

## AGENDA

Cumberland Town Council Meeting  
Town Council Chambers

**MONDAY, MARCH 14, 2011**

**6:00 Workshop**

**7:00 p.m. Call to Order**

**6:00 P.M. WORKSHOP** with Town Center Advisory Committee Liaisons to review committee recommendation.

**I. APPROVAL OF MINUTES**

February 28, 2011

**II. MANAGER'S REPORT**

Twin Brook Committee community garden update

**III. PUBLIC DISCUSSION**

**IV. LEGISLATION AND POLICY**

- 11 – 030** To hold a Public Hearing to consider and act on a Victualer's License application for the Cumberland/North Yarmouth Boys Youth Lacrosse, effective March 14, 2011 through June 30, 2011.
- 11 – 031** To hold a Public Hearing to consider and act on a Victualer's License application for the Cumberland/North Yarmouth Girls Youth Lacrosse, effective March 14, 2011 through June 30, 2011.
- 11 – 032** To hold a Public Hearing to authorize the Town Manager to enter into an agreement with the "First Tee" Program.
- 11 – 033** To hold a Public Hearing to authorize the Town Manager to execute a two year contract with Lowell & Lloyd Smith for the operation of the Viking Grill.
- 11 – 034** To hold a Public Hearing to consider and act on a Victualer's License, Class I Liquor License, Special Amusement Permit, and Auxiliary Mobile Golf Cart License for Rachel's on the Green at Val Halla, for the period of April 2011 – April 2012.
- 11 – 035** To appoint a member to the Twin Brook Facility Advisory Committee.
- 11 – 036** To consider and act on extending the date of the moratorium on gravel extraction to June 28, 2011.
- 11 – 037** To hold a Public Hearing to consider and act on adoption of the FY'12 Municipal Budget.
- 11 – 038** To set a Public Hearing date (March 28<sup>th</sup>) to consider and act on amendments to Main Street zoning as recommended by the Town Center Advisory Committee.
- 11 – 039** To set a Public Hearing date (March 28<sup>th</sup>) to add Section 204.23, Route 100 Corridor Residential Overlay, to the Cumberland Zoning Ordinance.
- 11 – 040** To set a Public Hearing date (March 28<sup>th</sup>) to consider and act on a Contract Zone Agreement for Phase One of the Doane Property Revitalization Project with Bateman Partners, LLC.
- 11 – 041** To authorize the Town Manager to execute a 5-year lease with Wells Fargo on behalf of Club Cart Enterprises for the lease of 50 electric carts for Val Halla Golf Course.
- 11 – 042** To hold a Public Hearing to consider and act on an extension of the Class I Liquor License for The Sparrow's Nest, d/b/a Viking Grill, for the period of March 15, 2011 – April 2, 2011.

V. NEW BUSINESS

VI. ADJOURNMENT



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- 11 – 041**   To authorize the Town Manager to execute a 5-year lease with Wells Fargo on behalf of Club Cart Enterprises for the lease of 50 electric carts for Val Halla Golf Course.

**V.     NEW BUSINESS**

**VI.    ADJOURNMENT**

# MOTIONS



# MOTIONS

- 11 – 030 **I move to approve** the Victualer's License application for the Cumberland/North Yarmouth Boys Youth Lacrosse, effective March 14, 2011 through June 30, 2011.
- 11 – 031 **I move to approve** the Victualer's License application for the Cumberland/North Yarmouth Girls Youth Lacrosse, effective March 14, 2011 through June 30, 2011.
- 11 – 032 **I move to authorize** the Town Manager to enter into a 5-year agreement with the "First Tee" Program.
- 11 – 033 **I move to authorize** the Town Manager to execute a 2- year contract with Lowell & Lloyd Smith for the operation of the Viking Grill at Val Halla
- 11 – 034 **I move to approve** the Victualer's License, Class I Liquor License, Special Amusement Permit, and Auxiliary Mobile Golf Cart License for Rachel's on the Green at Val Halla, for the period of April 2011 – April 2012.
- 11 – 035 **I move to appoint** Iwona Tarling to the Twin Brook Facility Advisory Committee.
- 11 – 036 **I move to extend** the moratorium ordinance regarding extraction of earth materials and water extraction, pumping and/or bulk storage, to June 28, 2011 pursuant to the following:
- (read moratorium language attached)*
- 11 – 037 **I move to approve** the FY'12 Municipal Budget not to exceed \$7,964,843.00.
- 11 – 038 **I move to set** a Public Hearing date of March 28<sup>th</sup> to consider and act on amendments to Main Street zoning as recommended by the Town Center Advisory Committee and forwarded to the Town Council without change.
- 11 – 039 **I move to set** a Public Hearing date of March 28<sup>th</sup> to add Section 204.23, Route 100 Corridor Residential Overlay, to the Cumberland Zoning Ordinance.
- 11 – 040 **I move to set** a Public Hearing date of March 28<sup>th</sup> to consider and act on a Contract Zone Agreement for Phase One of the Doane Property Revitalization Project with Bateman Partners, LLC.
- 11 – 041 **I move to authorize** the Town Manager to execute a 5-year lease with Wells Fargo on behalf of Club Cart Enterprises for the lease of 50 electric carts for Val Halla Golf Course.
- 11 – 042 **I move to approve** the extension of the Class I Liquor License for The Sparrow's Nest, d/b/a Viking Grill, for the period of March 15, 2011 – April 2, 2011.

*(Last year's application attached).*

**Department of Public Safety  
Division**



**Liquor Licensing & Inspection**

Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded.  
To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

**BUREAU USE ONLY**

License No. Assigned:

Class:

Deposit Date:

Amt. Deposited:

**PRESENT LICENSE EXPIRES** 3/15/2010

**INDICATE TYPE OF PRIVILEGE:** ☐ MALT ☐ SPIRITUOUS ☐ VINOUS

**INDICATE TYPE OF LICENSE:**

☐ RESTAURANT (Class I,II,III,IV)

☐ HOTEL-OPTINONAL FOOD (Class I-A)

☐ CLASS A LOUNGE (Class X)

☐ CLUB (Class V)

☐ TAVERN (Class IV)

☐ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL (Class I,II,III,IV)

☐ CLUB-ON PREMISE CATERING (Class I)

☒ GOLF CLUB (Class I,II,III,IV)

☐ OTHER: \_\_\_\_\_

**REFER TO PAGE 3 FOR FEE SCHEDULE**

**ALL QUESTIONS MUST BE ANSWERED IN FULL**

1. APPLICANT(S) –(Sole Proprietor, Corporation, Limited Liability Co., etc.) <u>Charles F. SPARROW</u> DOB: <u>1/21/57</u>			2. Business Name (D/B/A) <u>DBA</u> <u>The SPARROW'S Nest LLC</u> <u>Vikings Grill</u>		
<u>NANCY L. STORRY</u> DOB: <u>5/31/61</u>					
DOB: _____			Location (Street Address) <u>60 Val HALL RD</u>		
Address <u>19 Ryan Rd</u>			City/Town <u>Cumberland</u> State <u>Me</u> Zip Code <u>04021</u> <u>04072</u>		
			Mailing Address <u>19 Ryan Rd</u>		
City/Town <u>Saco</u> State <u>Me</u> Zip Code <u>04072</u>			City/Town <u>Saco</u> State <u>Me</u> Zip Code <u>04072</u>		
Telephone Number <u>207 604 0970</u> Fax Number _____			Business Telephone Number <u>207-829-2225 Ex 4</u> Fax Number _____		
Federal I.D. # <u>26-4028411</u>			Seller Certificate # <u>1137772</u>		

3. If premises are a hotel, indicate number of rooms available for transient guests: N/A
4. State amount of gross income from period of last license: ROOMS \$ N/A FOOD \$ 57326 LIQUOR \$ 54504
5. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐

complete Supplementary Questionnaire, If YES

6. Do you permit dancing or entertainment on the licensed premises? YES ☒ NO ☐

7. If manager is to be employed, give name: N/A

8. If business is NEW or under new ownership, indicate starting date: N/A

Requested inspection date: \_\_\_\_\_ Business hours: \_\_\_\_\_

9. Business records are located at: 60 Val HALL RD Cumberland Me 04072

10. Is/are applicants(s) citizens of the United States? YES ☒ NO ☐



11. Is/are applicant(s) residents of the State of Maine?

YES ☒ NO ☐

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:  
Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
Charles F SPARROW	1/21/57	Bangor Me
Nancy L. STOREY	5/31/61	Brunswick

Residence address on all of the above for previous 5 years (Limit answer to city & state)

Charles - Lexington TX Saco Me  
Nancy - Saco Me

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES ☐ NO ☒

Name: \_\_\_\_\_ Date of Conviction: \_\_\_\_\_  
Offense: \_\_\_\_\_ Location: \_\_\_\_\_  
Disposition: \_\_\_\_\_

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?  
Yes ☐ No ☒ If Yes, give name: N/A

15. Has/have applicant(s) formerly held a Maine liquor license? YES ☒ NO ☐

16. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner: \_\_\_\_\_  
16 Town of Cumberland

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) Bar + Grill @  
golf course (Bar grill + Back Deck)

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?  
YES ☒ NO ☐ Applied for: #656

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 1 1/2 Which of the above is nearest? 2 1/2

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☒ NO ☒

If YES, give details: SACO MIDDLEBORN SAVINGS - LOAN 19,000<sup>00</sup>

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: \_\_\_\_\_

Town/City, State

on \_\_\_\_\_

Date

, 20 10

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

Charles F. Sparrow

Signature of Applicant or Corporate Officer(s)

Nancy L. Storey



STATE OF MAINE

Dated at: Cumberland, Maine Cumberland SS  
City/Town (County)  
On: 1-17-10  
Date

The undersigned being: ☒ Municipal Officers ☐ County Commissioners of the  
☐ City ☐ Town ☐ Plantation ☐ Unincorporated Place of: \_\_\_\_\_, Maine

Hereby certify that we have given public notice on this application and held public hearing thereon as required by Section 653 Title 28A, Maine Revised Statutes and hereby approve said application.

for the Municipal Officers  
Maureen M. Canick  
Town Clerk

**THIS APPROVAL EXPIRES IN 60 DAYS**

**NOTICE - SPECIAL ATTENTION**

**§ 653. Hearings; bureau review; appeal**

1. **Hearing.** The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, shall hold a public hearing for the consideration of applications for new on-premise licenses and applications for transfer of location of existing on-premise licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.
    - A. The bureau shall prepare and supply application forms. [1993, c.730, §27(amd).]
    - B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear on at least 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located. [1995, c.140, §4 (amd).]
    - C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premise license, for transfer of the location of an existing on-premise license or for renewal of an on-premise license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premise license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premise license that has been extended pending renewal with 120 days of the filing of the application. [1999, c.589, §1 (amd).]
  2. **Findings.** In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:
    - A. Conviction of the applicant of any Class A, Class B or Class C crime: [1987, c.45, Pt.A§4 (new).]
    - B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control; [1987, c.45, Pt.A§4(new).]
    - C. Conditions of record such as waste disposal violations, health or safety violation or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner; [1993, c.730, §27 (amd).]
    - D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises; [1989, c.592, §3 (amd).]
    - E. A violation of any provision of this Title; and [1989, c.592, §3 (amd).]
    - F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601. [1989, c.592, §4 (new).]
- [1993, c.730, §27 (amd).]
3. **Appeal to bureau.** Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.
    - A. [1993, c.730, §27 (rp).]
  4. **No license to person who moved to obtain a license. (REPEALED)**
  5. **(TEXT EFFECTIVE 3/15/01) Appeal to District Court.** Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.



