TOWN OF CUMBERLAND
MEETING OF THE TOWN COUNCIL
MONDAY, NOVEMBER 26, 2001

6:00 pm Workshop - Growth Management Ordinance/Health Insurance

I. Call to order in the Council Chambers at Cumberland Town Hall at 7:00 p.m.

II. Manager's Report

III. Public Discussion

IV. Legislation and Policy

01-94 To swear in Town Councilor Michael Savasuk

01-95 To receive request for Fairground Overlay Zone

01-96 To authorize purchase of fire truck

01-83 To accept payment of foreclosed taxes and issuance quit claim deed (Map I07 Lot 71) *(Tabled from 11/13/01)*

01-97 To hold a Public Hearing to consider and act on application by Winn Road LLC d/b/a Route 9 Diner for a Liquor License and Victualer's License.

01-98 To hold a Public Hearing to consider an amendment to 204.8 of Zoning Ordinance – Southern Office Commercial Zone and to set date for Public Hearing to act.

01-93 To act on application of Val Halla Golf & Recreation Center for Liquor License Renewal *(Tabled from 11/13/01)*

01-99 To award solid waste hauling bid

01-100 To set date for Council Meetings in December

01-101 To set date to consider amendments to the Growth Management Ordinance

01-102 Nominating Committee Appointments

V. Correspondence

VI. New Business

VII. Adjourn

MEMBERS OF THE TOWN COUNCIL

Stephen Moriarty (Chair)	829-5095	Jeffrey Porter	829-4129
Mark Kuntz	829-6482	Harland Storey	829-3939
Peter Bingham	829-5713	Donna Damon	846-5140
Michael Savasuk	781-3061		

Town of Cumberland web site: www.cumberlandmaine.com

TOWN OF CUMBERLAND
MEETING OF THE TOWN COUNCIL
MONDAY, NOVEMBER 26, 2001

Present: Stephen Moriarty, Jeff Porter, Peter Bingham, Mark Kuntz, Harland Storey, Donna Damon, Michael Savaskus

I. The meeting was called to order by Chairman Moriarty in the Council Chambers at Cumberland Town Hall at 7:00 p.m.

II. Manager's Report

No Report

III. Public Discussion

None

IV. Legislation and Policy

01-94 To swear in Town Councilor Michael Savasuk

Deputy Clerk Debbie Flanagan swore in newly elected Town Councilor Michael Savasuk.

01-95 To receive request for Fairground Overlay Zone

The Farmer's Club encountered an issue last year concerning the Barnum & Bailey Circus and existing zoning for the Fairgrounds. Agricultural and grandfathered uses are permitted on existing zoning for that area of Cumberland. The circus was denied because it was a new request and present zoning did not allow a permit. Francis Small of the Farmer's Club asked the Council to initiate a process to permit a circus and similar events to be held at the Fairgrounds. Town Planner presented a draft ordinance that mirrored communities such as Topsham and Fryeburg that held similar events. Chairman Moriarty gave a draft ordinance amendment to Francis Small to present to the Farmer's Club called 'Fairgrounds Overlay District' which would apply only to the Cumberland Fairgrounds and not to the entire RR2 zone. They expressed strong support for the draft as written.

Councilor Kuntz moved to refer this item to the Planning Board for further input and recommendation and be returned to the Town Council for consideration.
Second by Councilor Porter
VOTE: Unanimous (7)

01-96 To authorize purchase of fire truck

Councilor Bingham moved to authorize purchase of fire truck.
Second by Councilor Storey
VOTE: Unanimous (7)

Discussion on the Motion
More information was requested by the Council regarding 20, 15 and 10 year bond issue tax rate costs.

01-83 To accept payment of foreclosed taxes and issuance quit claim deed (Map I07 Lot 71) *(Tabled from 11/13/01)*

Attorney Terry Snow was present to represent his clients. Purchasing the 1.24 acre subdivision parcel at fair market value is not advantageous for the town to consider. Discussion and review of tax policy ensued.
Councilor Bingham moved to accept payment of taxes and issue quit claim deed.
Second by Councilor Kuntz
VOTE: In Favor (4)
Opposed (2) (Porter, Storey)
Abstained (1) (Damon)

01-97 To hold a Public Hearing to consider and act on application by Winn Road LLC d/b/a Route 9 Diner for a Liquor License and Victualer's License.

The owners/managers were still waiting for inspections and paperwork to be completed before requesting Liquor License approval.

Councilor Damon moved to table this item until December 11th meeting.
Second by Councilor Bingham
VOTE: Unanimous (7)

Discussion on the Motion:
Bill & Maureen Ward expressed their concern regarding vehicle traffic and seating.

01-98 To hold a Public Hearing to consider an amendment to 204.8 of Zoning Ordinance – Southern Office Commercial Zone and to set date for Public Hearing to act.

This item was taken out of order prior to item 01-95.

Councilor Bingham moved to refer this item to the Planning Board for further recommendation to consider contract zoning options developed by the Town Manager and Town Attorney, Mr. Kennedy and interested parties.
Second by Councilor Porter.
VOTE: Unanimous (7)

01-93 To act on application of Val Halla Golf & Recreation Center for Liquor License Renewal *(Tabled from 11/13/01)*

Councilor Storey moved to approve application of Val Halla Golf and Recreation Center for Liquor License.
Second by Councilor Porter
VOTE: In Favor (5)
Opposed (2) (Damon, Kuntz)

01-99 To award solid waste hauling bid

Town Manager reported, out of the 3 lowest bids, Pine Tree Waste placed the lowest bid for solid waste hauling.

Councilor Bingham moved to award the solid waste collection and transportation bid (as attached) to Pine Tree Waste for a 5-year term subject to an annual review by the Town Manager regarding compliance with the terms of contract.
Second by Councilor Porter
VOTE: In Favor (6)
Opposed (1) (Kuntz)

01-100 To set date for Council Meetings in December

Councilor Storey moved to set dates of December 6th at 7:30 pm to discuss changes to the health insurance of the staff; December 11th and December 17th to hold Public Hearings.
Second by Councilor Kuntz
VOTE: Unanimous (7)

01-101 To set date to consider amendments to the Growth Management Ordinance

Councilor Storey moved to set date of December 17th of Public Hearing to consider and act on amendments to the Growth Management Ordinance.
Second by Councilor Kuntz
VOTE: Unanimous (7)

01-102 Nominating Committee Appointments

Councilor Damon moved to table this item until December 6th.
Second by Councilor Porter
VOTE: Unanimous (7)

V. Correspondence

- Current Growth Management Ordinance
- Growth Management Ordinance Amendment Draft 11/26/01
- Memo from Town Planner RE: Office Commercial Zone Amendments dtd 11/21/01
- Portland Chamber of Commerce Eggs & Issues December Speaker Announcement dtd 11/19/01
- TOC Notes to Financial Statements – Bonds & Notes Payable Long Term Debts
- RWS Solid Waste Report – November '01
- GPCOA ltr dtd 11/9/01 RE: Falmouth Property Tax Relief Forum
- Cumberland County Civic Center Memo & Agenda dtd 11/9/01 RE: Board of Trustee Meeting
- Office of the Cumberland County Sheriff dtd11/8/01 RE: Committee to Study the Needs of Persons with Mental Illness Who Are Incarcerated.
- TOC Financial Reports of October '01
- Cumberland County Commissioners Meeting Minutes of 10/22/01

- Cumberland County Commissioners Meeting Minutes of 10/29/01

Emailed to Council Members prior meeting:
- MSAD 51 Minutes of 11/5/01
- MSAD 51 Agenda of 11/19/01

Correspondence Discussion
- Councilor Damon reported comments regarding the safety of the ramps at Cousin's Island.
- Letters distributed to all Town Councilors by the County Manager for a meeting 11/26/01. The letters were received the same day as the meeting RE: Charter Commissioner increase.

VI. New Business

Town Manager received a letter from the City of Portland dtd 11/20/01 RE:

Councilor Bingham requested the Staff look into keeping the Town Offices open the day after Thanksgiving. He also asked about the status of the Maxner water issue.

Councilor Kuntz asked about the status of the DEP regarding West Cumberland (ie. Heinz & Hutchins)

Chairman Moriarty requested status update of the Chebeague Island water sample study. Town Manager said it was ongoing at this time.

VII. Adjourn

Councilor Kuntz moved to come out of Executive Session to adjourn meeting
Second by Councilor Storey
VOTE: UNANIMOUS (7)

Respectfully submitted,

Lisa Brown
Administrative Assistant

MEMO

Date: 11/21/01
To: Town Council Members
From: Robert Benson
RE: Town Council Workshop/Meeting of 11/26/01

WORKSHOP at 6:00 pm – Growth Management/Health Insurance

Please review the Growth Management Ordinance and the re-draft. On the health insurance issue, Carla Nixon and I will make a report regarding our progress to date on the investigation of health insurance costs.

01-94 Self Explanatory

01-95 We will receive a request for the Fairground Overlay Zone which will be properly referred to the Planning Board.

01-96 It has been discussed thoroughly in a workshop and this date for approval will allow the discount of $30,000. Chief Small will be present to discuss this issue and it has been decided to place the bond issue on a December agenda.

01-97 I have further information on the Quit Claim Deed and will present it at that time along with advice from the Town Attorney.

01-93 The Code Enforcement Officer will be present regarding the Liquor License and Victualer's License for the Route 9 Diner.

01-98 At this point, the Planning Board did not make a recommendation regarding language for an amendment of the Southern Office Commercial Zone. Please refer to the lengthy material provided by the Town Planner and recommendations therein. At this time, I have not discussed this with the Town Attorney but based on my conversation with the Town Planner, it appears that the contract zoning is the best thing to do regarding the Kennedy project.

01-93 We will need approval of the Val Halla Liquor License approval.

01-99 I'll have more detail for you at the meeting. We did receive 3 bids and the current hauler, Pine Tree Waste, was by far the lowest bidder. There's no question that we will be recommending Pine Tree Waste receive the award. I do, however, want to discuss a few contract issues with the Town Attorney on Monday and I will have a recommendation at the time of the meeting.

01-100 Self Explanatory

01-101 Self Explanatory

01-102 Self Explanatory

If there are any questions please do not hesitate to call. On behalf of the Staff and myself, we wish you all a Happy Thanksgiving! ☺

Thanks

Bob

COUNCIL
12-6-01

Corporation Counsel
Gary C. Wood

CITY OF PORTLAND

Associate Counsel
Charles A. Lane
Elizabeth L. Boynton
Donna M. Katsiaficas
Penny Littell

November 20, 2001

Robert Benson, Town Manager
Cumberland Town Hall
290 Tuttle Road
Cumberland ME 04021

RECEIVED

RE: Request to Join Portland in Lawsuit if Necessary To Require County to Legally Apply its Unreserved Fund Balance To Property Tax Relief

Dear Bob:

I have enclosed a copy of the brief and key exhibits that I prepared for mediation between the County and the City that will take place next week. The mediator is Robert Moore, Esquire, Vice President and Legal Counsel for Dead River Company. Attorney Pat Dunn represents the County. The purpose of the mediation is to see if the County and the City can come to some agreement about how much money the County should apply to property tax relief from its unreserved fund balance for all municipalities in Cumberland County. The City's analysis of the County's audited budget data and our interpretation of 30-A M.R.S.A. § 924(2) leads us to conclude that the County should apply $4 million to property tax relief in FY02. Despite the claim at last year's legislative session that § 924 is ambiguous, it is not. It prohibits the County from using more than the 10% limit (15% in FY02) to fund capital reserve accounts. Municipalities can and do use an unlimited amount from unreserved fund balances to fund capital accounts. Counties don't have that same power. It's that simple.

The County currently plans to set its FY02 budget on December 10th. That budget contains a proposed 20.4% increase in the county property tax. As you and I well know, no other level of government could ever get away with such a tax increase.

I am writing to inquire whether you are willing to talk with your elected officials to see if they will join Portland in a lawsuit if such a suit becomes necessary to enforce Section 924(2). Of more importance for legal purposes is whether you can enlist the services of one or two local taxpayers to join in the lawsuit as a named plaintiff. The current state of the law is that taxpayers have a better chance of litigating these cases than municipalities because taxpayers have statutorily-conferred standing whereas municipalities do not. The taxpayers would not have to commit any money to the suit nor would they subject themselves to any claims or liability. Their time commitment would in all likelihood consist of signing an affidavit stating that they are a county taxpayer residing on a specified street in a specified town. Their tax bill would be an exhibit.

389 Congress Street • Portland, Maine 04101-3509 • (207) 874-8480 • FAX 874-8497 • TTY 874-8936

Timing is now of the essence. To preserve a legal cause of action against the County, I believe that a lawsuit must be filed on November 30th with a request for a hearing to enjoin the County from enacting its budget on December 10th. That hearing would then occur during the following week and prior to December 10th. That timing is critical because the current state of the law is that taxpayers must seek preventative relief and I think a strong argument can be made by the County that such relief can only be granted prior to the time that they enact their budget.

Hopefully, litigation will be unnecessary because we will be able to mediate a reasonable settlement with the County. As you can see in our brief, that settlement calls for whatever amount is agreed upon to be dispersed among all the municipalities in the county based upon their 2001 valuation ratio.

