

# ITEM

## 18-032

To set a Public Hearing date of March 26<sup>th</sup> to consider and act on forwarding a Contract Zone Agreement for John Paynter, 445 Greely Road Extension, to the Planning Board for a Public Hearing and recommendation



# M E M O R A N D U M

TOWN OF CUMBERLAND, MAINE  
290 TUTTLE ROAD  
CUMBERLAND, MAINE 04021  
TEL: 207-829-2205 FAX: 829-2224

**To:** Steve Moriarty, Chairman of the Planning Board  
**From:** William R. Shane, Town Manager  
**Date:** March 6, 2018  
**Re:** Paynter CZA

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In December 2017, the Town Council approved the purchase of the remaining land around Knight's Pond. The purchase was a combination of a gift letter for tax proposes and annual payments over 10 years. In order to complete this purchase, the Town Council will need to authorize a Contract Zone Agreement because the current configuration of John's property on his lot would not allow the sale of existing land consistent with his possible development plans for the future.

A Contract Zone Agreement (CZA) would allow existing structures to remain in place. Those structures would be identified on a plan and would be part of the CZA requirement. The CZA is specific to setbacks to existing structures only. No other density bonuses or changes to the underlying zoning requirements of the RR 2 district would be allowed.

A copy of the signed P&S, survey plan and CZA are attached. We will follow the neighborhood meeting at 6 PM with a Council / Planning Board Workshop at 6:30 PM. Where this is truly about a setback to two existing storage buildings on his property, I don't expect a lot of concern with the CZA, as the public benefit is connecting the final piece of this amazing property in Cumberland. The 21 acre conveyance will ultimately be encumbered with a Conservation Easement as is the rest of the Knight's Pond Preserve.

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PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made as of January 12, 2018 (the "Effective Date"), by and between JOHN W. PAYNTER, an individual with a mailing address of 445 GREELY RD. EXT. CUMBERLAND, ME. 04021 ("Seller"), and the Town of Cumberland, a municipal corporation organized and existing under the laws of the State of Maine, with a mailing address of 290 Tuttle Road, Cumberland, Maine 04021 ("Buyer").

1. Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller agrees to sell and convey and Buyer agrees to purchase the following property (collectively referred to herein as the "Premises"):

Approximately 24.9 acres, being a portion of a certain lot or parcel of land on the Northeasterly side of Greely Road Extension, but not adjacent thereto, in the Town of Cumberland, County of Cumberland, State of Maine, including any improvements thereon, as shown on a plan entitled "Land Procurement, 24.9 Acres to Town of Cumberland from John Paynter, Cumberland, Maine" dated October 24, 2017 and prepared by Boundary Points Professional Land Surveying, LLC. Being a portion of the premises described in a deed from James W. Smith and Patricia B. Smith to John W. Paynter dated March 17, 2004 and recorded in Cumberland County Registry of Deeds in Book 20996, Page 303.

2. Purchase Price. The Purchase Price for the Property is Ninety Thousand Dollars (\$90,000.00) (the "Purchase Price"), payable to Seller pursuant to the terms of a promissory note to be delivered at Closing (defined hereafter). The promissory note will provide that Buyer shall make payments to Seller of the principal amount of Ninety Thousand Dollars (\$90,000.00), in one hundred twenty (120) successive monthly payments of principal in the amount of Seven Hundred Fifty Dollars (\$750.00) each, together with all interest then accrued on the unpaid principal outstanding from time to time at the rate of Five Percent (5.0%) per annum, all as set forth in the payment schedule attached as Exhibit A to the promissory note.

The Buyer intends for this transaction to qualify as a bargain sale, and the Buyer shall have the right, at his expense, to have the Premises appraised prior to Closing if the Buyer so chooses.

3. Adjustments and Costs. The following items shall be prorated, adjusted, and paid as follows:

(a) All applicable real estate taxes, utility charges and other charges and assessments affecting the Premises shall be apportioned between Seller and Buyer as of the Closing Date (as defined below). Seller shall be responsible for all such items for the period prior to and including the Closing Date.