STATE OF MAINE  
Liquor Licensing & Inspection Unit  
164 State House Station  
Augusta, Maine 04333-0164  
Tel: (207) 624-7220 Fax: (207) 287-3424

SUPPLEMENTARY QUESTIONNAIRE FOR CORPORATE APPLICANTS, LIMITED LIABILITY COMPANIES AND  
LIMITED PARTNERSHIPS

1. Exact Corporate Name: The Sparrow's Nest LLC

Business D/B/A Name: VIKING GRILL

2. Date of Incorporation: \_\_\_\_\_

3. State in which you are incorporated: MAINE

4. If not a Maine Corporation, date corporation was authorized to transact business within the State of Maine:  
\_\_\_\_\_

5. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list percent of stock owned:

Name	Address Previous 5 Years	Birth Date	% of Stock	Title
Charles F. SPARROW	Lexington Tx Saco Me	1/21/57	95	OWNER
Nancy L. STOREY	SACO Me	7-31-61	5	OWNER

6. What is the amount of authorized stock? N/A Outstanding Stock? N/A

7. Is any principal officer of the corporation a law enforcement official? ( ) YES ☒ NO

8. Has applicant(s) or manager ever been convicted of any violation of the law, other than a minor traffic violation(s), of the United States? ( ) YES ☒ NO.

9. If yes, please complete the following: Name: \_\_\_\_\_

Date of Conviction: \_\_\_\_\_ Offense: \_\_\_\_\_

Location: \_\_\_\_\_ Disposition: ☒

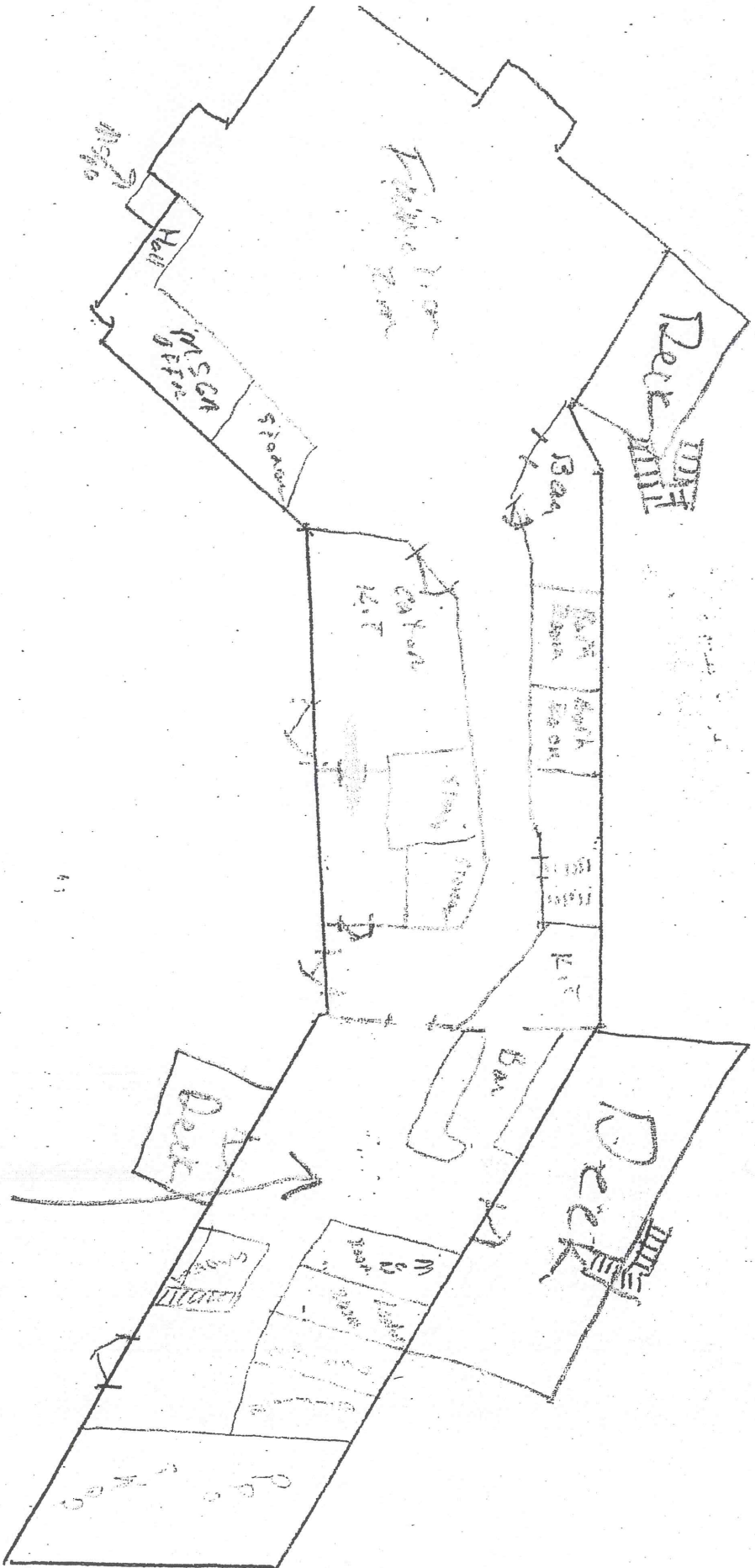
Dated at: \_\_\_\_\_ On: \_\_\_\_\_  
City/Town Date

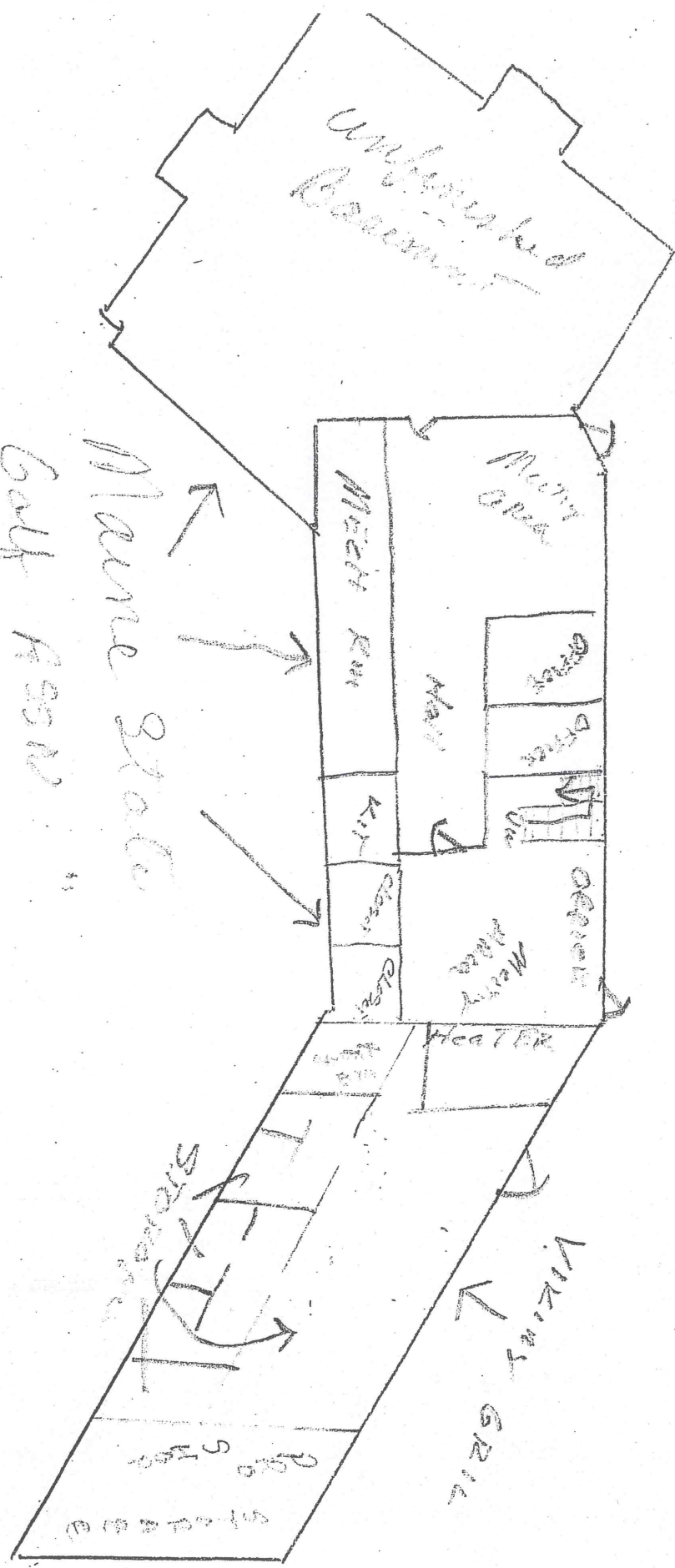
Signature of Duly Authorized Officer

Date: 1-5-2010

Charles F. SPARROW  
Print Name of Duly Authorized Officer

# 1<sup>ST</sup> Floor





← Maine State  
← Golf Assn

**Basement**

1st Floor  
Basement

EXTENSION OF MORATORIUM ORDINANCE REGARDING  
EXTRACTION OF EARTH MATERIALS AND WATER EXTRACTION,  
PUMPING AND/OR BULK STORAGE

The Town Council of the Town of Cumberland hereby ordains that the Moratorium Ordinance Regarding Extraction of Earth Materials and Water Extraction, Pumping and/or Bulk Storage enacted on November 8, 2010 be, and hereby is, extended as follows:

WHEREAS, the Town of Cumberland is under threat of increased development pressure from the extraction of earth materials in the Town and the extraction, pumping and/or bulk storage of water for wholesale commercial purposes, which uses as currently allowed, are inconsistent with other allowed and existing uses in the areas where such uses are allowed and further due to the potentially serious environmental and other impacts from such uses, including potential impacts upon groundwater and surface water quality and levels and upon abutting uses; and

WHEREAS, this development pressure was unanticipated and has not been adequately provided for in the Town's current zoning or other land use ordinances; and

WHEREAS, there is a strong likelihood that the Town will continue to be subjected to this development pressure due to the lack of adequate regulations or restrictions on the location and effects of these uses, especially in close proximity to incompatible land uses that could be adversely impacted by the noise, vibration, emissions, hours of operations, odors and other impacts resulting from these high intensity and high impact uses, as well as the environmental consequences of such uses and further due to the high demand for the minerals and water extracted and the manufactured materials and services resulting from these uses; and

WHEREAS, amendments to the zoning and other land use ordinances require public hearings by the Planning Board and a vote by the Town Council; and

WHEREAS, the Town has previously enacted a Moratorium Ordinance Regarding Extraction of Earth Materials and Water Extraction, Pumping and/or Bulk Storage and is in the process of developing new ordinances but has not had sufficient time to finalize and adopt those ordinances; and

WHEREAS, in the judgment of the Town, these facts continue to create an emergency within the meaning of 30-A M.R.S.A. § 4356(1)(B) and require extension of the Moratorium Ordinance as immediately necessary for the preservation of the public health, safety and welfare;

NOW, THEREFORE, the Town of Cumberland hereby ordains that the Moratorium Ordinance Regarding Extraction of Earth Materials and Water Extraction, Pumping and/or Bulk Storage be, and hereby is, extended until June 28, 2011, unless earlier repealed by action of the Town Council.