I am sorry for the short notice in this matter, but I hope that you have sufficient time to give it serious consideration. We have to bring county spending under control and we cannot allow them to continue to blame everything that occurs on the costs at the County jail. In that regard, we have worked with Cape Elizabeth and Representative Janet McLaughlin to get into the next session a bill that will restore the 10% limitation on the county use of unreserved fund balance in Cumberland County. Last year the Legislature passed a bill that increases the County's ability to spend unreserved fund balance from 10% to 15% in 2002, to 18% in 2003, and to 20% in 2004. I have also enclosed a copy of that bill and we look forward to working with you on it.

Thank you for your time and consideration.

Sincerely,

Gary C. Wood
City Attorney

GCW:njp
Enclosure

Currently Adopted Version

GROWTH MANAGEMENT ORDINANCE

1. **TITLE**

This Ordinance shall be known as the "Growth Management Ordinance of the Town of Cumberland, Maine" and shall be referred herein as the "Ordinance".

2. **LEGAL AUTHORITY**

This Ordinance is adopted pursuant to Home Rule Powers as provided in Article VIII-A of the Maine Constitution and Title 30-A, M.R.S.A. Section 3001.

3. **PURPOSE**

The purpose of this Ordinance is to protect the health, safety and general welfare of the residents of Cumberland through placing limitations on residential development and meeting the following:

A. To provide for the immediate housing needs of the existing residents of Cumberland.

B. To ensure fairness in allocation of Building Permits.

C. To plan for continued residential population growth of Cumberland which would be compatible with orderly and gradual expansion of community services including, but not limited to, education, public safety, transportation infrastructure, waste disposal and health services.

D. Avoid a situation in which the rapid development of new residences, potentially housing many families with school-age children, could outpace the town's capability to expand its schools and other services soon enough to avoid serious school over-crowding and a significant reduction in other services.

4. **APPLICABILITY**

This Ordinance shall apply to all new dwelling units (including manufactured housing) within the Town of Cumberland. No new dwelling unit, which fails to meet the requirements of the Ordinance, shall be constructed or placed within the Town of Cumberland.

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5. **EXEMPTIONS**

This Ordinance shall not apply to the following:

A. The repair, replacement, reconstruction or alteration of any existing building or structure provided the number of dwelling units is not increased, regardless of the need for a variance.

B. Dwelling units constructed by the Cumberland Housing Authority, an agency of the state or federal government; or by a private developer or contractor with a continuing age restriction of persons 55 years of age or older. Any conversion of these units eliminating the age restriction would require a Growth Permit.

C. Accessory Apartments as allowed in Section 407.1 of the Cumberland Zoning Ordinance.

D. Lots in subdivisions approved by the Cumberland Planning Board between January 1, 1998 and May 22, 2000.

E. Lots in subdivisions located on Chebeague Island approved by the Cumberland Planning Board prior to the adoption of this Ordinance. [Amended, effective 3/26/01]

6. **ADMINISTRATION**

A. Maximum Number of Dwelling Units

1. Unless and / or until this Ordinance is amended pursuant to Section 10, the maximum number of new Growth Permits issued shall be forty-four (44), from July 1, 2000 to June 30, 2001, and annually thereafter from July 1 to June 30, plus 3 additional Growth Permits that shall be reserved for dwelling units located on Chebeague Island, plus 2 additional Growth Permits that shall be for affordable housing constructed by Habitat for Humanity or a similar not for profit organization.

2. No more than 50% of the Growth Permits shall be issued annually for dwelling units within subdivisions. This provision shall not apply to the Growth Permits reserved for Chebeague Island as allowed in Section 6.A.1.

3. No more than 3 Growth Permits shall be issued on Chebeague Island in any fiscal year.

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B. Application Procedure

1. All Growth Permit Applications shall be submitted in person to the Code Enforcement Officer or his/her assistant or agent (hereinafter the CEO) during normal office hours on the form designated Growth Permit Application. No Growth Permit Applications shall be accepted by mail.

2. The CEO shall indicate on the Application form the date and time the Growth Permit Application was received and provide the applicant with a receipt, when said Application is complete. The Applications shall be reviewed in the order in which they were received. Only complete Applications will be accepted.

3. The Growth Permit Application shall be accompanied by a non-refundable administrative fee in the amount of One Hundred ($100.00) Dollars, documentation establishing the applicant's right, title and interest to the property, and one copy of a subsurface wastewater disposal system application form (HHE-200), and/or confirmation for eligibility of a sewer user unit.

4. A separate Application shall be required for each dwelling unit.

C. ISSUANCE PROCEDURE

1. Growth Permit Applications shall not be accepted by the CEO until on or after the effective date of this Ordinance. Growth Permit Applications shall be on file with the CEO. From that time on, Applications will be accepted, and Growth Permits issued, as provided for in Section 6.C.3.

2. Growth Permits shall be available on a first-come, first-served basis.

3. i. The CEO shall notify an applicant once the applicant is entitled to have a Growth Permit issued. Once the CEO has notified the applicant that the applicant is entitled to have a Growth Permit issued, the applicant shall have thirty (30) days to accept the Growth Permit from the CEO. If the applicant shall fail to accept the Growth Permit, then the Growth Permit shall expire.

   ii. Expired Growth Permits shall be available for reissue.

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iii. The CEO shall issue Growth Permits for all complete Applications if they do not outnumber the supply of Growth Permits.

a. If Applications exceed supply for any given year, Permits shall be issued on the basis of the order complete Applications were received by the CEO. Those on the list who do not get a Permit for that year shall have first priority to get a Permit in the next year, in the order in which the Applications were deemed to be complete.

4. With respect to Growth Permits sought for property located within a subdivision approved by the Planning Board of the Town, no more than 3 Growth Permits shall be issued during any year for the building of dwellings in a single subdivision. No person, partnership, or corporation shall be entitled in any single year to more than 2 of the three Growth Permits allocated to a subdivision. Corporations shall be treated as the same corporation for purposes of this Ordinance if they share common directors (or their spouses) and / or shareholders (or their spouses) of 10% or more of the stock. Any person or corporation which is a partner in a partnership shall also be considered the same person as the partnership.

   With respect to Growth Permits sought for property not located within a subdivision approved by the Planning Board of the Town, no more than 2 Growth Permits shall be issued during any year to any one person, partnership or corporation.

5. That the unused subdivision growth permits for the year 2000-2001 be available to those on the waiting list maintained by the Code Enforcement Officer by the formula of one third of the unused permits available April 1, 2001, one half of the remaining unused growth permits be available May 1, 2001 and the balance of any unused growth permits be available June 1, 2001. [Amended, effective 3/26/01]

6. If, at the end of the fiscal year, there are any unissued Growth Permits still available, they shall not be carried over to the next year.

D. **Replacement with building permit and expiration**

1. A Growth Permit shall be replaced by a building permit for a dwelling on the specific site for which the Growth Permit was

issued. A Growth Permit which has not been replaced with a building permit within 90 days of Growth Permit approval by CEO shall be considered expired and must be resubmitted for consideration. Resubmitted Growth Permit Applications will not have any priority over other Growth Permit Applications. The expiration of the building permit shall be in conformity with the Town of Cumberland Building Code.

2. Expired Permits shall be available for reissuance.

E. **Transferability**

Growth Permits are not transferable. They shall be valid for construction on the lot specified on the Application and by the Applicant; provided however, that such valid Permits shall be transferable to new owners of the lot should the property change hands. If a Permit is transferred, the date of issuance remains unchanged.

7. CONFLICT WITH OTHER ORDINANCES

This Ordinance shall not repeal, annul, or otherwise impair or remove the necessity of compliance with any federal, state or other local laws or ordinances. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall prevail.

8. SEPARABILITY

Should any section or provision of this Ordinance be found by the courts to be invalid, illegal, or unenforceable, such decision shall not affect any other section or provision of this Ordinance either singly or collectively.

9. EFFECTIVE DATE

The effective date of this Ordinance shall be July 1, 2000, but the total number of Growth Permits available through June 30, 2001 shall be limited by Section 6.A hereof.

10. REVIEW PROCEDURE

This Ordinance shall be reviewed by the Town Council in June 2001 to assess the efficacy of the Ordinance and shall be reviewed by the Planning Board periodically (but not less frequently than once every three years), to ensure that the annual maximum growth rate has not become inconsistent with the Town's capital program requirements to establish, maintain, or enlarge needed public

facilities and services. Based on its review the Planning Board may recommend amending this Ordinance as provided in Section 11.

11. **AMENDMENTS**

1. An amendment to this Ordinance may be initiated by one of the following:

   (A) The Planning Board.

   (B) The Town Council.

   (C) The residents, pursuant to Article X, Section 2 of the Town Charter.

12. **VIOLATIONS**

A. A violation of this Ordinance shall be deemed to exist when any person, partnership or corporate entity engages in any construction activity directly related to the erection or placement of a dwelling unit, upon any land within the Town without first having obtained a Growth Permit from the CEO.

B. If a dwelling unit has been constructed or placed, without a Growth Permit, it shall be deemed a violation for any person, firm, or corporate entity to sell, lease, rent or occupy such dwelling unit until such permit has been duly issued.

13. **NOTICES OF VIOLATIONS; LEGAL ACTION**

When a violation of any provision of this Ordinance shall be found, the CEO shall send a written notice of the violation to the responsible party or parties and shall notify the Town Council of the violation. If the notice does not result in the correction of the violation, the Town Council may institute any and all actions and proceedings, either legal or equitable, including seeking injunctive relief, the imposition of fines, removal of the structure, or other action that may be appropriate or necessary to enforce the provisions of this Ordinance. The remedies set forth herein are intended to be cumulative and not exclusive of each other. The Town Council is authorized to enter into administrative consent orders to eliminate violations with or without court action. Such agreement shall not allow an illegal structure or use to continue.

14. **PENALTIES**

A. Any person owning or controlling the use of any dwelling unit being constructed or occupied in violation of this chapter shall be liable to be

fined not less than $100 or more than $2,500 for each day such a violation (i.e. construction activity, unlawful occupancy) continues after notification by the CEO.

B. If a dwelling unit has been built in violation of this chapter and is then occupied, for residential use, the owner may be fined as provided in Section 14 A. of this Ordinance.

15. **APPEALS**

A. The Board of Adjustment and Appeals in accordance with Section 603 of the Cumberland Zoning Ordinance, may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Code Enforcement Officer in the administration of this Ordinance. Following such hearing, the Board of Adjustment and Appeals may reverse the decision of the Code Enforcement Officer only upon a finding that the decision is clearly contrary to the specific provisions of this Ordinance.

16. **DEFINITIONS**

A. **Building Permit:** A permit is defined by and issued in accordance with the Cumberland Building Code and Section 602.1 of the Cumberland Zoning Ordinance.

B. **Dwelling Unit:** A room or group of rooms designed and equipped exclusively for use as living quarters for a family, including provisions for living, sleeping, cooking and eating. The term shall include, but not be limited to, manufactured housing, modular/mobile homes, apartment unit, duplexes and multiplexes and condominium units. The term shall not include trailers or recreational vehicles used for overnight or temporary lodging only.

C. **Growth Permit:** A permit issued, in accordance with the provisions of this Ordinance, by the CEO to allow the establishment of a new dwelling unit.

D. **Family:** A person or persons occupying a dwelling unit and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging residence, hotel or motel.

E. **Manufactured Housing:** A fabricated pre-assembled dwelling unit designed to be transported after fabrication and to be used as living quarters. The term "Manufactured Housing" may include the term "Modular Home" and "Mobile Home", except that the fabricated single-

Currently Adopted Version

family modular home is assembled on the building site on a permanent foundation.

F. **Subdivision:** A subdivision shall be defined by 30-A M.R.S.A. § 4401, and as amended from time to time. For the purposes of this Ordinance, subdivisions shall mean only those approved by the Planning Board after March 6, 1959. In addition, any lots shown on a subdivision plan, but not subject to Planning Board review shall not be considered a lot in a subdivision.

H. Person: A person shall be defined to include an individual's spouse, parents, siblings and members of his or her immediate family unless the spouse, parents, sibling or immediate family member can demonstrate that the person seeking the Growth Permit owned the title to the property that is the subject of the Growth Permit independently of his spouse, parents, siblings or immediate family members as of May 1, 2000.

Adopted June 28, 2000 [Amended 3/26/01]

DRAFT – 26 Nov. 01

GROWTH MANAGEMENT ORDINANCE

1. **TITLE**

This Ordinance shall be known as the "Growth Management Ordinance of the Town of Cumberland, Maine" and shall be referred herein as the "Ordinance".

2. **LEGAL AUTHORITY**

This Ordinance is adopted pursuant to Home Rule Powers as provided in Article VIII-A of the Maine Constitution and Title 30-A, M.R.S.A. Section 3001.

3. **PURPOSE**

The purpose of this Ordinance is to protect the health, safety and general welfare of the residents of Cumberland through placing limitations on residential development and meeting the following:

A. To provide for the immediate housing needs of the existing residents of Cumberland.

B. To ensure fairness in allocation of Building Permits.

C. To plan for continued residential population growth of Cumberland which would be compatible with orderly and gradual expansion of community services including, but not limited to, education, public safety, transportation infrastructure, waste disposal and health services.

D. Avoid a situation in which the rapid development of new residences, potentially housing many families with school-age children, could outpace the town's capability to expand its schools and other services soon enough to avoid serious school over-crowding and a significant reduction in other services.

4. **APPLICABILITY**

This Ordinance shall apply to all new dwelling units (including manufactured housing) within the Town of Cumberland. No new dwelling unit, which fails to meet the requirements of the Ordinance, shall be constructed or placed within the Town of Cumberland.