(b) Each party shall pay one-half of the Maine real estate transfer tax, if applicable.

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(c) Each party shall pay all costs and expenses incurred by such party in connection with the transactions contemplated by this Agreement not adjusted as set forth in this Section or otherwise provided for in this Agreement.

4. Title. Seller shall convey the Premises to Buyer by Warranty Deed (the "Deed"). Buyer shall be responsible for the cost of any title insurance premium imposed in connection with any title insurance policy issued to Buyer.

5. Due Diligence Deliverables. Within ten (10) days of the Effective Date, Seller shall provide Buyer with copies of any and all surveys, title insurance policies, environmental reports, leases, and other contracts, if any, pertaining to the Premises.

6. Buyer's Contingency. Buyer's obligations under this Agreement are subject to the following contingencies, which, if not met after good faith efforts, shall entitle either party to terminate this Agreement by giving the other written notice of termination prior to the expiration of the time period specified, in which event neither party shall be under any further obligations under this Agreement:

(a) The approval and ratification of this Agreement by the Cumberland Town Council. The date of such approval and ratification shall be referred to as the "Approval Date," and is expected to occur on or before MARCH 1, 2018.

(b) Buyer or its agent conducting an inspection of the physical condition of the Premises, including environmental conditions, which inspection shall have results acceptable to Buyer, in its discretion, within fifteen (15) days from the Approval Date.

(c) Buyer or its agent conducting an inspection of the condition of the title to the Premises, including but not limited to access, easements, restrictions, and covenants, which review shall have results acceptable to Buyer, in its discretion.

After the Approval Date, Buyer and its agents shall have the right to enter upon the Premises at reasonable times and after reasonable prior notice to Seller to undertake such inspections. Any such entry shall be at Buyer's own risk.

7. Seller's Contingency. Seller's obligations under this Agreement are subject to Seller obtaining approval from the Town of Cumberland of a proposed contract zoning agreement acceptable to Seller. If such approval cannot be obtained after good faith efforts, Seller may terminate this Agreement by giving Buyer written notice of termination prior to Closing, in which event neither party shall be under any further obligations under this Agreement:

8. Further Encumbrances. Seller covenants and agrees with Buyer that between the Effective Date and the Closing, Seller shall not voluntarily dispose of any interest in the Premises, enter into any new leases affecting the Premises, or enter into any other agreement relating to the Premises that would survive the Closing contemplated

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hereby.

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9. Closing.

(a) The consummation of the transactions contemplated hereby (the "Closing") shall take place at the office of Buyer's attorney or title company on a mutually convenient date on or before April 1, 2018 (the "Closing Date").

(b) Possession of the Premises shall be delivered to Buyer at Closing free and clear of all leases, tenancies, or other third party rights of possession.

(c) The following shall occur at the Closing, each being a condition precedent to the others and all being considered as occurring simultaneously:

(i) Seller shall execute, have acknowledged, and deliver to Buyer the Deed;

(ii) Seller shall execute and deliver to Buyer an affidavit indicating that Seller is not a foreign person within the meaning of 26 U.S.C. § 1445, or in lieu thereof, Buyer shall be entitled to withhold and account for a portion of the Purchase Price as required by law unless another exemption applies;

(iii) Seller shall execute and deliver to Buyer an affidavit indicating that Seller is a Maine resident, or in lieu thereof, Buyer shall be entitled to withhold and account for a portion of the Purchase Price as required by law unless another exemption applies;

(iv) Seller shall execute and deliver to Buyer usual and customary title affidavits as required by Buyer's title insurance company;

(v) each party shall execute and deliver to the other a settlement statement in form and substance reasonably acceptable to the parties;

(vi) Buyer shall approve and execute the contract zoning agreement referenced in Paragraph 7 hereof, and deliver to Seller a copy of the same; and

(vii) each party shall deliver to the other such other documents as may be required herein or as may be necessary to carry out the obligations under this Agreement.