# MINUTES

## 02/28/11

**MINUTES**  
Cumberland Town Council Meeting  
Town Council Chambers  
**MONDAY, FEBRUARY 28, 2011**

**6:00 P.M. Workshop** with Town Center Advisory Committee Liaisons

**7:00 p.m. Call to Order**

**Present:** Chairman Storey-King, Councilors Moriarty, Stiles, Perfetti, Porter, Copp, and Turner

**I. APPROVAL OF MINUTES**

February 14, 2011

Motion by Councilor Stiles, seconded by Councilor Copp, to accept the minutes as presented with one spelling correction.

VOTE: 5-0-2 (Moriarty & Porter abstained)

MOTION PASSED

**II. MANAGER'S REPORT**

Some good news received today, the Town's bond rating went from AA- (which has been the rating for the past 20 years) to AA. This is no small task, especially in this economic climate. Typically, Standard & Poore will look at the financial capacity of towns for bond holders and future bond ratings. We are now one of the top ten communities in the entire state from a financial capacity. The Manager said that he is extremely proud of Finance Director, Alex Kimball.

Town Clerk, Tammy O'Donnell explained that nomination papers will be available on March 21<sup>st</sup> for the June 14, 2011 Municipal Election. There is one At-Large Town Council seat, one Cumberland Center Town Council seat, and two M.S.A.D. 51 Board of Director seats available. Nomination papers are required to be available 85 days prior to the election and 25 – 100 registered voter signatures are needed.

Town Clerk O'Donnell explained that she met with Recreation Program Director, Peter Bingham to outline the upcoming Twin Brook events to be included in a blanket Mass Gathering Permit. The list of events will be posted on the town website for the public to refer to.

**III. PUBLIC DISCUSSION**

None

**IV. LEGISLATION AND POLICY**

**11 – 022 To hold a Public Hearing to consider and act on a Mass Gathering Permit for a Boys Youth Lacrosse Jamboree to be held at Twin Brook on May 7, 2011.**

Town Manager Shane said that the Lacrosse Boosters have always been great to work with. Representatives from the booster clubs are here to answer any questions. Staff is recommending approval. The Police Chief said that the event went very well last year and the traffic flow was so well organized, that there is no need for police coverage this year.

Public discussion:

None



Councilor Stiles made reference to the boosters club certificate of insurance which states that "coverage applies only to teams/leagues comprised of 100% US Lacrosse member participants during scheduled and supervised lacrosse activities." He wants to confirm that all the teams that are playing are, in fact, US Lacrosse members.

Karyn Kurland, Girls Lacrosse Booster Club, said that all the players in the Cumberland Lacrosse League are US Lacrosse certified as are the other teams that play in the tournaments.

Motion by Councilor Stiles, seconded by Councilor Moriarty, to approve the Mass Gathering Permit for a Boys Youth Lacrosse Jamboree to be held at Twin Brook on May 7, 2011.

VOTE: 7-0

UNANIMOUS PASSAGE

**11 – 023 To hold a Public Hearing to consider and act on a Mass Gathering Permit for a Girls Lacrosse Round Robin to be held at Twin Brook on June 4, 2011.**

Public discussion:

None

Motion by Councilor Copp, seconded by Councilor Turner, to approve the Mass Gathering Permit for a Girls Lacrosse Round Robin to be held at Twin Brook on June 4, 2011.

VOTE: 7-0

UNANIMOUS PASSAGE

**11 - 024 To set a Public Hearing date (March 14<sup>th</sup>) to consider and act on a Victualer's License application for the Cumberland/North Yarmouth Boys Youth Lacrosse, effective March 14, 2011 through June 30, 2011.**

Town Manager Shane said that staff is recommending March 14<sup>th</sup> as the Public Hearing date.

Motion by Councilor Porter, seconded by Councilor Perfetti, to set a Public Hearing date of March 14th to consider and act on a Victualer's License application for the Cumberland/North Yarmouth Boys Youth Lacrosse, effective March 14, 2011 through June 30, 2011.

VOTE: 7-0

UNANIMOUS PASSAGE

**11 - 025 To set a Public Hearing date (March 14<sup>th</sup>) to consider and act on a Victualer's License application for the Cumberland/North Yarmouth Girls Youth Lacrosse, effective March 14, 2011 through June 30, 2011.**

Motion by Councilor Moriarty, seconded by Councilor Stiles, to set a Public Hearing date of March 14th to consider and act on a Victualer's License application for the Cumberland/North Yarmouth Girls Youth Lacrosse, effective March 14, 2011 through June 30, 2011.

VOTE: 7-0

UNANIMOUS PASSAGE

**11 – 026 To hear a report and hold a Public Hearing to consider and act on sending to the Planning Board for a recommendation, amendments to Section 410 (Extraction of Earth Materials) and Section 430 (Water Extraction and Storage) of the Cumberland Zoning Ordinance.**

Councilor Moriarty explained that over the past two months, the ordinance committee met several times and recommended to the Town Council that the wholesale/commercial extraction and/or bulk storage of water be eliminated in the zones which it is currently permitted, and that earth extraction continued to be a permitted use in the three areas which it is allowed, but that as an extra protective measure, a contract zone must be developed with the Town in each instance.

Public discussion:

Teri Maloney-Kelly of West Cumberland read the following letter to the Council:

*I want to again thank the Council for your quick response to my inquiry to review the applicability of allowing water and earth material extraction in residential zones back in October. Steve, George, Mike, and Bill I want to thank you for all the hours spent in the subcommittee meetings gathering information and listening to resident concerns over the past few months.*

*Recognizing how precious water is as a natural resource, I am supportive of the subcommittee's recommendation to eliminate commercial water extraction from the Rural Residential zones. However, I am very surprised and confused why the rest of Mother Nature's resources such as our wildlife, birds, streams and brooks, wildlife habitat, tree cover and soils and minerals would not deserve the same protection.*

*These ordinances have been on our books for 50 years. 50 years ago the make-up of our town was very different, the stripping of natural resources from our lands was acceptable and industrial businesses co-existed within our small residential neighborhoods. Now fast forward 50 years to today. The Town now has a Comprehensive Plan as a reference document for conducting and guiding our Town's business into the future. Based on information contained within the 2009 Comprehensive Plan here are some of the highlights of how our Town has changed:*

- 1. "Cumberland has experienced rapid growth over the last 50 years. The total population of the town increased more than 2.5 times in the 50 years from 2,030 in 1950 to 7,400 in 2007.*
- 2. "The number of households in Cumberland increased between 1990 and 2000 by 527, a 26% increase over the last census period. This growth makes the Town one of the 4<sup>th</sup> fastest growing towns in Cumberland County. Historically the Town of Cumberland has had a larger average household size than the county and the state, suggesting it is of above average appeal as a community for families."*
- 3. "Based on 2000 Census data, income levels in Cumberland are well above that of the state and the county. Cumberland's median household income was 81% higher than the state's and 53% more than Cumberland County."*
- 4. "Cumberland has the 2<sup>nd</sup> highest median housing value in Cumberland County, 8<sup>th</sup> in the State, and housing prices rose 55% from 2000 to 2005." 96% of Cumberland's housing is comprised of high-priced, owner-occupied, single-family homes and the median value for a home in Cumberland is \$340,000.*

*Why are all these stats important? They document the changes in the economic make-up of our residents, the financial investment in new homes, and the attractiveness of our Town as a place to live over the past 50 years.*



*Industrial business activities such as water or gravel extraction for profit may have been acceptable back in 1950 but are not in today's world of environmental responsibility, sustainability, and protection. I ask that you remember your visual memory of the October site walk and recall the barren ground stripped of all the vegetation and wildlife that previously existed, the drained pond that previously sustained wildlife, water fowl, and fish, and ask if this is the type of new business activity we want to welcome in the Town of Cumberland, much less in residential neighborhoods. Unfortunately it does not appear that the majority of the TC feels the same need to protect our mineral resources or it residents who live in a residential zone, hence the lack of a recommendation to remove the mineral extraction from our residential zones. Because this ordinance applies to 80% of the residents of our Town, a grass roots organization has been formed called the Cumberland Environmental Action Network or CLEAN. It is the intent of this citizen group to gather signatures to bring the gravel extraction ordinance to referendum so it can be removed from all rural residential zones. Although the immediate threat to our neighborhood may disappear as the property owner is looking at another use for this property, no residential neighborhood in our Town should have to fight this fight so we are going to proceed to bring this issue to referendum. To the citizens of the Town of Cumberland we need your help by signing this petition so you can vote in June to decide if you want the potential of an industrial gravel pit in your neighborhood. Remember, 80% of the taxpayers in this town have the potential to have a gravel pit as your neighbor. Please contact us via [www.cleancumberland.org](http://www.cleancumberland.org) and help us protect the future of the residential nature of your neighborhood, as well as Mother Nature's resources.*

Bert Kendall, Glenview Road, voiced his support for water extraction. From 2005 – 2007, Mr. Kendall was the Town Manager of Denmark, whose largest taxpayer was Poland Spring Water Company. During that time, he quickly learned a lot about water extraction. Water extraction can be very tightly controlled by municipal ordinance, as has been done in many towns. Anytime we can get tax revenue in our Town from a clean industry that has no downside that he is aware of, we should have some interest in that. The local ordinance gives the Town control over pumping, a test/monitoring site, and the ability to shut down in the event of drought, etc. It can be very lucrative in terms of the fee the Town can charge, as well as tax revenue. The amount of water pumped by all the water companies in the entire State of Maine is less than the evaporation of Sebago Lake in the month of July. Mr. Kendall said that he hopes that a good business proposition such as water extraction is not thrown out simply because it is politically unpopular.

Motion by Councilor Moriarty, seconded by Councilor Turner, to refer to the Planning Board the issue of whether Section 430 of the Cumberland Zoning Ordinance ought to be amended to abolish the wholesale/commercial extraction and/or bulk storage of water in existing zones to exclude Municipal or Quasi-Municipal extraction of water.