DRAFT – 26 Nov. 01

5. **EXEMPTIONS**

This Ordinance shall not apply to the following:

A. The repair, replacement, reconstruction or alteration of any existing building or structure provided the number of dwelling units is not increased, regardless of the need for a variance.

B. Dwelling units constructed by the Cumberland Housing Authority, an agency of the state or federal government; or by a private developer or contractor with a continuing age restriction of persons 55 years of age or older. Any conversion of these units eliminating the age restriction would require a Growth Permit.

C. Accessory Apartments as allowed in Section 407.1 of the Cumberland Zoning Ordinance.

D. Lots in subdivisions approved by the Cumberland Planning Board between January 1, 1998 and May 22, 2000.

E. Lots in subdivisions located on Chebeague Island approved by the Cumberland Planning Board prior to the adoption of this Ordinance. [Amended, effective 3/26/01]

6. **ADMINISTRATION**

A. Maximum Number of Dwelling Units

1. Unless and / or until this Ordinance is amended pursuant to Section 10, the maximum number of new Growth Permits issued ~~shall be forty-four (44), from July 1, 2000 to June 30, 2001,~~ from January 1, 2002 to December 31, 2002 and annually thereafter, ~~from July 1 to June 30,~~ shall be forty-four (44), plus three (3) additional Growth Permits that shall be reserved for dwelling units located on Chebeague Island, plus 2 additional Growth Permits that shall be for affordable housing constructed by Habitat for Humanity or a similar not for profit organization.

~~2. No more than 50% of the Growth Permits shall be issued annually for dwelling units within subdivisions. This provision shall not apply to the Growth Permits reserved for Chebeague Island as allowed in Section 6.A.1.~~

2~~3~~. No more than 3 Growth Permits shall be issued on Chebeague Island in any fiscal year.

3. All Growth Permits shall be issued in accordance with the issuance procedure described in Section 6.C of this Ordinance.

B. Application Procedure

1. All Growth Permit Applications shall be submitted in person to the Code Enforcement Officer or his/her assistant or agent (hereinafter the CEO) during normal office hours on the form designated Growth Permit Application. No Growth Permit Applications shall be accepted by mail.

2. The CEO shall indicate on the Application form the date and time the Growth Permit Application was received and provide the applicant with a receipt, when said Application is complete. The Applications shall be reviewed in the order in which they were received. Only complete Applications will be accepted.

3. The Growth Permit Application shall be accompanied by a non-refundable administrative fee in the amount of One Hundred ($100.00) Dollars, documentation establishing the applicant's right, title and interest to the property, and one copy of a subsurface wastewater disposal system application form (HHE-200 or equivalent), and/or confirmation for eligibility of a sewer user unit.

4. A separate Application shall be required for each dwelling unit.

C. ISSUANCE PROCEDURE

1. Growth Permit Applications shall not be accepted by the CEO until on or after the effective date of this Ordinance. Growth Permit Applications shall be on file with the CEO. From ~~that time on~~ the time of the adoption of this Ordinance onward, Applications will be accepted, and Growth Permits issued, as provided for in Section 6.C.3.

2. Growth Permits shall be available on a first-come, first-served basis.

3. i. The CEO shall notify an applicant once the applicant is entitled to have a Growth Permit issued. Once the CEO has notified the applicant that the applicant is entitled to have a Growth Permit issued, the applicant shall have thirty (30) days to accept the Growth Permit from the CEO, and the CEO shall notify the applicant in writing of the date of the expiration of said thirty (30) days. If the

applicant shall fail to accept the Growth Permit, then the Growth Permit shall expire.

ii. Expired Growth Permits shall be available for reissue.

iii. The CEO shall issue Growth Permits for all complete Applications if they do not outnumber the supply of Growth Permits.

a. If Applications exceed supply for any given year, Permits shall be issued on the basis of the order complete Applications were received by the CEO. Those on the list who do not get a Permit for that year shall have first priority to get a Permit in the next year, in the order in which the Applications were deemed to be complete.

4. With respect to Growth Permits sought for property located within a subdivision approved by the Planning Board of the Town,-_-no more than 3 Growth Permits shall be issued during any year for the building of dwellings in a single subdivision. No person, partnership, or corporation shall be entitled in any single year to more than 2 of the three Growth Permits allocated to a subdivision. Corporations shall be treated as the same corporation for purposes of this Ordinance if they share common directors (or their spouses) and / or shareholders (or their spouses) of 10% or more of the stock. Any person or corporation which is a partner in a partnership shall also be considered the same person as the partnership.

With respect to Growth Permits sought for property not located within a subdivision approved by the Planning Board of the Town, no more than 2 Growth Permits shall be issued during any year to any one person, partnership or corporation.

5. ~~That the unused subdivision growth permits for the year 2000-2001 be available to those on the waiting list maintained by the Code Enforcement Officer by the formula of one third of the unused permits available April 1, 2001, one half of the remaining unused growth permits be available May 1, 2001 and the balance of any unused growth permits be available June 1, 2001. [Amended, effective 3/26/01]~~

<u>Commencing January 1, 2002, and annually thereafter, all Growth Permits shall be issued on the basis of the calendar year (January 1</u>

through December 31), and in accordance with the following issuance schedule

The number of Growth Permits to be issued annually in the "subdivision" category is twenty-two (22), and the number of Growth Permits to be issued annually in the "non-subdivision" category is twenty-two (22), for a total town-wide issuance of forty-four (44) Growth Permits. In addition, three (3) additional Growth Permits shall be reserved for dwelling units located on Chebeague Island, plus two (2) additional Growth Permits shall be reserved for affordable housing constructed by Habitat for Humanity or a similar not-for-profit organization.

Further, unused growth permits in the "subdivision" category shall be reallocated to the "non-subdivision" category as follows: At 5 p.m. on the last day of the first calendar quarter of each year, one quarter (25%) of any remaining "subdivision" Growth Permits shall be reallocated to the "non-subdivision" category. At 5 p.m. on the last day of the second calendar quarter of each year, one third (33%) of any remaining "subdivision" Growth Permits shall be reallocated to the "non-subdivision" category. At 5 p.m. on the last day of the third calendar quarter of each year, one half (50%) of any remaining "subdivision" Growth Permits shall be reallocated to the "non-subdivision" category. In cases where fractional numbers of permits result, the fractional numbers shall be rounded down to the nearest whole number.

6. If, at the end of ~~the fiscal~~ any calendar year, there are any unissued Growth Permits still available, they shall not be carried over to the next year.

D. **Replacement with building permit and expiration**

1. A Growth Permit shall be replaced by a building permit for a dwelling on the specific site for which the Growth Permit was issued. A Growth Permit which has not been replaced with a building permit within 90 days of Growth Permit approval by CEO shall be considered expired and must be resubmitted for consideration. Resubmitted Growth Permit Applications will not have any priority over other Growth Permit Applications. The expiration of the building permit shall be in conformity with the Town of Cumberland Building Code.

2. Expired Permits shall be available for reissuance.

E. **Transferability**

Growth Permits are not transferable. They shall be valid for construction on the lot specified on the Application and by the Applicant; provided however, that such valid Permits shall be transferable to new owners of the lot should the property change hands. If a Permit is transferred, the date of issuance remains unchanged.

7. **CONFLICT WITH OTHER ORDINANCES**

This Ordinance shall not repeal, annul, or otherwise impair or remove the necessity of compliance with any federal, state or other local laws or ordinances. Where this Ordinance imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this Ordinance shall prevail.

8. **SEPARABILITY**

Should any section or provision of this Ordinance be found by the courts to be invalid, illegal, or unenforceable, such decision shall not affect any other section or provision of this Ordinance either singly or collectively.

9. **EFFECTIVE DATE**

The effective date of this Ordinance shall be July 1, 2000, but the total number of Growth Permits available through June 30, 2001 shall be limited by Section 6.A hereof.

10. **REVIEW PROCEDURE**

This Ordinance shall be reviewed by the Town Council in June 2001~~0~~ to assess the efficacy of the Ordinance and shall be reviewed by the Planning Board periodically (but not less frequently than once every three years), to ensure that the annual maximum growth rate has not become inconsistent with the Town's capital program requirements to establish, maintain, or enlarge needed public facilities and services. Based on its review the Planning Board may recommend amending this Ordinance as provided in Section 11.

11. **AMENDMENTS**

1. An amendment to this Ordinance may be initiated by one of the following:

   (A) The Planning Board.

   (B) The Town Council.

(C) The residents, pursuant to Article X, Section 2 of the Town Charter.

12. **VIOLATIONS**

A. A violation of this Ordinance shall be deemed to exist when any person, partnership or corporate entity engages in any construction activity directly related to the erection or placement of a dwelling unit, upon any land within the Town without first having obtained a Growth Permit from the CEO.

B. If a dwelling unit has been constructed or placed, without a Growth Permit, it shall be deemed a violation for any person, firm, or corporate entity to sell, lease, rent or occupy such dwelling unit until such permit has been duly issued.

13. **NOTICES OF VIOLATIONS; LEGAL ACTION**

When a violation of any provision of this Ordinance shall be found, the CEO shall send a written notice of the violation to the responsible party or parties and shall notify the Town Council of the violation. If the notice does not result in the correction of the violation, the Town Council may institute any and all actions and proceedings, either legal or equitable, including seeking injunctive relief, the imposition of fines, removal of the structure, or other action that may be appropriate or necessary to enforce the provisions of this Ordinance. The remedies set forth herein are intended to be cumulative and not exclusive of each other. The Town Council is authorized to enter into administrative consent orders to eliminate violations with or without court action. Such agreement shall not allow an illegal structure or use to continue.

14. **PENALTIES**

A. Any person owning or controlling the use of any dwelling unit being constructed or occupied in violation of this chapter shall be liable to be fined not less than $100 or more than $2,500 for each day such a violation (i.e. construction activity, unlawful occupancy) continues after notification by the CEO.

B. If a dwelling unit has been built in violation of this chapter and is then occupied, for residential use, the owner may be fined as provided in Section 14 A. of this Ordinance.

15. **APPEALS**

A. The Board of Adjustment and Appeals in accordance with Section 603 of the Cumberland Zoning Ordinance, may, upon written application of an aggrieved party and after public notice, hear appeals from determinations of the Code Enforcement Officer in the administration of this Ordinance. Following such hearing, the Board of Adjustment and Appeals may reverse the decision of the Code Enforcement Officer only upon a finding that the decision is clearly contrary to the specific provisions of this Ordinance.

16. **DEFINITIONS**

Building Permit: A permit is defined by and issued in accordance with the Cumberland Building Code and Section 602.1 of the Cumberland Zoning Ordinance.

Calendar Year: The period of time comprised of fifty-two (52) weeks commencing on January 1 and extending through December 31 on any given year.

Dwelling Unit: A room or group of rooms designed and equipped exclusively for use as living quarters for a family, including provisions for living, sleeping, cooking and eating. The term shall include, but not be limited to, manufactured housing, modular/mobile homes, apartment unit, duplexes and multiplexes and condominium units. The term shall not include trailers or recreational vehicles used for overnight or temporary lodging only.

Family: A person or persons occupying a dwelling unit and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging residence, hotel or motel.

Fiscal Year: The period of time comprised of fifty-two (52) weeks commencing July 1 of any given year and extending through June 30 of the following year.

Growth Permit: A permit issued, in accordance with the provisions of this Ordinance, by the CEO to allow the establishment of a new dwelling unit.

Manufactured Housing: A fabricated pre-assembled dwelling unit designed to be transported after fabrication and to be used as living quarters. The term "Manufactured Housing" may include the term "Modular Home" and "Mobile Home", except that the fabricated single-family modular home is assembled on the building site on a permanent foundation.

Person: A person shall be defined to include an individual's spouse, parents, siblings and members of his or her immediate family unless the spouse, parents, sibling or immediate family member can demonstrate that the person seeking the Growth Permit owned the title to the property that is the subject of the Growth

Permit independently of his spouse, parents, siblings or immediate family members as of May 1, 2000.

Subdivision: A subdivision shall be defined by 30-A M.R.S.A. § 4401, and as amended from time to time. For the purposes of this Ordinance, subdivisions shall mean only those approved by the Planning Board after March 6, 1959. In addition, any lots shown on a subdivision plan, but not subject to Planning Board review shall not be considered a lot in a subdivision.

Adopted June 28, 2000 [Amended 3/26/01, amended xx/xx/xx]

MEMORANDUM

PLANNING DEPARTMENT
TOWN OF CUMBERLAND, MAINE

Date: 21 November 2001
To: Bob Benson, Town Manager
From: Andy Fillmore, Town Planner
Subject: Office Commercial Zone amendments

Bob,

As you know, the Planning Board last night held its second review of proposed language for an Office Commercial Zoning text amendment. It had been hoped that a favorable recommendation would emerge from that review and that it would be forwarded to the Town Council for consideration and action at their 17 December, 2001 meeting. At this time, however, the Planning Board is not comfortable making the recommendation.

The amendment draft that Planning Board reviewed last night contained all of their suggestions from their October review, as well as several new changes suggested by Peter Kennedy. The proposed amendments are attached to this memo, and are prefaced with a memo written by me to the Planning Board, and are appended by two letters from Ken Cole expressing his legal opinion of the amendments. Please refer to those attachments for complete information on the proposed amendments.

