted use in the OCS district.**

**Mr. Foley seconded.**

**Discussion on the motion:**

Ms. Jensen voiced concern for wildlife habitats with tree cutting.

**VOTE: 10 in favor  
5 opposed**

Ms. Stockwell stated there may be other ways to regulate cutting to retain trees such as the Site Plan Review Ordinance.

Mr. Moriarty stated the Committee has been charged to review retail and restaurant use in both zones. Our predecessor Committee recommended allowing restaurants not to exceed 3,500 square feet.

Ms. Storey-King stated this item went to Public Hearing with very little public input; Tom Foley gave input and was not opposed, he had questions about design and thought the issue should be reviewed by the larger committee.

Mr. Foley stated he does not have an issue with restaurants and retail but thinks the Town should maximize commercial development in the Route One Corridor. Smaller lots may be suitable for restaurant or retail, he understands concern about employees in the zone having a location for lunch. Stating he would support restaurants integrated into a business as an associated use. SeaFax has a 21,000 sq. ft. building with an assessed value of \$3,188,800; he would have no issues if a restaurant or café rented space within that building, or a restaurant such as Orchard Thai in Falmouth which rents space in the Falmouth health care complex. He felt the town should regulate strategically where to allow these to maximize the commercial tax base.

Mr. Bingham provided background stating the Comp Plan Update Committee didn't disagree on this issue it was a split decision.

Mr. Foley stated he was in favor of retail and restaurants that are incorporated into a larger commercial building but not as a primary use.

Mr. Sherr asked what size building he would recommend for an associated use.

Mr. Foley reviewed the size of the existing commercial buildings, stating a multi-purpose use in the 20,000 to 21,000 sq. ft. range.

Mr. Neagle agreed he would not encourage free standing buildings; the Delorme building has associated uses with the retail store with the revolving globe, stating the town should not exclude the uses.

Mr. Moriarty asked if associated retail was included in his thoughts.

Mr. Neagle stated yes, at one point Planet Dog was looking at a lot on Route One (OCN) which had an associated retail component.

Ms. Pierce asked how we would encourage restaurants in existing buildings.

Mr. Foley stated there was an application for a Doctor's office which was to include an outdoor seating area, with a café or restaurant as an associated use. Mr. Foley stated it is important to not open lots up to low tax revenue uses. Maine Medical Center has a cafeteria which serves everyone, not just hospital employees, or visitors.

Mr. Franklin stated this is ideally good, but this is a commuter corridor and in the 2007 survey the highest response of people wanted restaurants, the two or three acre lots are not big enough for multi-use buildings.

Mr. Foley stated within three miles or so there are twenty restaurants, he didn't think small commercial businesses were appropriate for prime lots.

Mr. Bingham stated there seems to be some overall consensus for commercial and the next steps are to tweak associated uses, with the majority encouraging keeping the area development commercial and not residential.

Mr. Moriarty asked about free standing uses vs. subordinate uses.

Mr. Sherr suggested limiting standalone uses with the size of the lot, on a larger lot the use should be an associated use.

Mr. Lambert stated the data on restaurants is positive or negative verses the services provided. The Route One corridor is a limited resource, where we have created incentives to maximize the use of the area, we should ensure a way to maximize building size based on acreage, to maximize investment in the lot, and he would like to see more 20,000 + square foot buildings for tax revenue.

Mr. Porter stated the town could work with developers in one package to place uses in larger buildings, there is no actual evidence on restaurants. The Town now has options to have dinner and he is not traveling to Portland. Louie's, Doc's and Val Halla are very busy and are very positive additions to the town.

Mr. Waterhouse stated he doubted a 3,500 sq. ft. restaurant would be developed on an 11 acre lot, he asked if the lot could be split.

Ms. Nixon stated that is a good question, if a lot is an existing lot in an approved subdivision with restrictions it cannot be further subdivided.

Mr. Neagle stated any Planning Board conditions can be changed upon review and approval from the Board.

Mr. Waterhouse stated if lots were split to allow more small development it negates the concern. He agreed associated retail makes sense with a restriction to avoid large and chain restaurants.

Mr. Foley stated he was not opposed to restaurants on small lots where they fit, but encouraged the town to be patient, and continue to work hard to get quality development.

Mr. Neagle stated the 2007 survey supported restaurants, the Foreside is still waiting for one, West Cumberland has Cumberland House of Pizza, and the Center has Doc's Café, Louie's Grille, Val Halla and Food Stop, there is a demand for local services in town.

Ms. Nixon gave background information on the issue as follows: HUGS Restaurant approached Alyssa Daniels, Economic Development Director about putting a restaurant on Route One; it was not an allowed use. It has been discussed to not limit developers who might have a mixed use development plan. Doc's Café has a restaurant, apartments and study hall upstairs.

Mr. Gagne asked if the word associated implied part of a larger complex.

Ms. Nixon stated it was a term developed with the Route 100 Guidelines; a resident had a furniture restoration home business and would occasionally sell the furniture as an incidental use. Also Fat Andy's who mills hardwood needed a small showroom for customers to see the product.

Mr. Neagle stated associated restaurants would be a subordinate use.

Mr. Lambert stated he is not opposed to associated restaurants up to 3,500 square feet provided they are in a building with X# of square feet, to allow a very limited area for these types of uses; the bottom line is to achieve the highest tax revenue. A restaurant could be incorporated into a larger commercial business.

Ms. Storey-King suggested having language for the next meeting that would look at allowing restaurants inside office and professional buildings.

Mr. Bingham agreed that appeared to be the consensus of opinion.

Ms. Stockwell asked why limit associated uses; we should promote multiple uses such as daycare, restaurants, etc.

Ms. Fitzgerald stated there was a design contest for One City Center; would we do something like that.

Ms. Nixon stated if we owned the land we could send out an RFP for development as was done for Village Green.

Mr. Franklin stated there are approximately six or seven lots with two – two and a half acres, what would be the largest building allowed on a lot that size.

Ms. Nixon stated the town does not have a lot coverage provision, only setback requirements.

Mr. Neagle stated it would be helpful to have digital information such that Mr. Shane had produced for the Planning Board to be able to view the lots in discussion.

Ms. Nixon stated the committee should be thinking of desired uses... how you want the community to look and function, not just dollars and cents.

**Next Meetings:**

Mr. Moriarty asked for a date for the survey sub-committee to meet during the week of July 7<sup>th</sup>. The first committee meeting will be July 7<sup>th</sup> at 5:00 p.m. in the West Conference room.

Mr. Moriarty asked about meeting twice a month to allow the committee to meet Town Council's deadline.

The Committee agreed to meet two times a month.

The Committee will meet on the second and last Thursday of the month.

July meeting dates:      Thursday, July 10<sup>th</sup> at 6:00 p.m. in the Council Chambers  
                                    Thursday, July 31<sup>st</sup> at 6:00 p.m. in the Council Chambers

**VI. Adjournment:** The meeting was adjourned at 8:45 p.m.

Respectfully submitted,

Pam Bosarge  
Administrative Assistant