10. Risk of Loss.

(a) Risk of loss to the Premises prior to the Closing shall be on Seller. If between the Effective Date and the Closing any material portion of the Premises is damaged by fire or other casualty, Buyer shall have the right to

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terminate this Agreement by giving written notice to Seller on or before the Closing Date.

(b) If Buyer does not elect to terminate this Agreement pursuant to Section 9(a), Seller and Buyer shall perform their respective obligations under this Agreement and Seller shall (i) deliver to Buyer at the Closing any insurance proceeds or condemnation awards actually received by Seller as a result of any occurrence specified in Section 9(a) with respect to or allocable to the Premises; and (ii) assign to Buyer all of Seller's right, title, and interest in and to any insurance proceeds and condemnation proceeds allocable to the Premises which have not yet been received by Seller on the Closing Date, provided, however, that Seller shall in all events be entitled to retain any such proceeds to the extent the same exceed the Purchase Price.

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11. Remedies.

(a) If the purchase and sale of the Premises is not consummated in accordance with the terms and conditions of this Agreement due to default or breach on the part of Buyer, Seller's sole remedy shall be to terminate this Agreement.

(b) If the purchase and sale of the Premises is not consummated in accordance with the terms and conditions of this Agreement due to default or breach on the part of Seller, Buyer's sole remedy shall be to terminate this Agreement.

12. Notices. Any notice relating in any way to this Agreement shall be in writing and shall be hand delivered, or sent by registered or certified mail, return receipt requested, or sent by recognized overnight courier service which provides evidence of delivery (such as FedEx) addressed to the party to receive such notice at the address set forth for such party in the first paragraph of this Agreement, and such notice shall be deemed delivered when so delivered by hand, or when so posted or when so deposited with such overnight courier. Either party may, by such manner of notice, substitute persons or addresses for the giving of notices under this Agreement.

13. Seller's Representations. Seller represents and warrants to Buyer that:

(a) Seller has the legal right, power and authority to enter into this Agreement and to perform all of his obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of his obligations hereunder will not conflict with any agreement to which Seller is a party or by which Seller is bound;

(b) Seller has good and marketable title to the Property, and there are no lawsuits or other proceedings currently pending by or against the Seller or the Property that would affect the ownership, future development, ability to finance or enjoyment of



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any of the Property; and

(c) Seller has not generated, released, stored, disposed of, dumped, flushed or in any way introduced on to the Property oil, hazardous material, hazardous waste or hazardous substances (hereinafter collectively called "Hazardous Substances") as those terms are defined by any applicable federal, state or local law, rule or regulation (hereinafter referred to as "Applicable Environmental Laws"), and Seller has not received notice and is not otherwise aware of any incident which would have required the filing of notice or notification pursuant to any Applicable Environmental Laws applicable to the Property.

It shall be a condition of Buyer's obligation to close under this Agreement that these representations and warranties made by Seller hereunder are true, both as of the date hereof and as of the Closing, and Seller shall take all reasonable actions required to make the foregoing representations true.

14. Brokers. Seller and Buyer warrant and represent to each other that they have not employed or engaged any real estate broker or agent in connection with the transaction contemplated by this Agreement. Each party agrees to hold the other party harmless from and against any and all costs, expenses, claims, losses, or damages, including reasonable attorneys' fees, resulting from a breach of such party's representation or covenant contained in this Section. The provisions of this Section shall survive the Closing.

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15. Miscellaneous.

(a) Any reference herein to time periods of less than seven days shall be computed to exclude Saturdays, Sundays, and legal holidays, and any time period provided for herein which ends on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. of the next business day.

(b) This Agreement shall be binding upon and shall inure to the benefit of Seller and Buyer and their respective heirs, personal representatives, successors and assigns. Buyer may assign this agreement to an agency or entity owned or controlled by Buyer.