In brief, the Planning Board's issues with the proposed amendments are as follows:

- *Both the northern OC and the southern OC should be treated identically*. There is concern on the Board that we are writing a zone (southern OC) for one developer. Jim Guidi, the developer of the northern OC was at the hearing and voiced his support of identical zones as well. As currently proposed there are several differences. (See attached amendment text.)
- *There must be some mechanism to require developers to provide significant public amenities for the residents of the proposed developments*. There is some disagreement on the Board as to how "significant" these amenities should be, and how they should be enforced. Ideas range from a full "club house" (public meeting area), to trails and a gazebo, to just letting the market dictate whether any amenities are provided at all.
- *Compliance with the Americans with Disabilities Act (ADA)*. The Board was in unanimous support of subjecting all future age-restricted development in the OC to the construction standards of ADA. Currently these standards require that about 10% of all units be "accessible." It is Ken Cole's opinion that this requirement is easily instituted and quite defensible. It is his recommendation

that it be an amendment to the Subdivision Ordinance, not the Zoning Ordinance.

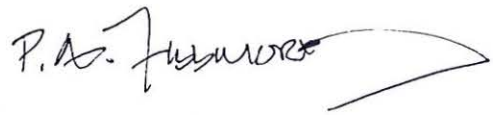
- *Why not Contract Zoning?* The Planning Board has asked this of me several times since this process got underway, and reiterated the question at last night's hearing. My answer to them has been that the Council considered Contract Zoning but ultimately chose to ask the Planning Board to examine text amendments instead. The Board still seems to want to explore this avenue. Would the Council like to look at the possibility of Contract Zoning again?

During last night's hearing Peter Kennedy expressed some concern that Contract Zoning may be overly restrictive in allowing his development scheme the flexibility necessary to respond to market conditions in terms of unit mix (single family, duplex, multiplex, etc.). Ken Cole's opinion is that a Contract Zone could certainly have ample flexibility built into it, and this could be negotiated with Mr. Kennedy.

As it currently stands, if we proceed with a text amendment strategy the public notice requirements for both the Planning Board and the Town Council would prohibit the Council from acting on the amendment until their first meeting in January, 2002.

Please let me know if I can offer any further clarification or assistance in this matter.

Best regards,



Andy Fillmore, AICP
Cumberland Town Planner

ITEM 2: OC DISTRICT ZONING TEXT AMENDMENT

Date	20 November, 2001
To	Town of Cumberland Planning Board
From	Andy Fillmore, Town Planner
Subject	**Zoning text amendment to allow senior housing in the southern OC district**

Background:

At the October 16, 2001 Planning Board Hearing, the Board heard proposed amendments to the Office Commercial Zone that would allow single-family detached housing for persons fifty-five years of age and older in the southern OC district. (See aerial photographs, "Exhibit #1")

At that time the Board expressed its support of the intent of the amendments, and expressed its general support of Peter Kennedy's proposed development in the area, which is the catalyst for these proposed amendments. (See site plan, "Exhibit #2") However, the Board had some concerns with the proposed language of the amendments. The motion to recommend amendments to the Town Council was tabled pending a rewrite of the amendments. Specifically the Board requested that the amendments clarify that:

- Only age-restricted single-family, duplex and multiplex residential units be allowed in the southern OC, and further that these units be granted a density bonus (10,000 s.f. lots rather than 20,000 s.f. lots for non age-restricted lots).
- Commercial uses shall be developed along the Route One frontage, thereby preserving the intent of the OC zone.
- Developers shall be required to provide public amenities for residents of any proposed residential development.

Proposed Amendment:

The revised amendments, attached, address the issues raised by the Planning Board in October.

However the Town's attorney, Ken Cole, has advised the Planning Department that the Zoning Ordinance is not the correct vehicle for requiring builder-provided amenities. He states, *"The zoning ordinance cannot authorize a planning board or a zoning board of appeals to establish new standards as part of its review of a project,"* and recommends that such requirements be added to the Subdivision Ordinance for enforcement at Subdivision Review. Mr. Cole's letter regarding this is attached as "Exhibit #3."

At this time the proposed amendments still feature language that requires builder-provided amenities, as the Planning Board requested. The Board is certainly within its

rights to recommend such language to the Town Council, however it is likely that the Council will strike that language on legal grounds, per Mr. Cole's advice.

In addition to the amendments requested by the Planning Board, Mr. Kennedy has requested that three other changes be added. These are:

1. That communication Towers be added to the southern OC zone as a Special Exception Use, in accordance with Section 433, page 152. This would also require the addition of the southern OC zone to the list of zones that permit towers as described in Section 433.4(a), page 155. Ken Cole sees no barrier to allowing this, which opinion is expressed in his attached letter, "Exhibit #4."

2. That the minimum frontage for 10,000 s.f. age-restricted residential lots be reduced from 150 ft. to 75 ft. Frontage for commercial lots shall remain at 150 ft.

3. That the side and rear building setbacks for 10,000 s.f. age-restricted residential lots be reduced 15 ft. and 20 ft. respectively (from 20 ft. and 65 ft.). The front setback shall remain at 25 ft.

Next Steps:

The Planning Department has reviewed both the Planning Board's, and Mr. Kennedy's proposed amendments with the Code Enforcement Officer, the Town Manager, and the Town's attorney, and all parties are in support of them.

With a favorable recommendation form the Planning Board, the Town Council is prepared to consider the amendments for adoption at their meeting on 10 December 2001.

Exhibits:

~~1. Aerial photograph of Southern Office Commercial district.~~
~~2. Conceptual Plan of Potential Development~~
3. Letter from Ken Cole regarding "builder-provided amenities", 25 October, 2001.
4. Letter from Ken Cole regarding Communication Towers, 30 October, 2001.

Respectfully submitted,

P.A. Fillmore

Andy Fillmore, Town Planner

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OFFICE COMMERCIAL DISTRICT – PROPOSED AMENDMENTS, 11/15/01

204.8 Office Commercial (OC)

The purpose of the OC District is to allow a limited range of employment-intensive commercial uses with low intensity land use impacts, measured in terms of traffic generation, environmental effects, and building scale and site layout. The ~~northern~~ OC District is also intended to allow higher density residential development (see Cumberland Comprehensive Plan-1989), and commercial health and recreation facilities [adopted,10/13/92]. Site Plan review and approval by the Planning Board is required with the exception of day care homes and bed & breakfast inns with three or fewer guest bedrooms. [Amended, effective 12/13/89, amended, effective XX/XX/XX]

204.8.1 The following uses are permitted within the OC District:

.1 Business and professional offices;
.2 Research facilities;
.3 Uses and buildings accessory to those above;
.4 Sewer pumping stations, subject to the provisions of Sec. 420.4.
.5 Duplex and multiplex dwellings in the more northerly of the two Office Commercial Districts shown on the Town's Zoning Map enacted May 15, 1989, and amended ~~January 25, 1999~~July 10, 2000, subject to the provisions of Sec. 406~~B~~, except that for purposes of this use in this District, those provisions shall be modified as follows [amended, effective 11/22/99, amended, effective XX/XX/XX]:
  .1 The minimum lot size shall be 20,000 square feet per dwelling unit, except that for units constructed specifically for persons 55 years of age or older the minimum lot size shall be 10,000 square feet per dwelling unit. [amended, effective 11/22/99].
  .2 No more than 40% of a tract or parcel developed hereunder shall be required to be reserved as open space. [Effective 5/15/89]
  .3 All dwelling units shall be connected to the public water and sewer system. [adopted 11/22/99]
.6 Single family, duplex and multiplex dwellings for persons 55 years of age or older in the more southerly of the two Office Commercial Districts shown on the Town's Zoning Map enacted May 15, 1989, and amended January 25, 1999, subject to the provisions of Sec. 406, except that for purposes of this use in this District, those provisions shall be modified as follows [adopted, effective XX/XX/XX]:
  .1 The minimum lot size shall be 10,000 square feet per dwelling unit. [adopted, effective XX/XX/01].
  .2 No more than 40% of a tract or parcel developed hereunder shall be required to be reserved as open space. [adopted effective XX/XX/01]
  .3 All dwelling units shall be connected to the public water and sewer system. [adopted XX/XX/01]
  .4 All dwelling units shall be served by builder-provided common public amenities as determined by the Planning Board in Subdivision Review.
  .5 Lands immediately adjacent to Route One shall wherever feasible be primarily reserved for commercial development, and residential development shall occur behind such commercial development and thereby be buffered from Route One. [adopted XX/XX/01]

.~~6~~7 Commercial health and recreation facility. [Effective 10/13/92]
.~~7~~8 Timber harvesting; [Amended, effective 10/26/98]
.~~8~~9 Residential care facilities, subject to the provisions of Sec. 432, except that for the purposes of this District, those provisions shall be modified as follows: [Amended, effective 6/14/99]
- .1 The minimum lot size shall be 4 acres;
- .2 All facilities shall be connected to the public water and sewer system;
- .3 The total gross area of all building footprints on the site shall not exceed thirty thousand square feet for each four acres of lot area. Additional building footprints of 30,000 square feet shall be permitted for each additional land area increment of four acres.
- .4 Buildings and parking lots shall cover not more than 25% of the lot.
- .5 The parking requirement included in Section 432 may be reduced upon a positive finding by the Board that the proposed use does not, in practice, require the amount stated in the standard.

.~~9~~10 Antennas as defined in Sec. 100, subject to Site Plan Review, and Section 433. [adopted, effective 12/13/99]
.1~~0~~1 Uses and buildings accessory to those above. [Effective 5/15/89]

204.8.2 The following uses are allowed as special exceptions in the OC District, requiring the approval of the Board of Adjustment and Appeals:

- .1 Light manufacturing, as defined;
- .2 Hotels and motels;
- .3 Municipal uses and buildings;
- .4 Accessory structures of public utilities;
- .5 Above ground utility transmission lines not located within public ways;
- .6 Uses listed as permitted uses in the LB District under 204.6.1; [Effective 5/15/89]
- .7 Home occupations; [Amended, effective 12/13/89]
- .8 Day care centers and nursery schools, subject to the provisions of Sec. 408A and Site Plan Review; [Amended, effective 12/13/89]
- .9 Uses and building accessory to those above.
- .10 Communication towers in the southern-most OC District in accordance with Section 433 of this Ordinance. [Amended, effective XX/XX/XX]

204.8.3 The following lot standards apply in the OC District:

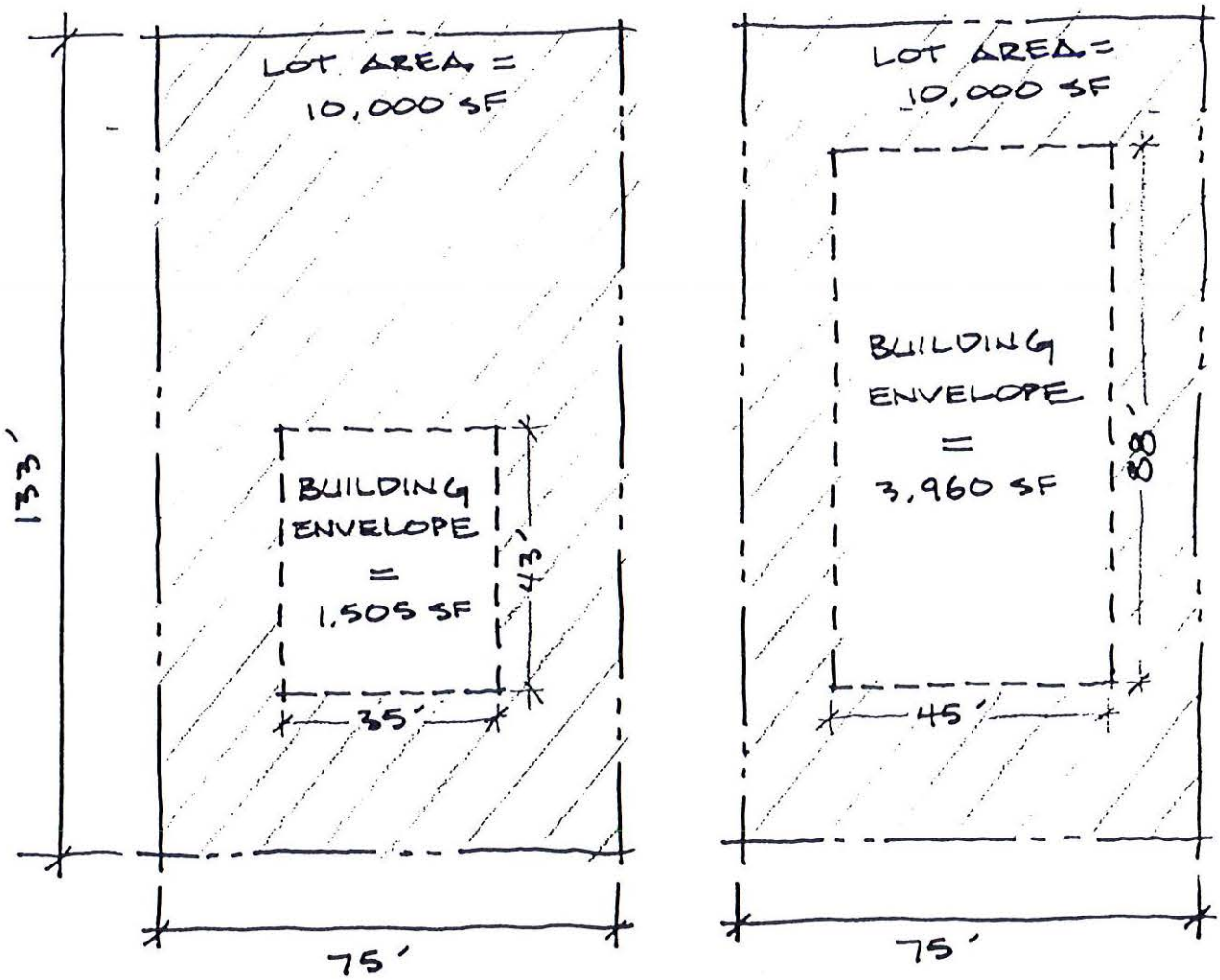
- .1 One (1) acre minimum lot size, except that the minimum lot size per dwelling unit in a duplex or multiplex development under Sec. 204.8.1.5 above shall be 20,000 square feet, except that for units constructed specifically for persons 55 years of age or older the minimum lot size shall be 10,000 square feet per dwelling unit; [Effective 5/15/89, amended 11/22/99]
- .2 There shall be no less than 150 feet of lot frontage for commercial lots, and 75 feet of lot frontage for residential lots~~.~~ [Effective 5/15/89, amended, effective XX/XX/XX]