VOTE: 6-1 (Porter opposed)

Councilor Porter pointed out that the vote on this item has no bearing on whether any member of the Council supports this ordinance or doesn't support it. All that is being done at this time is forwarding it to the Planning Board for their recommendation.

Town Manager Shane said that with any ordinance change, the ordinance sub-committee works through the issues and will attend the Planning Board meeting and provide the Planning Board members with the background on the issue.

Motion by Councilor Moriarty, seconded by Councilor Turner, to send to the Planning Board for its recommendation, possible amendments to Section 410 of the Cumberland Zoning Ordinance regarding earth extraction, specifically to consider the addition of a contract zone requirement to existing criteria for review and approval.

VOTE: 6-1 (Porter opposed)

Town Manager Shane explained that the difficult part of this issue is that this will be back from the Planning Board in April. He anticipates the signatures on the petition will be turned in at that point. The Council Liaison to the Planning Board may request that it be tabled pending voter reaction in June. He thanked Teri Maloney-Kelly for working with him on this. There are a lot of unintended consequences when a use is eliminated because there are other uses that may be related that are not intended to get tangled in the same net.

Kathy Lynch, Blackstrap Road, asked why nothing has ever been mentioned regarding all the rules that were broken and caused this situation. She is referring to clear cutting without a permit, water extraction of water without a permit, and earth extraction without a permit. It makes her angry that this has never even been mentioned. She urged the residents to visit [www.cleancumberland.org](http://www.cleancumberland.org) and view the photos.

Town Manager Shane explained that when the Town was notified, we immediately contacted the DEP and they been involved since the first allegations were brought forward. The Copp's are in the process of working with the DEP on a mitigation plan. The Manager assured Mrs. Lynch that the Code Enforcement Officer has been in communication with the Copp's and the DEP through the entire process.

Councilor Moriarty added that there have been two Town issued stop work orders and two DEP violations.

Randy Copp said that he did have a forestry permit and the Forestry Service has been on site. Every piece of wood that has come off the property has been accounted for. To date, the Copp's have all the required DEP permits, and any future development will require additional permits, which they will obtain. Mr. Copp said that they were doing what the ordinance allows. He had no knowledge that he was in violation until he was told to stop. The first thing he did was to go to the DEP with a proposal and asked what permits were required. He wants everyone to know that there was no attempt to hide anything from anyone.

Robert Maloney, West Cumberland, asked Mr. Copp if it is accurate that the Town permit for the clear cutting were applied for after the trees were already cut and added that the building that is on the site does not conform to the Town's regulations.

Town Manager Shane confirmed that both these points are true.

Town Manager Shane said that Mr. Copp approached the Town regarding putting a house at the end of the road that he constructed (without a permit). The ordinance allows for excavation and extraction for the construction of a home, not a half mile away, and not with screeners and excavators. That was a clear circumvention of the rules and that is why the Town stopped him.



Joyce Vaughan of Blackstrap Road asked what the allowed use would be for a gravel pit, if the referendum fails. She wants to be sure that aggregate processing will not be an allowed use.

Councilor Moriarty responded that, in his personal opinion, if extraction was allowed, aggregate processing and construction activities would not be supported as a use in this zone.

Town Manager Shane pointed out that most subdivision plans allow for aggregate processing onsite. Typically, the materials are used to build roads and infrastructure within the subdivision. That could be allowed with any subdivision or site plan because it's in a short duration and it's bonded.

**11 – 027 To hear a report from the Town Manager re: FY'12 Budget and to set Saturday, March 5, 2011 as the Town Council FY'12 Budget Workshop date from 8:00 a.m. to noon or completion.**

Town Manager Shane explained that there will be no increase in the municipal budget from the current year to July 1<sup>st</sup> of next year. There is a reduction of approximately \$19,000 in the current budget going forward. Over the past 5 years, municipal spending has decreased over \$850,000 due to the following:

- a reduction in trash contracts with EcoMaine
- the departure of the Town Clerk/HR Director (that position was not replaced)
- a front counter clerk position is vacant and not replaced
- increase in employee paid health insurance premium to 20%
- switched to a higher deductible health plan

This year, utility costs will increase by 10% and employee wages increase by 2%. Last week, we received the projection for the State Revenue Sharing and it was up by \$270,000 over this year. Unfortunately, under the Governor's new plan, we won't receive that amount. We will receive approximately \$560,000 instead of the \$820,000 expected. If we had received that amount, we would have been able to do a lot more with infrastructure and road paving. The Manager said that he is very proud of the effort put into the budget this year by Department Heads.

In regard to an increase in the mil rate, we are waiting for the school to get through their budget process. Over the last three years, the school operating budget has been at zero, but the loss of revenue from the State left a very large hole that the taxpayers have had to make up. A 2.5 – 4.5% increase in the mil rate is predicted, but none of that is coming from the Town side.

Motion by Councilor Turner, seconded by Councilor Stiles, to set Saturday, March 5, 2011 as the Town Council FY'12 Budget Workshop date from 8:00 a.m. to noon or completion.  
VOTE: 7-0 UNANIMOUS PASSAGE

**11 – 028 To set a Public Hearing date (March 14<sup>th</sup>) to consider and act on adoption of the FY'12 Municipal Budget.**

Motion by Councilor Stiles, seconded by Councilor Copp, to set a Public Hearing date of March 14th to consider and act on adoption of the FY'12 Municipal Budget.  
VOTE: 7-0 UNANIMOUS PASSAGE

**11 – 029 To set a Public Hearing date (March 14<sup>th</sup>) to authorize the Town Manager to enter into an agreement with the “First Tee” Program.**

Town Manager Shane explained that this exciting program has national recognition and introduces young people to golf. We currently have the largest junior golf program in the state with over 400 junior golfers. This will enhance our program as well as open up funding programs. Brian Bickford has done an outstanding job with the kids at Val Halla. It is exciting to see so much enthusiasm on the golf course.

Motion by Councilor Moriarty, seconded by Councilor Turner, to set a Public Hearing date of March 14<sup>th</sup> to authorize the Town Manager to enter into an agreement with the “First Tee” Program.

VOTE: 7-0

UNANIMOUS PASSAGE

**V. NEW BUSINESS**

**Councilor Turner** – there is a Public Hearing tomorrow in Augusta re: the proposed State Revenue Sharing cuts at 1:00 p.m. in room 228 of the State House. He suggested that any member of the public that is interested should attend and give their opinion.

**Councilor Copp** – last week, he received an e-mail from a resident who praised the Town Manager. What this resident recognized in the Manager is something that the Council members see every day. Thank you for the kind words and we appreciate him as much as that resident does.

**Councilor Porter** – received a letter from Lou Snow re: the budget. He responded back to Mr. Snow and encouraged him to get involved in the budget process.

**Councilor Perfetti** – received a phone call from a resident who is interested in the possibility of partnering with the developer of the Doane Property to include a Habitat House. He advised her that the next opportunity to be heard on this will be at the Planning Board meeting. He encouraged the Council to keep an open mind to the possibility of a Habitat House as part of this project.

**Chairman Storey-King** – referred to a thank you note from a resident who is appreciative of the Senior Circuit Breaker program.

Last week, she put out a special edition of the Cumberland Crier updating residents as to what has been happening with the Doane Property. She asked the Town Manager to post both the letters that she wrote in regard to the Doane Property on the Town’s website.

**Councilor Stiles** – the heavy limit truck signs are posted. The purpose of the road posting is to protect the roads from being broken up by heavy vehicles.

**Councilor Moriarty** – received the same phone call as Councilor Perfetti re: an affordable housing option on the Doane Property. He suspects that this will be discussed further when this item comes back to the Council.

His mailbox almost made it to the end of February, but not quite.

**Town Manager Shane** – the Contract Zone Agreement for Phase I of the Doane Property has been sent to the Planning Board. There may be opportunities in the remainder of the parcel to weave in some



Habitat houses, but the Planning Board is looking at the Phase I proposal that the Council forwarded to them and a Habitat house is not part of that.

The Twin Brook committee is meeting tomorrow evening and a community garden will be discussed. There are some residents who are actively pursuing the possibility of a community garden and Twin Brook offers a host of opportunities from access to water, parking, open areas, which make it conducive. The Town's DEP permit would have to be amended, and the Planning Board would have to authorize an amendment to the site plan. These are both very simple, administrative matters to take care of.

**VI. EXECUTIVE SESSION** pursuant to 1 M.R.S.A., § 405 (6)(C) re: real property and § 405 (6)(A) re: Town Manager evaluation.

Motion by Councilor Moriarty, seconded by Councilor Stiles, to recess to Executive Session pursuant to 1 M.R.S.A., § 405 (6)(C) re: real property and § 405 (6)(A) re: Town Manager evaluation.

VOTE: 7-0 UNANIMOUS PASSAGE  
TIME: 8:30 p.m.

Motion by Councilor Stiles, seconded by Councilor Perfetti, to return from Executive Session.

VOTE: 7-0 UNANIMOUS PASSAGE  
TIME: 9:52 p.m.

Motion by Councilor Perfetti, seconded by Councilor Turner to authorize the Town Manager to amend the Purchase and Sale Agreement for the sale of the banquet center at Val Halla.

VOTE: 7-0 UNANIMOUS PASSAGE

**VII. ADJOURNMENT**

Motion by Councilor Perfetti, seconded by Councilor Turner, to adjourn.

VOTE: 7-0 UNANIMOUS PASSAGE  
TIME: 9:55 p.m.

Respectfully submitted by,

Brenda L. Moore  
Council Secretary

# MANAGER'S REPORT

## MEMORANDUM

To: William Shane, Town Manager  
FROM: Chris Bolduc, Director of Operations/Public Services  
RE: Twin Brook Committee Council Agenda Items  
Date: March 10, 2011

At the March 8<sup>th</sup> Twin Brook Advisory Committee meeting, the Committee unanimously voted to bring the following items before the Council at the March 28<sup>th</sup> Council Meeting.

- After listening to a presentation made by Karen Marden regarding a potential community garden located on the Tuttle Road side of the Twin Brook facility, the committee voted to endorse locating a community garden at Twin Brooks and will be coming to the Council with a recommendation of approval of the garden with recommended conditions. These conditions will be outlined in a letter from the Committee Chair, John Leavitt, to the council prior to the meeting date.
- The committee voted unanimously to bring to the Council recommended changes they would like to see made to the Twin Brook Facility Rules and Regulations. Included in these changes will be the recommendation to adopt a lightning and foul weather policy as well as a recommendation to ban horses from the facility.



# ITEM

## 11-030

To hold a Public Hearing to consider and act on a Victualer's License application for the Cumberland/North Yarmouth Boys Youth Lacrosse, effective March 14, 2011 through June 30, 2011.