(c) All understandings, agreements, warranties and representations, either oral or in writing, heretofore between the parties hereto are merged into this Agreement. This Agreement fully and completely expresses the parties' agreement with respect to the transactions covered hereby. This Agreement may not be modified in any manner except by an instrument in writing signed by Seller and Buyer.

(d) This Agreement shall be governed by and interpreted in accordance with the laws of the State of Maine without regard to or application of its conflicts of law principles. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which, taken together, shall constitute a single instrument.

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(e) In the event of a dispute arising out of or related to this Agreement, directly or indirectly, the substantially prevailing party shall be entitled to recover its reasonable attorney's fees and costs (including paralegal fees) related to said dispute and the enforcement of any judgment related thereto.

(signatures on following page)

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IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement as of the Effective Date.

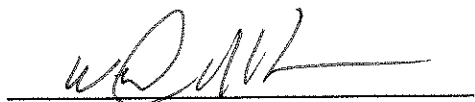
SELLER:

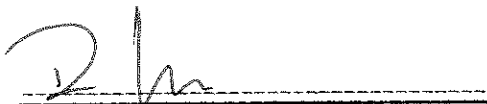
  
John W. Paynter JAN. 12 2018

BUYER:

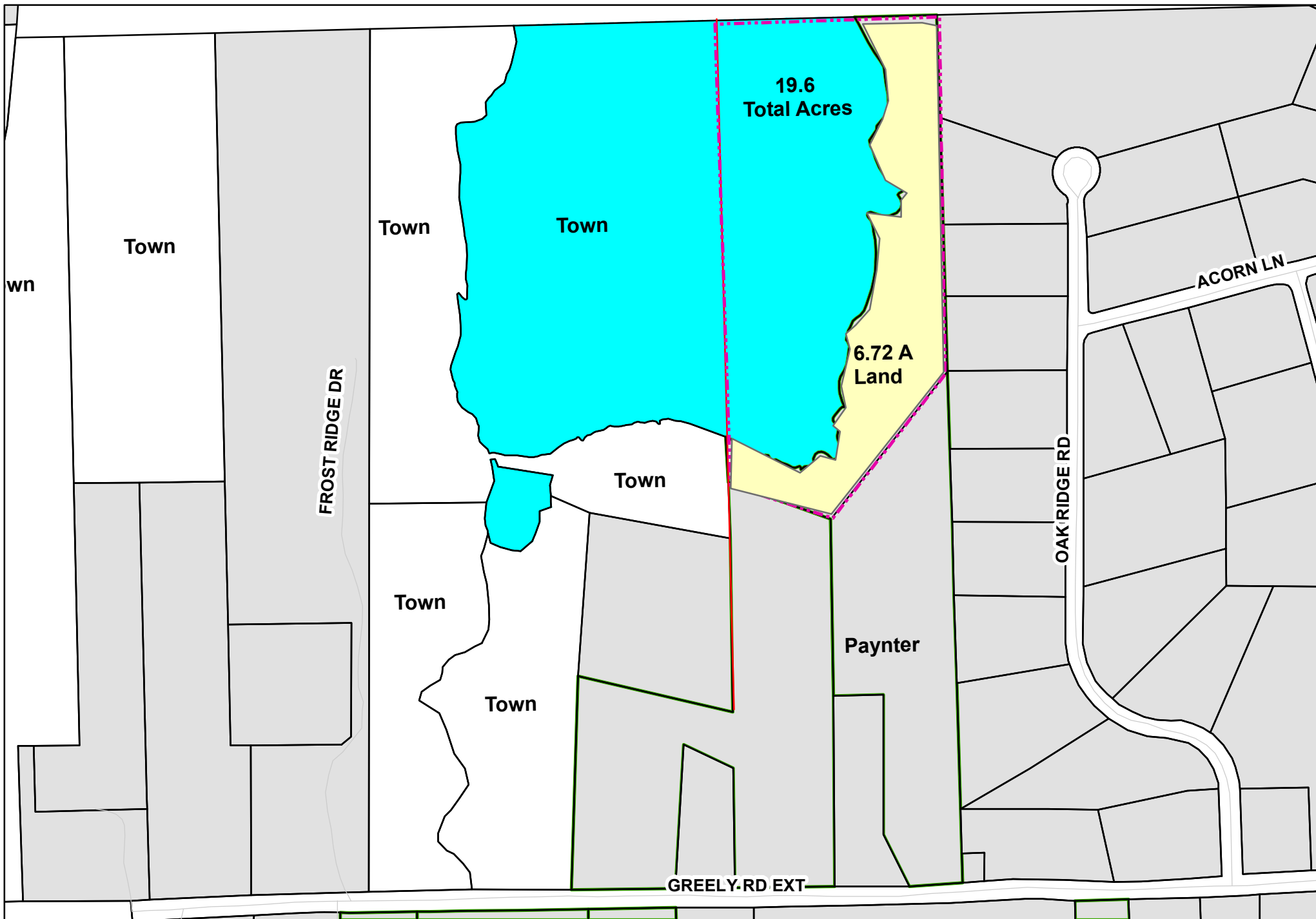
IN WITNESS WHEREOF, the parties have set their hands and seals as of the date first written above.