OFFICE COMMERCIAL DISTRICT – PROPOSED AMENDMENTS, 11/15/01

204.8.4 The following setbacks are required for all structures in the OC District: [Amended, effective 6/12/95, amended, effective XX/XX/XX]

.1 Commercial
- .1 Front: 25 feet;
- .2 Rear: 65 feet;
- .3 Side: 20 feet

.2 Residential
- .1 Front: 25 feet
- .2 Rear: 20 feet
- .3 Side: 15 feet



EXISTING SETBACKS

PROPOSED SETBACKS

EXHIBIT #3

Jensen Baird Gardner & Henry

WALTER E. WEBBER
KENNETH M. COLE III
NICHOLAS S. NADZO
FRANK H. FRYE
DAVID J. JONES
MICHAEL A. NELSON
RICHARD H. SPENCER, JR.
RONALD A. EPSTEIN
WILLIAM H. DALE
JOSEPH H. GROFF III
F. BRUCE SLEEPER

DEBORAH M. MANN
LESLIE E. LOWRY III
PATRICIA MCDONOUGH DUNN
MICHAEL J. QUINLAN
R. LEE IVY
NATALIE L. BURNS
SALLY J. DAGGETT
BRENDAN P. RIELLY
JEFFREY B. HERBERT
SUZANNE R. SCOTT

ATTORNEYS AT LAW

TEN FREE STREET
P.O. BOX 4510
PORTLAND, MAINE 04112
(207) 775-7271

TELECOPIER (207) 775-7935

www.jbgh.com

RAYMOND E. JENSEN
M. DONALD GARDNER
MERTON G. HENRY
JAMES E. KAPLAN
OF COUNSEL

KENNETH BAIRD
(1914-1987)

YORK COUNTY OFFICE

11 MAIN STREET, SUITE 4
KENNEBUNK, MAINE 04043
(207) 985-4676
TELECOPIER (207) 985-4932

October 25, 2001

Andy Fillmore, Town Planner
Town of Cumberland
290 Tuttle Road
Cumberland, ME 04021-9321

Re: Amendments to OC District

Dear Andy:

As you requested, I have reviewed the proposed amendments to the Office Commercial District to allow the location of single-family homes in the Office Commercial District. The only concern that I had with the proposed text was the requirement of "builder-provided public amenities as determined by the Planning Board in Subdivision Review." The purpose of the Zoning Ordinance is to establish quantified standards, such as setbacks, frontage, and building height. The Zoning Ordinance cannot authorize a planning board or a zoning board of appeals to establish new standards as part of its review of a project. If an amenities requirement were to be placed in the Zoning Ordinance, it would either have to specify exactly what those amenities would have to be or provide a list of acceptable amenities from which a developer would have to choose. The drawback to this is that an applicant who could not provide an amenity for some reason would have to seek a variance from the Board of Appeals and Adjustments.

If the Planning Board wants to require these types of amenities, language could be added to the Subdivision Ordinance establishing either a standard or a guideline. The Subdivision Ordinance is more of an environmental review, and its standards are not required to be quantified in the same manner as those in the Zoning Ordinance.

Please call me if you have any questions. Thank you.

Sincerely,

Kenneth M. Cole III

Enclosures

cc: Robert B. Benson

EXHIBIT # 4

Jensen Baird Gardner & Henry

WALTER E. WEBBER
KENNETH M. COLE III
NICHOLAS S. NADZO
FRANK H. FRYE
DAVID J. JONES
MICHAEL A. NELSON
RICHARD H. SPENCER, JR.
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P.O. BOX 4510
PORTLAND, MAINE 04112
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TELECOPIER (207) 775-7935

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RAYMOND E. JENSEN
M. DONALD GARDNER
MERTON G. HENRY
JAMES E. KAPLAN
OF COUNSEL

KENNETH BAIRD
(1914-1987)

YORK COUNTY OFFICE

11 MAIN STREET, SUITE 4
KENNEBUNK, MAINE 04043
(207) 985-4676
TELECOPIER (207) 985-4932

October 30, 2001

Andy Fillmore, Town Planner
Town of Cumberland
290 Tuttle Road
Cumberland, ME 04021-9321

Re: Revised OC Amendments

Dear Andy:

I have reviewed the most recent revisions to the draft OC amendments. The only thing that you will need to add to this proposal is an amendment to Section 433.4(a) that adds OC to the list of zoning districts where towers are permitted and makes those towers in that district subject to the same height restrictions as the other zones.

The only other question that I had was whether you wanted to consider establishing some defined minimum distance for Section 204.8.1.6.5. It is not absolutely essential that you do so: this would only serve to clarify the extent of the commercial development requirement. It is not clear from the current language who will make the determination whether it is feasible to establish a commercial use. Is the idea to have this decided by the Planning Board as part of subdivision or site plan review?

Everything else appeared to be fine as drafted. Please call me if you have any questions. Thank you.

Sincerely,

Kenneth M. Cole III

cc: Robert B. Benson, Town Manager

Council
NJ 11-26-01

PORTLAND CHAMBER OF COMMERCE

60 Pearl Street, Portland, ME 04101-4131
Phone: (207) 772-2811 Fax: (207) 772-1179
E-mail: chamber@portlandregion.com

November 19, 2001

Bob Benson, Town Manager
Town of Cumberland
290 Tuttle Road
Cumberland, ME 04110

RE: Eggs & Issues – December Speaker
Dr. Jack McConnell
Founder of Volunteers in Medicine Clinic

Dear Bob:

Please join us on Wednesday, December 5, 2001 when the Portland Chamber of Commerce's Eggs & Issues Breakfast welcomes Dr. Jack McConnell as its keynote speaker. Dr. McConnell is a true American hero. He could just change the way the State of Maine provides healthcare to the underprivileged and those truly in need.

Jack B. McConnell, MD is a nationally recognized scientist and business executive in the healthcare field. He is a visionary. Among his medical contributions, include:

- Directed the development of the TB/Tine test used in the detection of tuberculosis.
- Participated in the early stages of the development of the Polio vaccine.
- Directed the program for the development of the Tylenol Tablet.
- Created and directed the program for the first commercial MRI system in the US.
- Perhaps Dr. McConnell's greatest scientific achievement is being the founder of Volunteers in Medicine Clinic (VMC).

Dr. McConnell, and a group of visionaries, started the volunteer clinic on Hilton Head Island in South Carolina several years ago. Jack was 65 years old and recently retired. Some say, that Dr. McConnell single-handedly changed the legislative process to allow retired doctors and nurses and other retired professionals to practice their profession and provide much needed care to those truly in need. VMC now operates some 22 free clinics across the country. Dr. McConnell is working in Washington, DC to change the federal laws to allow more medical volunteers.

On December 3, 2001 he will receive the Humanitarian Award from the United Nations. Dr. McConnell is a world changer, and truly an America Hero.

Attached is a flyer which further details the event, ticket pricing and Dr. McConnell. Please make the time to attend this very special Eggs & Issues. We might just choose to change the world in which we live.

Very truly yours,

Craig S Young

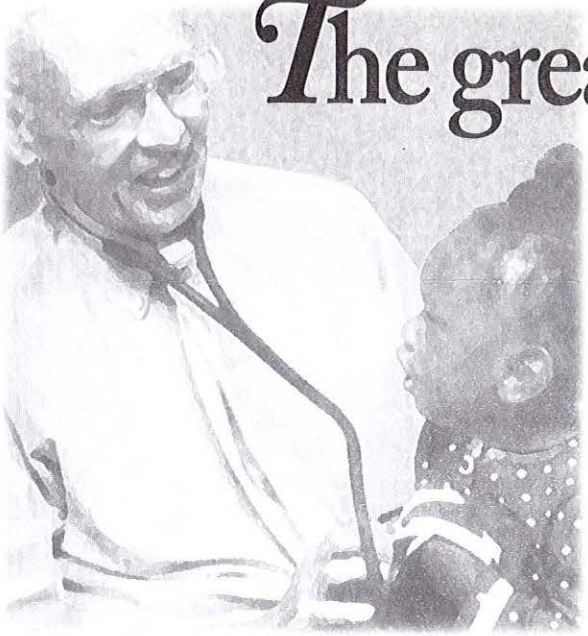
Craig S. Young, CCIM

CSY/mbs

Enclosure

THE PORTLAND CHAMBER OF COMMERCE'S MONTHLY BREAKFAST SERIES SPOTLIGHTING CURRENT TOPICS OF INTEREST

eggs & issues



The greatest story never told.

In his spare time, he invented the Tylenol tablet, the MRI system, the TB shot and was a leading geneticist in unraveling the Gnome.

Please join
DR. JACK McCONNELL,
founder of the Volunteers in Medicine Clinics,

as he describes his incredible journey to build a national system of nonprofit, volunteer-operated, free medical clinics. Truly one of the great untold stories of our time.

Wednesday, December 5, 2001 • 7:00am-9:00am
The Eastland Park-158 High Street, Portland

PUBLIC CORDIALLY WELCOMED

EGGS & ISSUES IS SPONSORED BY CORPORATE CO-SPONSORS

Fleet

Anthem®
Decide to be healthy.℠

Community Corner, featuring Habitat for Humanity: Sponsored by Maine Partners Health Plan
Media Sponsor: Maine Community Foundation **Media Partners:** WGAN, Time Warner Cable

$12.00 for Members / $14.00 for Nonmembers. Preregistration, accompanied by check, should be received at the Chamber one week prior to event.

Eggs & Issues: Dec. 5 Meeting

MEAL CHOICES: (circle one) #1. Fruit plate and bran muffin
#2. Eggs, bacon, homefries, muffin

Name: _____

Organization: _____

E-mail: _____ Telephone: _____

Eggs & Issues Breakfast Block# (if applicable): _____

MAIL THIS TEAR-OFF TO: Portland Chamber of Commerce, 60 Pearl Street, Portland ME 04101
TO REGISTER BY PHONE: 772-1196, ext. 228 **TO REGISTER BY FAX:** 772-1179
TO REGISTER ONLINE: www.portlandregion.com/calendar.taf

LONG-TERM DEBT

Bonds and Notes Payable

Bonds and notes payable at June 30, 2001, are comprised of the following:

	Date of issue	Date of maturity	Interest rate	Balance
Bonds and notes payable:				
General long-term debt:				
New Town office	5/28/98	11/1/2018	4.528-5.378%	$937,343
School renovation	5/28/98	11/1/2018	4.528-5.378%	1,536,367
Fire truck purchase	10/28/99	11/1/2019	4.283-5.908%	463,974
Library construction	10/25/86	10/25/2006	5-6.6%	204,424
Purchase of Sunset Landing	05/01/90	11/01/2002	6.0-6.95%	50,000
Purchase Doane property	08/09/00	04/01/05	5%	102,651
Total general long-term debt	–	–	–	3,294,759
Enterprise fund debt:				
Sewer construction	10/25/86	10/25/2006	5-6.6%	125,576
Senior House	12/31/91	12/01/2012	4.4-6.9%	1,235,000
Val Halla irrigation	12/31/91	12/01/2012	4.0-6.75%	165,000
Val Halla Clubhouse	10/30/96	11/01/2016	4.0-6.9%	654,631
Maine State Housing Authority	01/02/92	07/01/2022	2.0%	349,747
Total enterprise fund debt				2,529,954
Total bonds and notes payable				$5,824,713

Note: state Law provides a 15% debt Limit re state valuation:
As of 2001 state valuation of Cumberland 603,100,0
603100000 x 15% = $90,465,000 debt Limit
Cumberland debt = 5,824,713 = 6.4% debt Limit
or 1% of state val.

Library debt ends in 2006 = Annual Appropriation 45000:
Sunset " " " 2002 = " " 30000

Note: School Renovation is paid by SAD-51

SOLID WASTE TO R.W.S.