**TOWN OF CUMBERLAND, MAINE**  
**APPLICATION FOR VICTUALER'S (Food Service Establishment) LICENSE**

Business or Trade Name: Cumberland / North Yarmouth Youth  
Lacrosse

Business Address: \_\_\_\_\_

Name of Manager: Karyn Kurland Bus. Phone: 653-5837

Date of Event or New License: 5/7/11

Signature of Authorized Person: Karyn Kurland Date: 2/15/11

+++++

**CHECK THE PROPERTY CATEGORY OF REQUESTED LICENSE:**

- (a) Restaurant or Victualer not serving malt beverages on the premises \$50.00 \_\_\_\_\_
- (b) Restaurant or Victualer serving malt beverages on the premises \$50.00 \_\_\_\_\_
- (c) Class A Restaurant, as defined by the Revised Statutes of Maine, serving both malt liquor and spirituous and vinous liquor \$50.00 \_\_\_\_\_
- (d) A business establishment such as, but not limited to, retail grocery stores, food storage warehouses, bakeries, delicatessen stores, and dairy product stores, where food is stored or is kept for sale and where the total area of the establishment is less than 10,000 square feet \$25.00 \_\_\_\_\_
- (e) Same as (d) but total area of the establishment is more than 10,000 square feet \$25.00 \_\_\_\_\_
- (f) Eating and Lodging places. Any place where eating and sleeping accommodations are furnished to the public such as hotels, motels and bed and breakfasts \$100.00 \_\_\_\_\_
- (g) Establishment operated by Non-Profit organization NO FEE ☒
- (h) Vending Machine \$10.00 \_\_\_\_\_
- (i) Temporary Vending Unit operating at a fair. Per Unit: \$10.00 \_\_\_\_\_  
Name & type of vending unit(s): \_\_\_\_\_
- (j) Mobile Vending Unit \$10.00 \_\_\_\_\_

Enclose CHECK payable to: Town of Cumberland  
SEND TO: TOWN CLERK, 290 Tuttle Road, Cumberland ME 04021

Application Rec'd: \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Cert No. \_\_\_\_\_



# ITEM

## 11-031

To hold a Public Hearing to consider and act on a Victualer's License application for the Cumberland/North Yarmouth Girls Youth Lacrosse, effective March 14, 2011 through June 30, 2011.



**TOWN OF CUMBERLAND, MAINE**  
**APPLICATION FOR VICTUALER'S (Food Service Establishment) LICENSE**

Business or Trade Name: Cumberland/North Yarmouth Youth Lacrosse

Business Address: \_\_\_\_\_

Name of Manager: Karen Kurland Bus. Phone: 653-5837

Date of Event or New License: 6/4/11

Signature of Authorized Person: Karen Kurland Date: 2/15/11

+++++  
**CHECK THE PROPERTY CATEGORY OF REQUESTED LICENSE:**

- (a) Restaurant or Victualer not serving malt beverages on the premises \$50.00 \_\_\_\_\_
- (b) Restaurant or Victualer serving malt beverages on the premises \$50.00 \_\_\_\_\_
- (c) Class A Restaurant, as defined by the Revised Statutes of Maine, serving both malt liquor and spirituous and vinous liquor \$50.00 \_\_\_\_\_
- (d) A business establishment such as, but not limited to, retail grocery stores, food storage warehouses, bakeries, delicatessen stores, and dairy product stores, where food is stored or is kept for sale and where the total area of the establishment is less than 10,000 square feet \$25.00 \_\_\_\_\_
- (e) Same as (d) but total area of the establishment is more than 10,000 square feet \$25.00 \_\_\_\_\_
- (f) Eating and Lodging places. Any place where eating and sleeping accommodations are furnished to the public such as hotels, motels and bed and breakfasts \$100.00 \_\_\_\_\_
- (g) Establishment operated by Non-Profit organization NO FEE ☒
- (h) Vending Machine \$10.00 \_\_\_\_\_
- (i) Temporary Vending Unit operating at a fair. Per Unit: \$10.00 \_\_\_\_\_  
Name & type of vending unit(s): \_\_\_\_\_
- (j) Mobile Vending Unit \$10.00 \_\_\_\_\_

Enclose CHECK payable to: Town of Cumberland  
SEND TO: TOWN CLERK, 290 Tuttle Road, Cumberland ME 04021

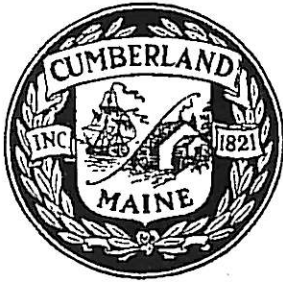
Application Rec'd: \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Cert No. \_\_\_\_\_

# ITEM

## 11-032

To hold a Public Hearing to authorize the Town Manager to enter into an agreement with the "First Tee" Program.





# M E M O R A N D U M

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

**To:** Town Council  
**From:** William R. Shane, Town Manager  
**Date:** March 10, 2011  
**Re:** First Tee Program

---

Brian Bickford will be giving an overview of the First Tee Program. I am asking for your authorization to enter into an agreement with "First Tee". We are still going back and forth with the draft contract language with Ken and Kate Boyle of the Maine Golf Foundation. I am hopeful by meeting time Monday we will have the final pieces put together. This is a five year contract with 2 five year renewable terms. We are looking for a long term partnership that will help grow junior golf, but also help with infrastructure investment from the national organizations which support First Tee.

**DRAFT**

**Golf Facility Use Agreement  
The First Tee of Maine  
October 22, 2010**

**This Use Agreement** is made as of October 22, 2010 (the "Date Hereof"), by and between the Maine Golf Foundation, Inc., a not-for-profit corporation (hereinafter the "Chapter"), and the Val Halla Golf Course, a municipal golf course owned by the Town of Cumberland, Maine (hereinafter the "Owner").

**Whereas**, the Owner is the owner of those certain existing golf course facilities described in Exhibit A attached hereto and incorporated herein by reference (the "Golf Facilities"); and

**Whereas**, the Chapter is a non-profit corporation whose purpose is to provide for the general instruction of all persons in the proper techniques, etiquette, rules and technology of golf, with special emphasis on children and young adults; and

**Whereas**, pursuant to the Chapter Agreement the Chapter may receive funds up to \$XXX,XXX from the First Tee for the development and/or operation of a First Tee program in Maine; and

**Whereas**, the Chapter desires to locate its First Tee program at the Owner's Golf Facilities and the Owner is willing to provide the Chapter access to and use of its Golf Facilities for the First Tee program in accordance with the terms and provisions of this agreement.

**Now, therefore**, in consideration of the mutual covenants and agreements contained hereinbelow, the Owner and the Chapter agree and covenant as follows:

1. Within ten (10) days after the Date Hereof, the Chapter shall apply for and diligently pursue the execution of a Chapter Agreement with the First Tee. If the Chapter does not execute a Chapter Agreement with the First Tee and become a First Tee chapter within six (6) months after the Date Hereof, this Agreement shall terminate and be null and void, and the parties hereto shall have no further rights or obligations hereunder. If the Chapter does not execute a Chapter Agreement with the First Tee and become a First Tee chapter with six (6) months after the Date Hereof, the executed Chapter Agreement shall be attached to this Agreement as Exhibit B in place of the form currently attached hereto, this Agreement shall become fully effective and the following terms and provisions of this Agreement shall control the relationship between the Chapter and the Owner.



2. Upon the Chapter becoming a First Tee chapter, the Owner agrees to provide the Chapter access to and use the Golf Facilities for Chapter participants in accordance with the minimum access and program use requirements of the Chapter Agreement. The Chapter's use of the Golf Facilities shall include, but not be limited to:
  - a. Owner will provide up to sixteen (16) rounds of golf at no cost for each qualified Chapter participant wishing to obtain certification under The First Tee's curriculum;
  - b. Greens fees for non-certification rounds played by Chapter participants at an appropriate discounted price as agreed by the Owner and the Chapter; and
  - c. Range balls at an appropriate discounted price as agreed by the Owner and Chapter. Greens fees and range ball fees will be paid by participants before play or otherwise subsidized by the Chapter or a third party. Such greens fees and range balls shall be the property of the Owner and not the Chapter. The parties expect that the foregoing minimum criteria will likely be exceeded as the parties work together to impact the lives of young people through the game of golf and its values.
3. In cooperation with the Owner, Chapter will provide and administer golf instruction and/or classroom instruction incorporating The First Tee Life Skills & Golf Experience curriculum for a minimum of two hundred fifty (250) hours per calendar year at the golf Facilities. Chapter and Owner will specify and agree upon any and all golf instructors employed by the Chapter.
4. The Chapter and Owner will specify and agree upon the hours of operation in which the above-described access and use criteria are to be satisfied, and cooperate on all other program and operating matters under this Agreement. In determining reasonable access and use, the parties will adhere to The First Tee's access guidelines of fully integrating Chapter participants' use into the rhythm of play of the other patrons at the Golf Facilities, which means balancing the need of the Owner to exclude "peak times" with reasonable convenient times for young people.
5. The Chapter and the Owner shall work together to obtain and provide funds for both capital improvements to the Golf Facilities and for operational expenses of the Chapter.
6. The term of this Agreement shall begin effective October 22, 2010 and shall continue until December 31, 2025.
7. To the extent allowed by law, each party hereto (the "Indemnifying Party") agrees to protect, indemnify and hold the other party and the other party's respective directors, officers, employees and agents (the "Indemnified Party") harmless from and against any and all expenses, damages, claims, suits, actions, judgments, and

cost including reasonable attorney's fees, arising out of or in any way connected with the negligent, grossly negligent, reckless, or intentional acts or omissions of the Indemnifying Party, except for claims also based upon the Indemnified Party's negligent, grossly negligent, reckless, or intentional acts or omissions. The terms of this paragraph shall survive the termination of this Agreement.

8. Neither party shall assign rights under the Agreement without the express written consent of either party. This Agreement shall be governed by Maine law heard by a court competent jurisdiction and binding upon and inure to the benefit of the Chapter, Owner and their duly authorized successors and assigns. This Agreement shall no be modified or amended except by writing signed by all parties. This agreement constitutes the entire agreement of the parties and supersedes all prior written and oral agreements and understandings related to the subject matter herein.

**In witness whereof**, the parties hereby execute and deliver this Agreement as of the day and year first above written.

MAINE GOLF FOUNDATION, INC.,  
A 501(c)(3), non-profit corporation,

By: \_\_\_\_\_  
Name & Title

VAL HALLA GOLF COURSE,  
A municipal golf course owned by the Town of Cumberland, Maine,

By: \_\_\_\_\_  
Name & Title



## Exhibit A Golf Facilities

Facility Name: Val Halla Golf Course

Location: 60 Val Halla Road  
Cumberland, ME 04021  
(207) 829-2225

Mailing (Town Hall): 290 Tuttle Road  
Cumberland, ME 04021  
(207) 829-2208

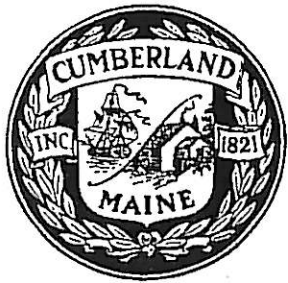
Description: Val Halla Golf Course is an 18-hole municipal regulation golf facility owned by the Town of Cumberland, Maine. It has a driving range, forward tees, a dedicated Junior Golf Room (fully equipped, classroom space), a junior club repair room (fully equipped), and a clubhouse. We are currently the home of the largest junior program in Maine and the home of the Maine State Golf Association and Maine golf Foundation.