THE TOWN OF CUMBERLAND

  
By William Shane  
Its Town Manager

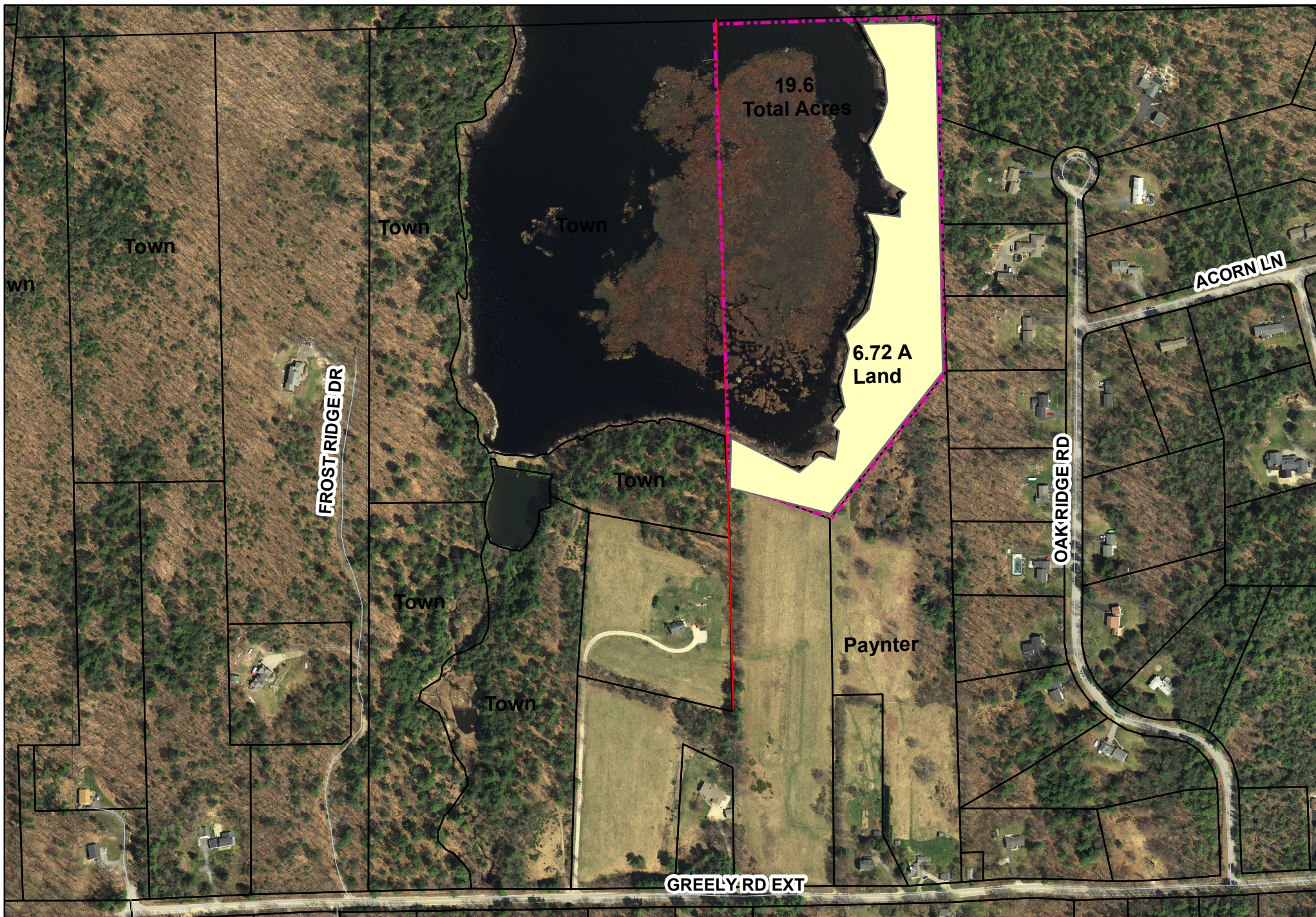
  
Witness





19.6 Acre +/- offer from John Paynter 2017





19.6 Acre +/- offer from John Paynter 2017



# KNIGHT'S POND PRESERVE

N/F  
TOWN OF CUMBERLAND  
BK 32680 PG 168

PLAN BOOK 196 PAGE 395

N/F  
TOWN OF NORTH YARMOUTH  
BK 32680 PG 207

N/F  
JOHN PAYNTER  
BK 20996 PG 303

KNIGHT'S POND

POND AND LAND AREA  
24.9 Acres

N/F  
GLENNA TURNER  
BK 15120 PG 152

N/F  
RICHARD BASTON  
BK 2238 PG 117

N/F  
JOHN PAYNTER  
BK 20996 PG 303

SET 10-19-2017

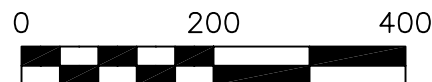
PLOT PLAN GREELY WOODS PLAN BOOK 116 PAGE 42

## LEGEND

- PROPERTY LINE
- ADJOINER LINE
- MONUMENT
- IRON ROD
- GRAVEL ROAD
- o-o-o-o-o STONE WALL

*Boundary*  *Points*

**PROFESSIONAL LAND SURVEYING, LLC**  
P.O. BOX 175  
CUMBERLAND MAINE 04021-0175



## LAND PROCUREMENT

24.9 ACRES  
TO  
TOWN OF CUMBERLAND  
FROM  
JOHN PAYNTER  
CUMBERLAND MAINE

Scale: 1"=200'

Date: 10/24/2017

Drawn: db

Checked: db

Job: 201756

## CONTRACT ZONE AGREEMENT

This Contract Zone Agreement made this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the TOWN OF CUMBERLAND, a municipal corporation (“Town”), of the County of Cumberland and State of Maine, and JOHN W. PAYNTER, an individual with a mailing address of 445 Greely Road Ext., Cumberland, Maine (“Paynter”).

### W I T N E S S E T H:

WHEREAS, Paynter owns certain property located at 445 Greely Road Ext. in Cumberland, referenced as Lot 29 of the Town of Cumberland Tax Map R06 (hereinafter the “Property”), and wishes to convey a portion of the Property to the Town for open space and recreation purposes, as well as subdivide another portion of the Property for future residential development; and

WHEREAS, the portions of the Property to be conveyed to the Town and to be subdivided for residential purposes are proposed to be accessed by a Private Way to be constructed from Greely Road Extension running in a northeasterly direction along the southerly boundary of the Property; and

WHEREAS, Paynter currently occupies a residential dwelling unit on the Property, which includes accessory structures (a shed and garage) that would not conform to the setback requirements of the proposed Private Way; and