YEAR MONTH	2001	1996	1997	1998	1999	2000
January	211.07	179.89	204.61	192.30	191.10	184.53
February	163.98	154.08	152.55	163.73	167.36	171.20
March	175.61	148.88	164.92	187.13	188.09	193.05
April	211.90	347.03*	233.12*	179.17	190.87	181.92
May	331.97*	200.44	175.02	217.70*	277.75*	304.98*
June	228.57	190.25	201.01	229.98	222.10	229.93
July	248.17	232.78	223.52	224.88	212.91	223.73
August	244.76	224.45	175.55	194.03	251.36	267.61
September	217.00	193.89	247.89	245.27	229.28	225.17
October	**277.72***	343.81*	260.72*	273.00*	270.87*	267.31*
November		172.94	185.99	197.09	209.37	236.55
December		194.62	214.89	208.16	230.40	195.88
Total		2,583.06	2,439.79	2,512.44	2,641.46	2,681.86

NOTE: All Measurements in tons

* Bulky Waste Pick-up week included

Council
11-26-01
RS

GPCOG THE GREATER PORTLAND COUNCIL OF GOVERNMENTS

November 9, 2001

TO: GPCOG Executive Committee, Municipal Managers, Councilors and Selectmen

FROM: Neal W. Allen, Executive Director

RE: Falmouth Property Tax Relief Forum

The Falmouth Property Tax Relief Forum was held on November 5, 2001 at the Falmouth High School. The Falmouth Town Council's ad-hoc committee did a splendid job in organizing the Forum with an excellent combination of speakers and information. While the Forum was specific to the Town of Falmouth, the public policy issues raised were clearly global in scope with far-ranging ramifications.

Close to 75 persons attended the Forum including municipal officials from around the region, state legislators, the Cumberland County Manager and two gubernatorial candidates - David Flanagan and Dan Wathen. Congressman Baldacci sent a representative. In addition to those attending, I received a number of calls prior to the Forum from a number of GPCOG communities requesting information summarizing the Forum.

Following the meeting and at the request of the ad hoc committee, I led a brief discussion of those municipal officials who remained in an effort to get a quick sense of priorities and possible directions for the region to take on the issue of tax policy reform. Below is a summary of that discussion.

- To be effective in Augusta, we need to work and stay together as a group.
- There is interest, if not strong support, to advocate for a local options sales tax.
- The issue of tax exemptions needs to be more diligently examined.
- A more equitable school funding formula needs to be designed and implemented.
- The current efforts of the Education Funding Reform Commission (made up entirely of legislators) should be carefully monitored and we should organize to advocate as appropriate.
- We should seek to build consensus around issues that are common to all, such as the woefully under-funded mandate of Special Education.
- We should stay in front of the gubernatorial candidates to ensure that they are fully informed on the issues of concern to this region and on the theory that if substantive tax reform is to occur it will most likely do so in the early years of an administration.
- While there was no consensus regarding the role of County government, there is strong support to shift the cost of operating the County Jail to the State Department of Corrections.

Next Steps

GPCOG is prepared to assist in building and coordinating a coalition of support on behalf of our members and other interested parties to advance the above and related issues. To that end, I plan to review with the GPCOG Steering Committee how this might be best accomplished. Any suggestions you may have will therefore be very much appreciated. Please feel free to call, write or e-mail me directly. My email address is: nallen@gpcog.eddmaine.org

I look forward to hearing from you and will be getting back to you soon on this important issue.

Cumberland County
Portland, Maine

Council
11-26-01
MS

MEMORANDUM

TO: Civic Center Board of Trustees
Cumberland County Commissioners
Leonard Nelson, Legal Counsel
The Portland Newspapers, City Editor
News Desk, WPOR

FROM: Gary Lorfano, Chair

DATE: November 9, 2001

RE: Regular Monthly Meeting of Board of Trustees

The Regular Monthly Meeting of the Civic Center Board of Trustees will be held on **Wednesday, November 14, 2001, at 8:00 A.M.** The meeting will take place in the Captain's Club at the Civic Center.

GL/ap

ONE CIVIC CENTER SQUARE • PORTLAND, MAINE 04101 • TELEPHONE (207) 775-3481 • FAX (207) 828-8344

THE CIVIC CENTER
Cumberland County
Portland, Maine

TRUSTEES' MEETING
November 14, 2001
AGENDA

CALL TO ORDER

01-68	To approve the minutes of the Board of Trustees' Meeting held on October 17, 2001
01-69	Treasurer's Report: Tom Bartell (a) October's Financial Statement
01-70	2002 County Warrant
01-71	Long Range Committee Update
01-72	General Manager's Report
01-73	Other

ADJOURNMENT

ONE CIVIC CENTER SQUARE • PORTLAND, MAINE 04101 • TELEPHONE (207) 775-3481 • FAX (207) 828-8344

Council
11-26-01
11/15/01
C: Bob Devlin, Deputy U.
Budget Advisory Committee
Town Officials

Mark N. Dion
Sheriff

Richard J. Gagliano F.Y.I.
Chief Deputy

Office of the Sheriff
Cumberland County
36 County Way
Portland, Maine 04102-2755

Peter Crichton

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NOV 14 2001
COUNTY OF CUMBERLAND
EXECUTIVE DEPARTMENT

November 8, 2001

Senator Michael J. McAlevey, Chair
Representative Edward J. Povich, Chair
211A State Office Building
Augusta, Maine 04330

RE: Committee to Study the Needs of Persons with Mental Illness Who Are Incarcerated

Dear Senator McAlevey & Representative Povich:

The study you are currently conducting is a significantly important task. The number of citizens with mental illness incarcerated in county jails continues to grow. This population presents many unique and sometimes troubling challenges for Correction Officers.

Collectively, we need to aggressively change the current manner that citizens with mental illness are managed by the correctional system with a broad range of changes and new requirements. In general, the preliminary recommendations put forth by the participants of the Study Group will be very expensive to implement. It is absolutely critical that the recommendations be prioritized to meet need across the four areas identified by your Study Group: Diversion, Maine Department of Corrections, County Jails and Aftercare. I want to take this opportunity to identify some troubling areas of concern that the Maine Sheriffs need to have adequately addressed:

1. There seems to be a great deal of energy devoted to developing a common intake assessment tool and adding staff within BDS to provide better case management for diverting citizens with mental illness from county jails. **Where will these citizens be diverted?** The current community infrastructure is overloaded. Additional community housing resources are critical to any program designed to divert citizens from the jail.
2. Proper medication is critical to this population. The new generation medications that are frequently prescribed are very expensive. To ensure that appropriate care is provided, Counties need financial assistance in managing this ever-increasing cost.
3. The jails need easier access to AMHI. Waiting for a bed is just not an option that works for the jail staff. Jails need an expert to assess these individuals and provide in-patient treatment or guidance to jail staff responding to aberrant behavior.

RE: Committee to Study the Needs of Persons with Mental Illness Who Are Incarcerated

4. Cumberland County has taken on the arduous task of seeking accreditation from the American Correctional Association. This process has resulted in increased operational efficiency, staff accountability, matching staff practice with written policy and delivery of better and more appropriate service to the inmate population. The Auditing Team from the American Correctional Association has visited the jail and has recommended to the Commission on Accreditation that the Cumberland County Jail be the first correctional facility in Maine to achieve accreditation. My staff and I will travel to the next ACA Conference for a final review where I am sure we will be awarded accreditation. This being said, I strongly recommend that the Study Group not abandon the concept of national accreditation for all correctional facilities in Maine. It is healthy to have an independent third party assess operational practices designed to meet the "Best Practices" across the country.

I will be attending the next Study Group meeting to address any concerns you may have. If you have any additional areas that you would like me to address at the meeting, please contact Major Newton at 774-5939, Extension 2107, Fax 879-5600 and e-mail address is newton@cumberlandcounty.org.

Very truly yours,

Mark N. Dion, Sheriff

cc: Captain James Foss, President Maine Jail Association
Executive Director Maine Sheriffs Association
File

The County of Cumberland is committed to providing quality services to all citizens equitably, in a responsive and caring manner.

COMMISSIONERS' MEETING

MINUTES October 22, 2001

The Board of Cumberland County Commissioners, Esther B. Clenott, Richard J. Feeney, and Gary E. Plummer, convened a meeting in Courtroom 1 on the above date.

Chairperson Clenott called the meeting to order at 7:00 PM and the following business was conducted.

Minutes of the regular meeting of October 9, and special meeting of October 10, 2001 approved as written.

Peter Crichton, County Manager, reported that he, Bob Devlin, Deputy County Manager, and George Flaherty, EMA Director, had recently attended a Cumberland County City & Town Managers Association meeting regarding terrorism and biological hazard response at the State, County and local levels. He commended Mr. Flaherty on the excellent presentation he provided, with a good response from managers. Mr. Crichton also noted that a workshop with New Gloucester Councilors regarding County issues has been scheduled for November 7 at 7PM.

Commissioner Feeney reported that the Commissioners had met last Tuesday with Sheriff's Department staff regarding contracting with local communities and school districts for police services. He commended Genie Beaulieu, Fiscal Officer, for her rapid response to a request for financial information to distribute to the Budget Advisory Committee, which was provided the next day.

Chairperson Clenott reported that she had attended a local conference on domestic violence issues last week. She noted that through the efforts of the County's grant coordinator, Faye Luppi, 400 second-hand cellphones had been collected, to be programmed for 911 calls only and distributed to area agencies for use in domestic violence cases. She also reported that she and Mr. Devlin had attended an emergency meeting in Augusta hosted by Congressman John Baldacci to discuss terrorism and biological hazards. She noted the lack of sharing of information between federal, state and local agencies.

01-95 Approval, Increase in Copy Fees, Registry of Deeds

Mr. Crichton reported that the Registry of Deeds currently charges $1.00 per page for copies of documents filed at the Registry. During budget discussions, it was suggested that the Registry raise the fee to $1.50 per page, which will generate $200,000 in revenue in FY2002. By beginning this increase in mid-November, the Registry can generate about $10,000 in

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additional revenue before the end of FY2001. He concurred with the recommendation to increase the copy fee to $1.50 per page.

John O'Brien, Register of Deeds, noted that the fee has remained the same for the past 8 years, while the cost of copy paper has tripled. He preferred to wait before implementing the increase to allow time to post the increase and alert Registry users.

Motion by Commissioner Plummer to increase the copy fee to $1.50 per page beginning November 13, or the appropriate date decided upon by the Register of Deeds. Second by Commissioner Feeney, so voted.

01-96 Contract, Domestic ViolenceCounseling, Jail

Mr. Crichton reported that the Jail has not had a domestic violence counseling program since the last counselor left County employment. The program offered by that counselor was not a state-certified program, and there are currently no other employees qualified to deliver this training. He reported that the Jail Administrator has been working with Opportunity for Change to create a 3-year contract to provide these services. He concurred with the recommendation to enter into the contract.

Major Jeffery Newton, Jail Administrator, reviewed the request to contract with Opportunity for Change to provide domestic violence counseling services. He noted that by eliminating the position the County would save $43,611. The $18,000 per year contract cost would be funded by the inmate commissary account. Since the program was for 48 weeks, participants would be transitioned into similar programs upon leaving incarceration.

Mary Campbell, Executive Director for Opportunity for Change, reviewed the program, which would consist of 2 classes per week with 2 counselors per class. She would also be attending the initial classes, to further evaluate the possible need for additional classes or instructors. She noted that contract increases would only occur if additional classes or instructors were needed. Discussion ensued regarding the conditions and termination clause of the contract.

Motion by Commissioner Plummer to authorize the Chairperson to sign the 3-year contract with Opportunity for Change, at a cost of $18,000 per year, to provide domestic violence counseling services at the County Jail. Second by Commissioner Feeney, so voted.

No further business conducted; motion to adjourn at 7:28 PM.

ATTEST:

Timothy J. Jarvis
Deputy Clerk

Next regular meeting: Tuesday, November 13, 2001 at 7:00 PM.

The County of Cumberland is committed to providing quality services to all citizens equitably, in a responsive and caring manner.

SPECIAL MEETING

MINUTES October 29, 2001

The Board of Cumberland County Commissioners, Gary E. Plummer, Richard J. Feeney, and Esther B. Clenott, convened a special meeting in Conference Room B on the above date.

Chairperson Clenott called the meeting to order at 7:00 PM. She noted that review and discussion had occurred in the earlier executive session regarding Action Item # 01-97.

01-97 Contract, Inmate Medical Services, Jail

Major Jeffery Newton, Jail Administrator, reviewed the proposed contract with Correctional Medical Services (CMS) for management services for inmate health services, which would begin at 12:01 AM on November 1st. He noted that the current provider, PrimeCare Medical (PCM), would be terminating their services as of midnight on October 31st.

Motion by Commissioner Plummer that subject to a final review of contract language by the County Attorney and staff, to authorize the Chairperson to sign a three-year agreement with Correctional Medical Services, of St. Louis, Missouri, to provide medical management services for a fee of $182,000 in year 1, and increasing as stated in the agreement. This is a "cost plus agreement" where all medical costs will be paid by CMS. The County will reimburse CMS for all medical costs on a monthly estimated basis. These estimates will be based on Exhibit E of the agreement. All medical costs will be jointly audited by County and CMS staff quarterly. Second by Commissioner Feeney, so voted.

Motion to go into executive session at 7:20 PM to discuss legal issues.

Motion to come out of executive session at 7:50 PM. No action was taken in executive session.

No further business conducted, motion to adjourn at 7:51 PM.

Attest:

Timothy J. Jarvis
Deputy Clerk

FAXED #1513
10:39 am
11-16-01

Date: 11/16//01

To: Joan, Portland Press Herald

791-6910 Fax

From: Lisa Brown, Administrative Assistant of the Town Manager and Town Council

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LEGAL AD

Please run this Legal Ad for Wed, Nov 21, 2001. Purchase Order #5737-T

PLEASE CALL ME TO CONFIRM or EMAIL lbrown@cumberlandmaine.com Thank you!! Any questions please contact me at 829-2205

TOWN OF CUMBERLAND

TOWN COUNCIL

PUBLIC HEARING

The Cumberland Town Council will hold a Public Hearing to consider and act on application by Winn Road LLC d/b/a Route 9 Diner for a Liquor License. The Public Hearing will be held on Monday, November 26, 2001 at 7:00 p.m. in the Council Chambers at the Cumberland Town Offices, 290 Tuttle Road, Cumberland Center.