# ITEM

## 11-033

To hold a Public Hearing to authorize the Town Manager to execute a two year contract with Lowell & Lloyd Smith for the operation of the Viking Grill.





# M E M O R A N D U M

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

**To:** Town Council  
**From:** William R. Shane, Town Manager  
**Date:** March 10, 2011  
**Re:** Lloyd & Lowell Smith Agreement for Viking Grill-  
DBA "Rachel's on the Green at Val Halla"

---

I will be asking for your authorization to enter into a 2 year agreement with Mike & Lowell Smith. I will also be asking for your approval for the following licenses:

- a. Class I liquor license
- b. Victualer's License
- c. Mobil Vending Cart License
- d. Special Amusement Permit

In addition, the 2 year contract.

Pursuant to your direction, I have met with both of the Smith's and they have agreed to and complied with your conditions of approval including a financial capacity letter, liquor license acceptance, involvement of both partners in the operation explanation and background checks.

Both men attended the Val Halla Board of Directors meeting and reviewed their hours, menus and management of the facility. The Board of Directors was very supportive of their operations plan and wished them the best in moving forward.

## LEASE

This Lease, dated April 4, 2011 for reference purposes, is made between the TOWN OF CUMBERLAND, with offices in Cumberland, County of Cumberland and State of Maine ("Landlord") and Lloyd and Lowell Smith, doing business as Rachel's on the Green, with a place of business at Cumberland, County of Cumberland and State of Maine ("Tenant"), who agree as follows:

### ARTICLE I BASIC LEASE PROVISIONS

The following basic Lease provisions supplement and summarize provisions elsewhere in this Lease. They are presented to facilitate convenient reference by the parties to this Lease, subject to further definition and discussion in the referenced sections and elsewhere in this Lease. Although the basic Lease provisions are part of this Lease, if there is any conflict between the basic Lease provisions and provisions contained in the balance of this Lease, the provisions contained elsewhere shall control.

Use:	Restaurant & Bar	(Sec. 5.1)
Tenant's Trade Name:	Rachel's on the Green	(Sec. 5.1)
Premises Address:	60 Val Halla Road	(Sec. 2.1)
Commencement		
Date:	April 4, 2011	(Sec. 3.1)
Primary Term:	23 months	(Sec. 3.2)
Option Period:	Landlord's discretion	(Sec. 3.3)
Rent:	\$700/month April – November	(Sec. 4.2)
	\$200/month December – March	
Damage Deposit:	\$2,000	(Sec. 4.3)
Exhibits:		

- A. Tenant's Certificate of Insurance

### ARTICLE 2 PREMISES

2.1 **Leased Property:** Landlord leases to Tenant and Tenant leases from Landlord the following property (the Premises):

(a) **Premises:** The snack bar area at Val Halla Golf & Recreation Center, including kitchen, bar and dining area at Viking Grill, common use of adjoining deck and restrooms in restaurant area and dedicated space to be used as an office or for storage. Landlord does not guarantee Tenant rights to catering of banquet facility events or use of banquet facility kitchen. Tenant may negotiate with Maine State Golf Association as Lessee of said banquet facility to provide catering services or for use of banquet facility kitchen.

(b) **Parking Spaces.** Tenant will not have exclusive use of any parking spaces but the Landlord will permit restaurant guests and employees to park in the Center parking lot at the



rear entrance of the building. Tenant or its employees may only use rear entrances for loading/unloading or receiving shipments on a time-restricted basis.

(c) **Contents.** Landlord also leases to Tenant all furniture, fixtures, equipment and furnishings located at the premises. A list of Landlord's personal property included in this Lease will be prepared and attached hereto, but Tenant agrees that whatever the contents of said list, all said furniture, fixtures, equipment and furnishings as are in place on April 4, 2011 are included herewith and Tenant shall be responsible for all additional items required to operate a restaurant.

(d) **Bar.** Tenant shall operate the bar adjoining the restaurant at such times as Tenant reasonably determines to open the same. Hours of operation must be consistent with industry standards and maintained throughout the season. Changes to hours of operation must be approved by Landlord and notice of the same must be given to Landlord and restaurant guests at least seven (7) days prior to the change taking effect.

2.2 **Tenant's Acceptance of Premises.** Tenant shall accept the Premises in its "As Is" condition on the Commencement Date, but shall be entitled to early occupancy, without cost, to clean and renovate the same with Landlord's consent.

2.3 **Recreation Center.** The Premises are part of a larger parcel of real property (the "Center") owned by Landlord commonly known as Val Halla Golf & Recreation Center in the Town of Cumberland, County of Cumberland, State of Maine.

2.4 **Landlord's Title and Authority.** Landlord has good, legal, and marketable fee title to the Premises and the full right and lawful authority to make this Lease.

2.5 **Quiet Enjoyment.** So long as no Event of Default (as defined below) has occurred, Tenant shall have full, quiet, and peaceful possession of the Premises without interference or interruption by Landlord. This quiet enjoyment provision will not be effective once Landlord has given notice of termination subject to Article 3, paragraph 3.4.

2.6 **Access.** Golfers shall have the right to use said premises in common with Tenant's customers. Also, Landlord shall have the right through its golf professional to use a portion of said restaurant space for registration during golf outing events and further to enter upon the Premises for the purpose of inspection, serving or posting notices, making any necessary repairs to the Premises, complying with laws, ordinances, or regulations, protecting the Premises, or any other lawful purpose. Tenant shall be open for business, in at least a limited capacity, during all organized golf outing events, including hours of registration. Landlord reserves the right to operate the Premises during such times if Tenant is unable or unwilling to do so. Landlord shall exercise such rights reasonably, upon reasonable advance notice (except in the case of emergencies) and in such manner as not to interfere unreasonably with the business of Tenant.

## ARTICLE 3

### TERM

3.1 **Commencement Date.** This Lease shall be effective and Tenant's obligation to pay rent shall commence on April 4, 2011 (the "Commencement Date").

3.2 **Initial Term.** The initial term (the "Initial Term") shall begin on the Commencement Date and end on March 1, 2013.

3.3 **Extensions.** Provided that Landlord determines at its sole judgment that the operation of said restaurant was beneficial to the Center as a whole, Landlord agrees to negotiate extensions hereof at the end of the term.

3.4 **Early Termination.** Landlord has the right to terminate the Lease at any time, with cause. Tenant has the right to terminate this Agreement thirty (30) days prior written notice to Landlord.

3.5 **Licenses and Permits.** Tenant shall be responsible for obtaining all necessary licenses and permits to operate said restaurant. Upon termination of the Lease the Tenant will surrender and assign, if requested by Landlord, to Landlord, concurrently with such termination, all of the licenses and permits necessary to operate the restaurant (without compensation to Tenant).

## ARTICLE 4

### RENT

4.1 **Lease Year.** The term Lease Year shall mean twelve (12) consecutive full calendar months commencing April 4, 2011. Any succeeding Lease Year shall commence upon the anniversary of the commencement of the first Lease Year.

4.2 **Rent.** Tenant shall pay to Landlord by the 15<sup>th</sup> of each month:  
April – November inclusive: \$700 per month  
December – March: \$200 per month  
Totaling: \$6,400 annually

4.3 **Damage Deposit.** Tenant shall be required to place a deposit of \$2,000 with Landlord as security for payment of rent and Tenant's obligation to explain and clear said premises during the Term hereof and permit to the obligation to surrender the same set forth in Section 14.1.

4.4 **Confidentiality of Information.** Landlord shall maintain confidentiality and not disclose to third parties the information furnished or revealed as the result of Section 4.3 except as may be required by the Right to Know Law, or for disclosure to prospective new Tenants after the expiration or termination of this Lease.

4.5 **Marketing.** Tenant shall be responsible for the cost of local advertising.

4.6 **Golf Pro.** Tenant shall be given first option to provide food and beverage service for various Val Halla Golf Association events and leagues and private functions and golf outings. If Tenant elects to provide food and beverage service for any of the aforementioned events, Tenant shall coordinate menu offerings and pricing with the golf pro. If Tenant declines to provide the same, the golf pro shall offer the option to an outside caterer.

## ARTICLE 5

### USE

5.1 **Use.** The premises shall be used for the operation of a restaurant for Center guests and the public generally. Landlord acknowledges that Tenant intends to operate a restaurant with the service of alcoholic beverages and Tenant shall obtain proper liquor liability insurance protecting Landlord in this regard. Tenant shall not use or permit the Premises to be used for any other purpose.

5.2 **Compliance with Laws.** Tenant shall comply with all laws concerning the use, condition, and occupancy of the Premises during the term. Victualers and Liquor Licenses shall be obtained by Tenant, as well as any other State or local permit or license needed to operate said Restaurant.

5.3 **Conduct of Business.** Tenant must provide high quality food and beverage service during the Center's business hours seven days per week during the golfing season, generally defined as April 15 to November 15, and during such hours as the parties may reasonably agree during the off season. Hours of operation must be consistent with industry standards and maintained throughout the golfing season. Changes to hours of operation must be approved by Landlord and notice of the same must be given to Landlord and restaurant guests at least seven (7) days prior to the change taking effect. Landlord shall further have the right to consult on Tenant's menu and prices thereof, approval from said consultation shall not be deemed required. Further, any change in restaurant hours, menu or prices shall be established in consultation with Landlord. Tenant shall deliver a proposed menu and a full Operating Procedures manual to Landlord prior to commencement of this Lease and on an annual basis thereafter. Notwithstanding the foregoing, Tenant shall not be required to operate in the Premises (i) on the days the Center is not otherwise open for other than golf, (ii) if it is prevented from doing so because of force majeure considerations, (iii) for a reasonable period of time at the end of the term to facilitate moving out, restoration, and other activities incidental to Tenant winding up business at the Premises. If Tenant is unable or unwilling to operate in the Premises under the aforementioned circumstances, Landlord reserves the right to operate in the Premises. Tenant shall carry on its business at all times in an efficient, quality, and reputable manner for the type of business for which the Premises are leased, including maintenance of an adequate number of employees and sufficient inventory. Landlord agrees that normal odors and exhaust incidental to a restaurant, excluding odors of deteriorating food, shall not be deemed a nuisance or objectionable.

5.4 **Public Restaurant.** The Premises shall be opened to the general public and Tenant and its employees shall operate a public restaurant in a courteous and pleasant manner under the same terms and conditions as set forth herein. Restaurant guests may use the adjoining deck but no reserved seating is intended to be made available thereat by the terms of this Agreement. Smoking on the outside deck is prohibited under 22 MRSA §1550.