WHEREAS, Title 30-A § 4352 of the Maine Revised Statutes permits conditional/contract rezoning in regard to conditions which relate to the physical development or operation of property; and

WHEREAS, Section 315-78 of the Cumberland Code also authorizes the same;

NOW THEREFORE, pursuant to the aforesaid provisions, the Cumberland Town Council seeks to advance the desired land use objectives set forth herein and finds this Contract Zoning Agreement is (a) consistent with the Comprehensive Plan duly appointed by the Town of Cumberland; (b) establishes a contract zone consistent with the existing permitted uses in the original zone of the area involved; (c) only includes conditions and restrictions which relate to the physical development of this site; (d) imposes such conditions and restrictions as are necessary and appropriate for the protection of the public health, safety, and general welfare of the Town of Cumberland; and (e) the land use objective sought herein further a desired public purpose or benefit.

THE PARTIES AGREE AS FOLLOWS:

1. Site: The Town hereby agrees that the Property as shown on Exhibit A hereto shall be deemed a contract zone pursuant to the provisions of 30-A M.R.S.A. § 4352(8) and Section 315-79 of the Cumberland Code (hereinafter referred to as the “Paynter Contract Zone”).

2. Lot Standards Within the Zone: Development permitted within the Paynter Contract Zone established above shall be consistent with all requirements of the Rural Residential District 2 (RR2). However, following the conveyance of a \_\_\_\_ acre parcel to the Town to be used for open space and recreation purposes around Knight’s Pond (hereinafter the “Town Parcel”), the setback requirements of the RR2 shall not apply to existing non-conforming structures in place as of the date of this Agreement and as shown on Exhibit A hereto. In the event existing non-conforming structures are removed for any reason, they may only be rebuilt in conformance with the then applicable setbacks for front, rear and side yards in the underlying RR2 District. All other applicable lot standards, ordinance provisions, and building codes shall be enforced with regard to all future development or construction within the Paynter Contract Zone.

3. Consideration: Paynter shall convey to the Town the fee to the Town Parcel as shown on Exhibit B for use as an open space and recreation area around Knight’s Pond.

4. Further Assurances: Until this Contract is effective and properly implemented, the parties agree to negotiate in good faith the terms and conditions of such further instruments and agreements as may be reasonably necessary from time to time to implement this Contract.

5. Maine Agreement: This Contract Zone Agreement is a Maine agreement entered into pursuant to the laws of the State of Maine and shall be enforced in accordance with the same.

6. Binding Covenants: The above stated restrictions, provisions and conditions are an essential part of this Contract and shall run with the Property and bind the parties, and their respective successors, heirs and assigns, or any party in possession or occupancy of the Property or any part thereof, and shall inure to the benefit of and be enforceable by the Town.

7. Recording: A true copy of this Contract shall be recorded in the Cumberland County Registry of Deeds.

8. Severability: If any one or more clauses of this Contract is held to be void or unenforceable, such clause or clauses shall deem to be severable and the remainder of this Contract shall be deemed to be valid and in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Contract the day and year first above written.

WITNESS

TOWN OF CUMBERLAND

\_\_\_\_\_

By: \_\_\_\_\_  
William R. Shane  
Its Town Manager

\_\_\_\_\_

\_\_\_\_\_  
John W. Paynter

State of Maine  
County of Cumberland, ss. \_\_\_\_\_, 2018

Then personally appeared the above-named William R. Shane, Town Manager of the Town of Cumberland and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Town of Cumberland.

Before me,

\_\_\_\_\_  
Attorney at Law/Notary Public  
Printed Name: \_\_\_\_\_  
Commission expires: \_\_\_\_\_

STATE OF MAINE  
County of Cumberland, ss. \_\_\_\_\_, 2018

Then personally appeared the above-named John W. Paynter and acknowledged the foregoing instrument to be his free act and deed.

Before me,

\_\_\_\_\_  
Attorney at Law/Notary Public  
Printed Name: \_\_\_\_\_  
Commission expires: \_\_\_\_\_