Stephen Moriarty, Council Chairman

MAINE SCHOOL ADMINISTRATIVE DISTRICT #51
CUMBERLAND / NORTH YARMOUTH
P. O. Box 6A
Cumberland Center, ME 04021
Web site: www.msad51.org - Phone: 829-4800

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Board of Directors

Agenda

Emailed to Town Council 11-15

WORKSHOP
On District Goals 2002-2003

Monday
November 19, 2001 **7:00 PM** **North Yarmouth Memorial School Gym**

1. **Call To Order - by MSAD #51 Board of Directors Chairperson, Kim True.**

2. **Approval of Minutes**

3. **Superintendent's Report**

4. **Presentations**

5. **Committee Report**
   a) Affirm Committee Task Force Goals 2001-2002
   b) Finance Committee
   c) Negotiation Committee
   d) Design Team
   e) Steering Committee - Declaration of Results of Referendum of 11/6/01
   f) Policy Committee
   g) Performance Indicators
   h) Time Task Force
   i) Technology Task Force

6. **Items for Action**
   a) Vote to approve bond resolution
   b) Vote to approve coaching position recommendations
   c) Vote to increase educational technician time – Chebeague Island School

7. **Adjourn Meeting _____PM**

MSAD #51 Mission

The mission of MSAD #51 is to guide all students as they acquire enthusiasm for learning, assume responsibility for their education, achieve academic excellence, and discover and attain their personal bests.

To accomplish this mission, the MSAD #51 community will collaborate to:

- Use effective instructional practices and provide professional development to assure that all students meet or exceed the District's benchmarks and outcomes;
- Ensure a safe and respectful environment where all feel a sense of belonging; and
- Promote parental participation as fundamental to each student's success.

Board Goals for 2001-2002

- Support the District's work in curriculum, assessment, instruction and professional development through:
  - Promoting educational programming based on student learning needs;
  - Measuring the District's progress towards achieving our mission by 2003, including progress toward the certification that all students meet the State's Learning Results; and
  - Effectively communicating the results of our District's work.

- Execute the Resolution on Facilities Planning by ensuring the timely completion of the Charges made to the Building Committees to construct a new middle school and renovate Greely Junior High School into high school space, and support measures to relieve constraints due to conditions created by our current facilities.

3. Promote sound resource management through:
   - Measuring progress towards structuring the school day and year to maximize student achievement;
   - Budgeting three-year resource needs;
   - Effectively communicating to the public the District's resource needs.

MSAD #51 Board of Directors

John Aromando, Vice Chair	829-6861	jaromando@pierceatwood.com
Maryellen Fitzpatrick	829-4657	efitzpa486@aol.com
Polly Haight Frawley	657-2373	PHFraw@aol.com
Betts Gorsky	871-7500	bjgorsky@hotmail.com
Audrey Lones	829-4171	audrey@alum.mit.edu
Henry Kennedy	829-6979	hrk@kieve.org
Kim True, Chair	829-3209	ktrue1@maine.rr.com
Bob Vail	829-5393	

Upcoming Meetings/Events

11/15/01 – GHS Play "Annie Get Your Gun," 7:30 PM

11/16/01 – GHS Play "Annie Get Your Gun," 7:30 PM

11/16/01 – GHS: Make-up day for yearbook pictures

11/16 and 11/17 - All State Auditions

11/17/01 – GHS Play "Annie Get Your Gun," 7:30 PM
11/18/01 – GHS Play "Annie Get your Gun," 2:00 PM
11/19/01 – First Practice High School Winter Athletics (tentative)
11/19/01 – All New England Band Festival
11/19 and 11/20 – Teacher Inservice Days and Parent/Teacher Conferences - No School
11/21/01 – Thanksgiving Break starts - No School
11/22/01 – Thanksgiving – No School
11/23/01 – Thanksgiving – No School
11/26/01 – Steering Committee Meeting, GHS Library, 7:00 PM
11/26 through 12/7 – MEA Testing: Grades 4, 8, & 11
11/27/01 - Policy Committee Meeting, Central Office Conference Room, 4:30 PM
11/28/01 – MIW School Based Planning Team Parent Meeting, Prince Memorial Library, 10:00–11:00 AM
11/28/01 – GHS ASVAB Test
11/28/01 - Early Release, Grades 7-12 @ 1:12 PM, Grades K-6 @ 12:15 PM
12/4/01 – Dept. of Education presentation of School Funding, Deering High School, 7:00 PM
12/5/01 – MIW Book/Bake/Craft Sale, 5:30 – 7:00 PM
12/5/01 - Early Release, Grades 7-12 @ 1:12 PM, Grades K-6 @ 12:15 PM
12/5/01 – Association gathering at Val Halla, 3:00 – 5:00 PM
12/5/01 – Cottage Meeting, NYMS, 7:30 AM
12/6/01 – Greely Junior High School Winter Concert, 7:00 PM
12/10/01 – Chanukah
12/10/01 – Cottage Meeting, GJHS, 2:30 PM
12/11/01 – Cottage Meeting, MIW, 3:30 PM
12/12/01 - Early Release, Grades 7-12 @ 1:12 PM, Grades K-6 @ 12:15 PM
12/12/01 – Cottage Meeting, DRS, 7:40 AM
12/12/01 – Cottage Meeting, GHS, 2:30 PM
12/12/01 through 12/14/01 – Book Fair at NYMS during school hours
12/13/01 – GHS Band Concert
12/14/01 – GJHS/GHS Mid-Quarter Reports
12/18/01 – GHS Financial Aid Night
12/19/01 - Early Release, Grades 7-12 @ 1:12 PM, Grades K-6 @ 12:15 PM
12/24/01 through 1/1/02 – No School: Holiday Break; School Resumes on January 2, 2002
12/25/01 – Christmas Day
12/27/01 – Title 1 Parent Night, MIW, 6:30 PM

The following activities were not published on the District Calendar, but please note now that the dates are set:
1/10/02 – Grade 4 Family Math Night (snow date January 17)
3/21/02 – Grade 4 Pioneer Night – 3/21/02

Next Meeting:

Monday, December 3, 2001 – Cumberland Town Hall Council Chambers

MAINE SCHOOL ADMINISTRATIVE DISTRICT #51
CUMBERLAND / NORTH YARMOUTH
P. O. Box 6A
Cumberland Center, ME 04021
Web site: www.msad51.org **- Phone:** 829-4800
Board of Directors

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Minutes

Monday
November 5, 2001 **7:00 PM** **Mabel I. Wilson School Multipurpose Room**

---

1. Call To Order - by MSAD #51 Board of Directors Chairperson, Kim True 7:00 PM.

Emailed to Town Council 11-15

Attendance:
Board of Directors: John Aromando, Maryellen Fitzpatrick, Polly Haight Frawley, Henry Kennedy, Betts Gorsky, Audrey Lones, Kim True, Bob Vail

Administrators: Brenda Breton, Becky Foley, Wayne Fordham Suzanne Godin, Jack Hardy, Robert Hasson, Pat Palmer, Scott Poulin, Susie Robbins, Judy True, Penny Wheeler-Abbott

2. Approval of the Minutes – of the Board of Directors meetings held on October 15, 2001 and October 24,2001.

Motioned 2nd ed.
Voted: To approve the minutes of the Board of Directors meeting held on October 15, 2001 and As amended. (Voted: 7-0)

Motioned 2nd ed.
Voted: To approve the minutes of the Board of Directors meeting held on October 24, 2001. (Voted: 8-0)

3. Superintendent's Report
- **a)** Chebeague Island School Update

4. Presentations
- **a)** Guidance – Doug Drew
- **b)** MSMA Conference - BOD

5. Committee Reports
- **a)** Finance Committee
- **b)** Negotiation Committee
- **c)** Design Team
- **d)** Steering Committee
- **e)** Policy Committee
- **f)** Performance Indicators
- **g)** Time Task Force

6. Items for Action

a) Authorize superintendent to execute an extension of employment contracts for administrators

Motioned 2nd ed
Voted: To authorize superintendent to execute an extension of employment contracts for administrators, 2002-2004. (Voted: 8-0)

b) Appointment of individuals to teaching positions for the 2001/2002 school year

Motioned 2nd ed
Voted: To appointment of individuals to teaching positions for the 2001/2002 school year. (Voted: 8-0)

Dorothea Demitre – Gifted and Talented Teacher
Ruth Kirkwood - Gifted and Talented Teacher

c) Approve MSAD #51 Mission and 2001-2002 Goals Statement

Motioned 2nd ed
Voted: to approve MSAD #51 Mission and 2001-2002 Goals Statement. (Voted: 8-0)

d) Vote to approve coaching position recommendation

Motioned 2nd ed
Voted: To approve coaching position recommendations. (Voted: 8-0)

Scott Caron – GHS JV Ice Hockey
Ken Charest – GJHS Baseball, Gr. 8.
Sarah Weiss – GJHS Indoor Track & Field

e) Executive Session – Labor Negotiations

Motioned 2nd ed
Voted: Vote to enter into Executive Session. (Voted: 8-0)

Motioned 2nd ed
Voted: Vote to come out of Executive Session. (Voted: 8-0)

7. Adjourn Meeting _____PM

Upcoming Meetings/Events

10/30/01 - Policy Committee Meeting, Central Office Conference Room, 4:30 PM
10/31/01 - Early Release, Grades 7-12 @ 1:12 PM, Grades K-6 @ 12:15 PM
10/31/01 – Halloween
11/1/01 – First Practice – Jr. High School boy's basketball (tentative)
11/1/01 – GHS PAC meeting, 4:00 PM
11/1/01 and 11/2/01 – Maine Fest at MIW
11/2/01 – End of 1st Quarter
11/6/01 – Referendum: Voting day on 1) Middle School project and 2) Phase I of the high school renovation of GJHS project, Cumberland Town Hall and North Yarmouth Town Hall, 7:00 AM – 8:00 PM
11/6/01 - Policy Committee Meeting, Central Office Conference Room, 4:30 PM
11/7/01 - Early Release, Grades 7-12 @ 1:12 PM, Grades K-6 @ 12:15 PM
11/10/01 – Foundation 51 Auction Third Annual Dinner Auction, 58 Fore St., Portland
11/12/01 – Veterans Day Observed – no school
11/13/01 - Policy Committee Meeting, Central Office Conference Room, 4:30 PM
11/13/01 – PTO Math Forum K-12
11/13/01 – Finance Committee Meeting, Central Office Conference Room, 7:00 AM
11/14/01 - Early Release, Grades 7-12 @ 1:12 PM, Grades K-6 @ 12:15 PM
11/14/01 – Design Team, GHS, 3:15 PM
11/15/01 – GHS Play "Annie Get Your Gun," 7:30 PM
11/16/01 – GHS Play "Annie Get Your Gun," 7:30 PM
11/16/01 – GHS: Make-up day for yearbook pictures
11/16 and 11/17 - All State Auditions
11/17/01 – GHS Play "Annie Get Your Gun," 7:30 PM
11/18/01 – GHS Play "Annie Get your Gun," 2:00 PM
11/19/01 – First Practice High School Winter Athletics (tentative)
11/19/01 – All New England Band Festival
11/19 and 11/20 – Teacher Inservice Days and Parent/Teacher Conferences - No School
11/20/01 - Policy Committee Meeting, Central Office Conference Room, 4:30 PM
11/21/01 – Thanksgiving Break starts - No School
11/22/01 – Thanksgiving – No School
11/23/01 – Thanksgiving – No School
11/26 through 12/7 – MEA Testing: Grades 4, 8, & 11
11/27/01 - Policy Committee Meeting, Central Office Conference Room, 4:30 PM
11/28/01 – MIW School Based Planning Team Parent Meeting, Prince Memorial Library, 5:30 – 6:30 PM
11/28/01 – GHS ASVAB Test
11/28/01 - Early Release, Grades 7-12 @ 1:12 PM, Grades K-6 @ 12:15 PM

The following activities were not published on the District Calendar, but please note now that the dates are set:

1/10/02 – Grade 4 Family Math Night (snow date January 17)
3/21/02 – Grade 4 Pioneer Night – 3/21/02

Next Meeting:

Monday, November 19, 2001 – Mabel I. Wilson School Multipurpose Room

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY) 11/20/01

PRODUCER
LAKE REGION AGENCY
726 ROOSEVELT TRAIL
WINDHAM ME 04062
18044

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

COMPANIES AFFORDING COVERAGE

COMPANY A: SCOTTSDALE INSURANCE COMPANY

COMPANY B:

COMPANY C:

COMPANY D:

INSURED
WINN ROAD LLC
DBA ROUTE 9 DINER
137 MAIN STREET
CUMBERLAND ME 04021

COVERAGES

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY				GENERAL AGGREGATE	$
	COMMERCIAL GENERAL LIABILITY				PRODUCTS-COMP/OP AGG.	$
	CLAIMS MADE / OCCUR				PERSONAL & ADV. INJURY	$
	OWNER'S & CONTRACTOR'S PROT				EACH OCCURRENCE	$
					FIRE DAMAGE (Any one fire)	$
					MED. EXPENSE (Any one person)	$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT	$
	ANY AUTO				BODILY INJURY (Per person)	$
	ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
	SCHEDULED AUTOS				PROPERTY DAMAGE	$
	HIRED AUTOS					
	NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	
	ANY AUTO				OTHER THAN AUTO ONLY: EACH ACCIDENT	
					AGGREGATE	
	EXCESS LIABILITY				EACH OCCURRENCE	$
	UMBRELLA FORM				AGGREGATE	$
	OTHER THAN UMBRELLA FORM					
	WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS / OTHER	
	THE PROPRIETOR/ PARTNERS/EXECUTIVE OFFICERS ARE: INCL / EXCL				EL EACH ACCIDENT	$
					EL DISEASE-POLICY LIMIT	$
					EL DISEASE-EA EMPLOYEE	$
A	OTHER LIQUOR LIABILITY	TBA	12/26/01	12/26/02	PER OCCURRENCE	$500,000
					AGGREGATE LIMIT	$500,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS
LIQUOR LIABILTY INSURANCE FOR "ROUTE 9 DINER".