5.5 **Employees.** All employees shall be Tenants, but Landlord reserves the right to approve the same; Tenant agrees that the provision of adequate wait staff, bartenders and cooks are a condition hereof. Tenant shall provide staff to operate a mobile vending cart during such days and tournaments as the parties may reasonably agree.

5.6 **Coke Scramble.** Tenant shall serve exclusively Coca Cola products in accordance with a tournament agreement between the Coca Cola Company and the Val Halla Golf Association.

## ARTICLE 6

### MAINTENANCE OF PREMISES

6.1 **Tenant's Obligations.** Subject to the provisions of this Lease concerning destruction and condemnation, Landlord shall make all necessary repairs and replacements to maintain the clubhouse Premises, except the Pro Shop, in good order, condition, and repair, including to kitchen equipment and furniture provided, ordinary wear and tear excepted. At all



times Tenant shall maintain the kitchen, related storage areas and Restaurant in a safe and sanitary condition and at a level commensurate with other restaurants in the area. Tenant shall also maintain exterior landscaping and plantings as well as ensure general tidiness immediately around the rear entrances and on the outdoor eating area of the adjoining deck. Tenant shall maintain the restrooms located in the restaurant area including daily inspection, cleaning, trash removal and stocking of supplies in accordance with restaurant industry standards. Failure to comply with maintenance obligations shall be cause for early termination of this Lease.

6.2 **Tenant Improvements.** Tenant may make certain improvements to the premises involving certain remodeling of the Restaurant and kitchen areas, at Tenant's cost and with prior approval of Landlord. All such improvements which are permanent in nature shall become Landlord's at the end of the term without any obligation to reimburse Tenant therefor.

6.3 **Emergency Repairs.** In the event of any life or property-threatening emergency, Landlord shall have the immediate right to enter the Premises to effect emergency repairs without prior notice to Tenant. In the event Landlord is unable to conduct emergency repairs immediately, Landlord will provide Tenant a list of contractors authorized to complete emergency repairs on Landlord's behalf.

## ARTICLE 7 COMMON AREAS

7.1 **Definition.** The term Common Area means all areas and facilities within the Center that are designated by Landlord from time to time for the common use of Tenant and other guests or Tenants of the Center. Common Areas include hallways, lobby, driveways, parking areas, loading areas, landscaped areas, restrooms and the like.

7.2 **Modifications.** Landlord shall refrain from doing or permitting to be done any act which would in any way materially impair the visibility of or access to the Premises.

7.3 **Tenant's Right to Use.** Landlord gives Tenant and its representatives, customers, and invitees the nonexclusive right to use the Common Areas in common with others to whom Landlord has granted or shall grant a similar right, except as provided herein. Tenant shall not locate any of its restaurant equipment or furniture in Common Areas, nor displace any Golf Association bulletin boards or computer equipment from Common Areas. Members of the Val Halla Golf Association shall have priority to use lockers and shower facilities within the shared restrooms.

7.4 **Landlord's Maintenance and Management.** At all times Landlord shall adequately insure the Common Areas and maintain the Common Areas in good condition, including keeping the Common Areas properly lighted and repaired. Landlord shall have the exclusive right to:

(a) **Rules and Regulations.** Establish and enforce reasonable rules and regulations applicable to all Tenants and Center guests concerning the maintenance, management, use, and operation of the Common Areas.

(b) **Maintenance Closure.** Close temporarily any of the Common Areas for maintenance. Landlord shall, however, use its best efforts to maintain free access to the Premises during Tenant's normal business hours.

(c) **Costs.** Landlord shall bear all costs associated with maintenance of the Common Areas.

7.5 **Vending Machines.** Landlord shall be responsible for operation and maintenance of all vending machines located on the Premises and has the exclusive right to all profits therefrom.

## **ARTICLE 8**

### **UTILITIES**

8.1 **Utilities.** Landlord shall pay the appropriate suppliers for water, sewer, telephone, internet and refuse removal. Landlord shall provide one full tank of propane upon the commencement of the Lease Term. Tenant shall be responsible for the cost of propane used during the months of the Lease Term in which Tenant's business is in operation and shall provide a full tank of propane upon the expiration of the Lease Term. Landlord shall bill Tenant for the cost of propane, cable and electricity based upon monthly usage.

## **ARTICLE 9**

### **TAXES & ASSESSMENTS**

9.1 **Personal Property.** Tenant shall pay all taxes levied and assessed against furnishings, fixtures, equipment, and other personal property of Tenant kept upon the Premises to the extent such taxes become payable during the term of this Lease

9.2 **Real Property.**

(a) **Obligation.** Since Landlord is a municipal corporation, no real property taxes will be assessed on said premises and nor does Landlord expect any assessment to be made on Tenant's Leasehold.

## **ARTICLE 10**

### **INDEMNITY & INSURANCE**

10.1 **Landlord Exculpation.** Landlord shall not be liable to Tenant for any damage to Tenant or Tenant's property from any cause, and Tenant waives all claims against Landlord for damage to person or property arising from any reason, except that Landlord shall be liable to Tenant for damage to Tenant resulting from the negligence or willful misconduct of Landlord or its representatives.

10.2 **Tenant's Indemnity.** Tenant shall defend, indemnify, and hold Landlord and its representatives harmless from and against any and all costs, expenses (including attorneys' fees and court costs), losses, liabilities, damages, claims, and demands of every kind or nature (collectively, "Losses"), arising in any way from (i) construction on or use or occupancy of the Premises by Tenant or any person claiming under Tenant, (ii) the conduct of Tenant's business and any activity, work, or thing done or permitted by Tenant in or about the Premises, (iii) negligence or willful misconduct of Tenant or its representatives, or (iv) any breach or default in the performance of any obligation on Tenant's part to be performed under this Lease. Tenant shall defend any such action or proceeding brought against Landlord or its representatives at Tenant's expense with counsel reasonably satisfactory to Landlord. Tenant's foregoing indemnity obligation shall, however, exclude Losses arising in any way from the negligence or willful misconduct of Landlord or its representatives.

10.3 **Landlord's Indemnity.** To the extent of the Maine Tort Claims Act, Landlord shall defend, indemnify, and hold Tenant and its representatives harmless from and against any and all Losses arising in any way from (i) construction on or use of the Common Areas, (ii) the management of the Common Area and any activity, work, or thing done or permitted by Landlord in or about the Common Areas, (iii) negligence or willful misconduct of Landlord or its representatives, or (iv) any breach or default in the performance of any obligation on Landlord's part to be performed under this Lease.

Landlord shall defend any such action or proceeding brought against Tenant or its representatives at Landlord's expense with counsel reasonably satisfactory to Tenant. Landlord's foregoing indemnity obligation shall, however, exclude Losses arising in any way from the negligence or willful misconduct of Tenant or its representatives.

10.4 **Tenant's Insurance.** Tenant shall, at all times after the delivery of the Premises to Tenant, carry at its expense:

(a) **Liability Insurance.** Comprehensive general liability insurance providing bodily injury and property damage including dram shop/liquor liability coverage in the amount of at least \$1,000,000 combined single limit insuring against all legal liability (subject to usual policy exclusions, terms, and conditions) of Tenant and its representatives arising out of the use, occupancy, or condition of the Premises. Such insurance shall name Landlord as an additional insured for the specified amount. Tenant shall have the right to effect all or any part of such insurance by endorsement on general liability insurance maintained by or on behalf of Tenant or by a separate policy or policies of insurance.

(b) **Worker's Compensation.** Worker's compensation insurance as required by law.

10.5 **Certificates.** Tenant shall deliver to Landlord, prior to delivery of possession of the Premises to Tenant, a certificate or certificates of insurance evidencing the types of coverage, carriers, limits, and effective dates of coverage (see attached). Each policy shall provide not less than 10 days' prior notice to Landlord of cancellation of that insurance. Tenant shall provide current certificates or other satisfactory evidence of renewal to Landlord throughout the term of this Lease. Tenant shall name Landlord as co-insured on all policies. Tenant shall hold insurance policies on workers' compensation and employee liability, commercial general public liability, liquor liability, fire and business interruption, and insurance on any personal property owned by Tenant.

10.6 **Waivers of Subrogation.** Landlord and Tenant shall each obtain from their respective insurers under all policies of fire, theft, public liability, worker's compensation and other insurance maintained by either of them at any time during the term hereof insuring or covering the Center, the Premises or any portions thereof or operations therein, a waiver of all rights of subrogation which the insurer of one party might have against the other party, and Landlord and Tenant shall each indemnify the other against any loss or expense, including reasonable attorneys' fees, resulting from the failure to obtain such waiver.

10.7 **Employment Clarification.** It may occur from time to time that an employee of Landlord may work temporarily for Tenant, or an employee of Tenant may work temporarily for Landlord. In every case, full employment records must be kept on these employees by both parties, and the employee must log off one party's payroll and log onto the other party's payroll, prior to commencing work.



## ARTICLE 11

### ASSIGNMENT & SUBLETTING

11.1 **General Prohibition.** Tenant shall not assign or sublet all or any portion of the Premises or Tenant's interest in this Lease without Landlord's prior written consent, and if said consent is granted, Tenant shall remain primarily responsible for all obligations hereunder.

11.2 **No Waiver.** Landlord's consent to any assignment or sublease shall not waive the requirement of Landlord's consent to any subsequent assignment or sublease. Any assignment or sublease requiring but lacking Landlord's prior written consent shall be void at Landlord's option.

11.3 **Collection.** Any rental payments or other sums received by Landlord from Tenant or any other person in connection with Tenant's obligations under this Lease shall be conclusively presumed to have been paid by Tenant or on Tenant's behalf.

## ARTICLE 12

### DAMAGE AND DESTRUCTION

12.1 **Obligation to Repair.** In the event of (i) the partial or total damage or destruction of the Center or (ii) the Center being declared unfit or unsafe for occupancy by any authorized public authority, Landlord may, at its sole discretion and expense, promptly commence and diligently prosecute to completion such repairs as are necessary to permit the safe use and occupancy of the Center and to restore the Center to substantially the same condition as it was in immediately prior to such damage or destruction. Landlord may, at its sole discretion and expense, promptly commence and diligently prosecute to completion such repairs as are necessary to correct any damage or destruction of parking or other Common Areas which render the Center totally or partially inaccessible, unusable, or which materially and adversely affect Tenant's business.

12.2 **Option to Terminate.** If all or substantially all of the Premises are damaged or destroyed and if such damage or destruction is insured by Landlord and can be repaired within 90 days following the date of such damage or destruction, Landlord may repair such damage or destruction. If the damage or destruction cannot be repaired within such 90-day period or Landlord elects not to repair the damage to the Center, either party may terminate this Lease by written notice to the other, given within thirty (30) days following the date such damage or destruction occurred.

12.3 **Insurance Proceeds.** If either party elects to terminate this Lease as allowed under Section 12.2, Tenant shall deliver the Premises to Landlord in their damaged condition and neither party shall have any obligation to repair or rebuild. In such event, insurance proceeds, if any, shall belong to Landlord.