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORD 25-S (1/95) © ACORD CORPORATION 1995

CREATIVE LENDING SOLUTIONS
215 COMMERCIAL STREET 2ND FLR
PORTLAND, ME 04101
207-772-1990 FAX 207-871-0680

FACSIMILE TRANSMITTAL SHEET

TO: Barbara McPhetters
FROM: Mike Normandeau
COMPANY:
DATE:
FAX NUMBER:
TOTAL NO. OF PAGES INCLUDING COVER:
PHONE NUMBER:
SENDER'S REFERENCE NUMBER:
RE: "Route 9 Diner"
YOUR REFERENCE NUMBER:

☐ URGENT ☒ FOR REVIEW ☐ PLEASE COMMENT ☐ PLEASE REPLY ☐ PLEASE RECYCLE

NOTES/COMMENTS:

Please find liquor liability binder.

Thank You!

3 carriers in state ETNA CIGNA (with MMA) BCBS

ETNA

Rates	MMA	Number of People in Plan	**MMA Total Costs**	Aetna	Number of People in Plan	**Aetna Total Cost**	Savings per month	**Savings per year**
Employee Only POS	437.42	18	7873.56	361.00	18	6498.00	1375.56	16506.72
Employee & Spouse POS	981.17	12	11774.04	722.90	12	8674.80	3099.24	37190.88
Employee & Children POS	713.71	3	2141.13	686.50	3	2059.50	81.63	979.56
Family POS	981.17	18	17661.06	1055.40	18	18997.20	-1336.14	-16033.68
Employee Only Indemnity	455.64	1	455.64	361.00 POS Rate	1	361.00	94.64	1135.68
Family Indemnity	1022.05	1	1022.05	1055.40 POS Rate	1	1055.40	-33.35	-400.20
							3281.58	**39378.96**

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							3281.58	**39378.96**

Point of Service in Network	Current Plan	Aetna Plan	Difference
Deductible	0	0	
Coinsurance	100%	100%	
Maximum Out of Pocket Per Calendar Year	500 Single/1000 Family (only used for durable medical equipment)	N/A	+ Aetna
Lifetime Maximum	5,000,000 Per Person	Unlimited	+ Aetna
Inpatient Services			
Specified mental health diagnoses (biologically based)	100%	100%	
Unlimited days of care in semi-private room	100%after 100 per day copayment	100%	+ Aetna
Physician services	100%	100%	
Intensive Care	100%	100%	
Ancillary services, lab tests, x-rays,anesthesia, medications	100%	100%	
Maternity Care	100%	100%	
Newborn Care	100%	100%	
Outpatient Services			
Specified mental health diagnoses (biologically based)	$10 Copayment	$15 Copayment	+MMA
Any physician office visit, diagnosis and treatment	$10 Copayment	$10 Copayment $15 Specialist	+MMA
Lab & X-ray - Diagnostic	100%	$15 Copayment	+MMA
Lab & X-ray - Preventive	100%	$15 Copayment	+MMA
Physical exams and Well-child care	$10 Copayment	$10 Copayment	
Immunizations	$10 Copayment	$10 Copayment	
All Surgical procedures	100% after 100 Copayment –If facility billed for services	100%	+Aetna
Maternity Care	100% self-refer	$15 Copay for initital visit only Self-refer	+MMA
Gynecological exam	$10 Copayment - Self -refer	$15 Copayment Self-refer	+MMA
Physical, Speech or Occupational Therapy	$10 Copayment	$15 Copayment	+MMA
Outpatient Facility fees	100%	100%	
Ambulance (medically necessary)	100%	100%	
Emergency Room Services			
Accident care within 72 hours	25 Copayment	50 Copayment (waived if admitted)	+MMA
Emergency/Urgent Acutecare	25 Copayment	50 Copayment	+MMA
Non-emergency care	25 Copayment	50 Copayment	+MMA
Other Services			
Home health /Hospice care	100%	100%	

Skilled nursing facility	100% Limited to 100 days per calendar year	100%	+Aetna
Human tissue & Organ transplants	100%	100%	
Durable Medical Equipment	80%	100%	+Aetna
Oral surgery (limited benefits)	100%- Call Cigna	100% bony impacted wisdom teeth	
Routine Eye Exams	10 Copayment Self-refer/Age schedule	15 Copayment Self-refer/Age Schedule	+MMA
Chiropractic Care	10 Copayment Self-refer	15 Copayment Self-refer	+MMA
Prescription Drugs up to 30 day supply	10-20-30	10-15-30	
Oral contraceptives up to 30 day supply	10-20-30	10-15-30	
Maintenance Medications 31-90 day supply	20-40-60	20-30-60	+Aetna
Mental Health- Unlisted conditions			
Inpatient care- per calendar year	80% 31 days	100% Non Biologically based 30 days per calendar year	+Aetna
Outpatient care-per calendar year			
1-5 Visits	10 Copayment	15 Copayment	+MMA
6-40 Visits	50% No limit for Biologically based	15 Copayment	+Aetna
Substance Abuse Services			
Lifetime Maximum	No Maximum	No Maximum	
Inpatient Care-per calendar year	90 % detox only – 31 days	100 % detox only 30 days	+Aetna
Outpatient Care- per calendar year	50% up to 1000 (2 treatment programs per lifetime)	15 copayment 30 visits	+Aetna

County of Cumberland

Peter J. Crichton
County Manager

November 20, 2001

Mr. Peter Bingham
Councilor
12 Drowne Road
Cumberland Center, ME 04021

Dear Mr. Bingham,

I am extending an invitation for you to attend a workshop the County Commissioners will hold on Monday, November 26 at 5:00 PM in the second floor Jury Room of the Cumberland County Courthouse. This workshop is to discuss the issue of establishing a county charter commission and the process to get on the ballot for either June or November of 2002.

You input and insight would be appreciated regarding this issue. If you are unable to attend, please forward your thoughts and suggestions to me.

Kind regards.

Sincerely,

Peter Crichton

Peter J. Crichton
County Manager

C: Commissioners
Deputy County Manager
Department Heads

142 Federal Street, Suite 102 • Portland, Maine 04101-4196 • Tel. (207) 871-8380 • Fax (207) 871-8292

MEMORANDUM

PLANNING DEPARTMENT
TOWN OF CUMBERLAND, MAINE

Date: 21 November 2001
To: Bob Benson, Town Manager
From: Andy Fillmore, Town Planner
Subject: Office Commercial Zone amendments

Bob,

As you know, the Planning Board last night held its second review of proposed language for an Office Commercial Zoning text amendment. It had been hoped that a favorable recommendation would emerge from that review and that it would be forwarded to the Town Council for consideration and action at their 17 December, 2001 meeting. At this time, however, the Planning Board is not comfortable making the recommendation.

The amendment draft that Planning Board reviewed last night contained all of their suggestions from their October review, as well as several new changes suggested by Peter Kennedy. The proposed amendments are attached to this memo, and are prefaced with a memo written by me to the Planning Board, and are appended by two letters from Ken Cole expressing his legal opinion of the amendments. Please refer to those attachments for complete information on the proposed amendments.

In brief, the Planning Board's issues with the proposed amendments are as follows:

- *Both the northern OC and the southern OC should be treated identically*. There is concern on the Board that we are writing a zone (southern OC) for one developer. Jim Guidi, the developer of the northern OC was at the hearing and voiced his support of identical zones as well. As currently proposed there are several differences. (See attached amendment text.)
- *There must be some mechanism to require developers to provide significant public amenities for the residents of the proposed developments*. There is some disagreement on the Board as to how "significant" these amenities should be, and how they should be enforced. Ideas range from a full "club house" (public meeting area), to trails and a gazebo, to just letting the market dictate whether any amenities are provided at all.
- *Compliance with the Americans with Disabilities Act (ADA)*. The Board was in unanimous support of subjecting all future age-restricted development in the OC to the construction standards of ADA. Currently these standards require that about 10% of all units be "accessible." It is Ken Cole's opinion that this requirement is easily instituted and quite defensible. It is his recommendation

that it be an amendment to the Subdivision Ordinance, not the Zoning Ordinance.

- *Why not Contract Zoning?* The Planning Board has asked this of me several times since this process got underway, and reiterated the question at last night's hearing. My answer to them has been that the Council considered Contract Zoning but ultimately chose to ask the Planning Board to examine text amendments instead. The Board still seems to want to explore this avenue. Would the Council like to look at the possibility of Contract Zoning again?

During last night's hearing Peter Kennedy expressed some concern that Contract Zoning may be overly restrictive in allowing his development scheme the flexibility necessary to respond to market conditions in terms of unit mix (single family, duplex, multiplex, etc.). Ken Cole's opinion is that a Contract Zone could certainly have ample flexibility built into it, and this could be negotiated with Mr. Kennedy.

As it currently stands, if we proceed with a text amendment strategy the public notice requirements for both the Planning Board and the Town Council would prohibit the Council from acting on the amendment until their first meeting in January, 2002.

Please let me know if I can offer any further clarification or assistance in this matter.

Best regards,

Andy Fillmore, AICP
Cumberland Town Planner

ITEM 2: OC DISTRICT ZONING TEXT AMENDMENT

Date	20 November, 2001
To	Town of Cumberland Planning Board
From	Andy Fillmore, Town Planner
Subject	**Zoning text amendment to allow senior housing in the southern OC district**

Background:

At the October 16, 2001 Planning Board Hearing, the Board heard proposed amendments to the Office Commercial Zone that would allow single-family detached housing for persons fifty-five years of age and older in the southern OC district. (See aerial photographs, "Exhibit #1")

At that time the Board expressed its support of the intent of the amendments, and expressed its general support of Peter Kennedy's proposed development in the area, which is the catalyst for these proposed amendments. (See site plan, "Exhibit #2") However, the Board had some concerns with the proposed language of the amendments. The motion to recommend amendments to the Town Council was tabled pending a rewrite of the amendments. Specifically the Board requested that the amendments clarify that:

- Only age-restricted single-family, duplex and multiplex residential units be allowed in the southern OC, and further that these units be granted a density bonus (10,000 s.f. lots rather than 20,000 s.f. lots for non age-restricted lots).
- Commercial uses shall be developed along the Route One frontage, thereby preserving the intent of the OC zone.
- Developers shall be required to provide public amenities for residents of any proposed residential development.

Proposed Amendment:

The revised amendments, attached, address the issues raised by the Planning Board in October.

However the Town's attorney, Ken Cole, has advised the Planning Department that the Zoning Ordinance is not the correct vehicle for requiring builder-provided amenities. He states, *"The zoning ordinance cannot authorize a planning board or a zoning board of appeals to establish new standards as part of its review of a project,"* and recommends that such requirements be added to the Subdivision Ordinance for enforcement at Subdivision Review. Mr. Cole's letter regarding this is attached as "Exhibit #3."

At this time the proposed amendments still feature language that requires builder-provided amenities, as the Planning Board requested. The Board is certainly within its

rights to recommend such language to the Town Council, however it is likely that the Council will strike that language on legal grounds, per Mr. Cole's advice.

In addition to the amendments requested by the Planning Board, Mr. Kennedy has requested that three other changes be added. These are:

1. That communication Towers be added to the southern OC zone as a Special Exception Use, in accordance with Section 433, page 152. This would also require the addition of the southern OC zone to the list of zones that permit towers as described in Section 433.4(a), page 155. Ken Cole sees no barrier to allowing this, which opinion is expressed in his attached letter, "Exhibit #4."

2. That the minimum frontage for 10,000 s.f. age-restricted residential lots be reduced from 150 ft. to 75 ft. Frontage for commercial lots shall remain at 150 ft.

3. That the side and rear building setbacks for 10,000 s.f. age-restricted residential lots be reduced to 15 ft. and 20 ft. respectively (from 20 ft. and 65 ft.). The front setback shall remain at 25 ft.

Next Steps:

The Planning Department has reviewed both the Planning Board's, and Mr. Kennedy's proposed amendments with the Code Enforcement Officer, the Town Manager, and the Town's attorney, and all parties are in support of them.

With a favorable recommendation form the Planning Board, the Town Council is prepared to consider the amendments for adoption at their meeting on 10 December 2001.

Exhibits:

~~1. Aerial photograph of Southern Office Commercial district.~~
~~2. Conceptual Plan of Potential Development~~
3. Letter from Ken Cole regarding "builder-provided amenities", 25 October, 2001.
4. Letter from Ken Cole regarding Communication Towers, 30 October, 2001.

Respectfully submitted,

P.A. Fillmore

Andy Fillmore, Town Planner

E:\Data Files\Planning\Plng-Brd\11-20-01\Kennedy\South-OC2.doc