12.4 **Continued Operation.** Unless this Lease is terminated pursuant to Section 12.2, Tenant shall continue the operation of its business during any such period to the extent reasonably practicable from the standpoint of prudent business management.

## ARTICLE 13

### DEFAULT

13.1 **Events of Default.** The occurrence of any of the following shall constitute an "Event of Default" by Tenant:

(a) **Abandonment.** Abandonment of the Premises by Tenant or vacation of the Premises by Tenant for 2 consecutive days, exclusive of time closed for renovation. Abandonment shall include not opening and operating said restaurant as agreed herein. Landlord may operate the Premises to the best of its capability during the abandonment.

(b) **Nonpayment of Rent.** Failure by Tenant to pay rent when due if the failure continues for 10 days after written notice has been given to Tenant that the rent is delinquent.

(c) **Other Obligations.** Failure by Tenant to perform any provision of this Lease required of it other than (a) and (b) above if the failure is not cured within 30 days after written notice has been given to Tenant. If, however, the failure cannot reasonably be cured within 30 days, Tenant shall not be in default of this Lease if Tenant commences to cure the failure within such 30-day period and diligently and in good faith continues to cure the failure.

(d) **General Assignment.** A general assignment for the benefit of creditors by Tenant.

(e) **Bankruptcy.** A petition to have Tenant adjudicated a bankrupt, or a petition for reorganization or arrangement under the federal bankruptcy laws is filed by Tenant or against Tenant and is not dismissed within 60 days from the date of such filing.

(f) **Receivership.** The assumption of the assets of Tenant or of the business conducted by Tenant on the Premises by a trustee, receiver, or other person where possession is not restored to Tenant within 30 days.

(g) **Attachment.** The attachment, execution, or other judicial seizure of substantially all of Tenant's assets located at the Premises or Tenant's interest in the Lease, where such seizure is not discharged within 30 days.

(h) **Insolvency.** The admission by Tenant of its inability to pay its debts as they become due.

Notice given under this Section 13.1 shall (i) specify the alleged breach and the applicable Lease provisions and (ii) demand that Tenant perform the provisions of this Lease or pay the rent that is delinquent, as the case may be, within the applicable period of time or quit the Premises. No such notice shall be deemed a forfeiture or a termination of this Lease unless Landlord so elects in the notice. The purpose of the notice requirements in this Section 13.1 is to extend the notice requirements of the unlawful detainer statutes.

13.2 **Landlord's Remedies.** Landlord shall have the following remedies if Tenant commits an Event of Default. These remedies are not exclusive; they are cumulative in addition to any remedies now or later allowed by law.

(a) **Recover Possession.** Landlord may terminate Tenant's right to possession of the Premises at any time. No act by Landlord other than giving notice to Tenant shall be required to terminate this Lease. Acts of maintenance, efforts to relet the Premises, or the appointment of a receiver on Landlord's initiative to protect Landlord's interest under this Lease shall not constitute a termination of Tenant's right to possession. On termination, Landlord has the right to recover from Tenant any amount, including court costs, necessary to compensate Landlord for all detriment proximately caused by Tenant's default.

(b) Other Relief. The remedies provided for in this Lease are in addition to any other remedies available to Landlord at law or in equity by statute or otherwise.

(c) Right to Remedy. Landlord may, after expiration of the applicable cure period hereunder, correct or remedy any failure of Tenant not timely cured. The reasonable cost paid by Landlord to correct or remedy any such default shall immediately become due and payable to Landlord as additional rent.

13.3 Mitigation. Landlord and Tenant shall each exercise best efforts to mitigate the damages caused by the other party's breach of this Lease. Efforts to mitigate damages shall not be construed as a waiver of the nonbreaching party's right to recover damages.

13.4 Late Charges. If Tenant fails to pay any amount due after expiration of any applicable cure period, Tenant shall pay to Landlord, as a late charge and in consideration of the additional costs and record keeping incurred or required by Landlord, \$50.

## ARTICLE 14

### SURRENDER OF PREMISES, HOLDING OVER

14.1 Surrender of Premises. Upon termination of this Lease, Tenant shall surrender the Premises to Landlord in good and clean condition, ordinary wear and tear and damage not required to be repaired excepted. Tenant shall remove all of its furnishings, fixtures, and other personal property. Tenant shall correct any damage arising from its removal activity.

14.2 Holding Over. Any holding over after the termination of this Lease shall be construed as a tenancy from month-to-month at the rents specified in this Lease and otherwise upon the terms and conditions specified in the Lease, so far as applicable. The foregoing sentence shall not be construed as Landlord's consent for Tenant to hold over.

14.3 Personal Property. It is agreed that Tenant and Landlord will derive a personal property list to be attached as an addendum to this Agreement within 90 days from the execution of this Agreement. At the surrender of the Property, it will be the responsibility of Tenant to turn over the personal property identified on this list in good condition.

## ARTICLE 15

### INTEGRATION OF AGREEMENT

15.1 Entire Agreement. This Lease constitutes the entire agreement between the parties on the subject matter of this Lease and supersedes any prior negotiation, understanding, representation, or agreement.

15.2 Amendment. This Lease may not be amended orally, but may be amended only by a written instrument signed by both parties.

## ARTICLE 16

### MISCELLANEOUS

16.1 Notices. Any notice, request, or other communication required or permitted by this Lease shall be in writing and shall be deemed given if personally delivered, mailed or registered or certified mail (return receipt requested), delivered by express delivery service, or sent by facsimile or similar transmission which is confirmed by mail or the recipient, addressed as follows:



To Landlord:

William R. Shane, Town Manager  
Town of Cumberland  
290 Tuttle Road P.O. Box 128  
Cumberland, ME 04021

To Tenant:

Lloyd M. Smith  
335 West Pownal Road  
North Yarmouth, ME 04097

Lowell M. Smith  
3 Brookview Lane  
North Yarmouth, ME 04097

Service by registered or certified mail shall be deemed given three business days after mailing absent proof of sooner delivery. Either party, by written notice, may change the place or places for future notice. Each recipient must have a street address for notice purposes.

16.2 **Construction and Interpretation.**

(a) **Governing Law.** This Lease is to be construed in accordance with the laws of the State of Maine.

(b) **Caption, Exhibits.** The titles and subtitles of the various articles and sections of this Lease are inserted for convenience and shall not be deemed to affect the meaning or construction of this Lease in any way. The Exhibits are made part of this Lease by the respective references to them.

(c) **Plain Meaning.** Unless defined otherwise, the words used in this Lease shall be construed according to their plain meaning in the English language. The language used in this Lease shall not be interpreted strictly for or against either party. The word **shall** is used as a command. The word **law** includes federal, state, and local constitutions, statutes, orders, writs, injunction, decrees, ordinances, requirements, laws, rules and regulations. The word **termination** is used in an all inclusive sense, that is, it includes the concepts of the expiration of this Lease by lapse of time, rescission, and ending by reason of default. The word **transfer** is used in an all inclusive sense, that is, it includes each and every manner of disposing of any interest in or rights, privileges, or obligations under any part of this Lease, including any sale, gift, or assignment. The word **notice** means notices, requests, demands, and other communications and includes all payments to be made and all materials to be submitted for review or approval and all approvals or disapprovals. The term **rent** means Rent and all other sums required to be paid by Tenant pursuant to the terms of this Lease. The term **representative** means officers, directors, partners, employees, agents, and authorized contractors of a party when acting in such capacity.

(d) **Conflicting Construction.** If any provision of this Lease is capable of two constructions, one of which would render the provision void and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

(e) Singular and Plural, Gender. The singular includes the plural and vice versa, and the masculine includes the feminine and neuter, whenever the context so requires.

16.3 Time of Essence. Time is of the essence of each provision of this Lease.

16.4 Severability. Nothing in this Lease shall be construed as requiring the commission of any act contrary to law. If there is any conflict between any provision of this Lease and any present or future law, such provision shall be limited only to the extent necessary to bring it within the requirement of the law. If any part of this Lease is held to be indefinite, invalid, or otherwise unenforceable, the balance of this Lease shall continue in full force and effect. If any arbitrator or court of competent jurisdiction finds any provision of this Lease unreasonable, the arbitrator or court may declare a reasonable modification of this provision. This Lease shall be valid and enforceable and the parties agree to be bound by and perform it.

16.5 Effect of Waiver. The failure of either party to exercise any power reserved to it by this Lease or to insist on strict compliance by the other party with any obligation or condition under this Lease, and no custom or practice of the parties at variance with terms of this Lease, shall constitute a waiver of the party's right to demand exact compliance thereafter with each term of this Lease. Waiver by either party of any default by the other shall not affect or impair the waiving party's rights with respect to any other default of a like, similar, or different nature. Any delay, forbearance, or omission of a party to exercise any power or right arising out of any default by the other of any provision of this Lease shall not affect or impair the party's rights to declare any subsequent default and to terminate this Lease.

16.6 Brokers. Each party represents and warrants that it has not dealt with or taken any other action with any party in a manner so as to give rise to any valid claim against either party for a broker's commission or finder's fee in connection with the execution of this Lease. Each of the parties shall defend, indemnify, and hold the other harmless from and against all liabilities from any claims for broker's commissions or finder's fees arising out of its breach of the foregoing representation and warranty.

16.7 Attorneys' Fees. If any action or proceeding is necessary to enforce the provisions of this Lease, including any claims or demand or declaratory relief action to interpret this Lease, the prevailing party shall be entitled to reasonable attorneys' fees, costs, and necessary disbursements, as may be fixed by the court having jurisdiction over the matter, in addition to any other relief to which it may otherwise be entitled.

16.8 Force Majeure. Except for payment obligations imposed pursuant to this Lease, if there is any prevention, delay, or stoppage of an act required of a party pursuant to this Lease because of strikes, lockouts, other labor disputes, material shortages, embargoes, civil unrest, governmental regulations, governmental controls, enemy or hostile governmental action, judicial order, public emergency, fire, earthquake, other Acts of God, and other causes beyond the reasonable control of the party obligated to perform, performance of the act shall be excused for the period of the delay.

16.9 Relationship of Parties. This Lease is not intended to create any relationship of partnership, joint venture, principal-and-agent, employer-employee or otherwise than the relationship of Landlord and Tenant.

16.10 Successors. This Lease shall be binding on and inure to the benefit of the parties and their successors and assigns, subject to the restrictions as to assignment pursuant to this Lease.

The undersigned parties have caused this Agreement to be signed on the date first written above.

**LANDLORD:**

**TENANT:**

TOWN OF CUMBERLAND

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

By: \_\_\_\_\_  
Lloyd M. Smith  
d/b/a Rachel's on the Green

By: \_\_\_\_\_  
Lowell M. Smith  
d/b/a Rachel's on the Green



# ITEM

# 11-034

To hold a Public Hearing to consider and act on a Class I Liquor License, Special Amusement Permit, and Auxiliary Mobile Golf Cart License for Rachel's on the Green at The Viking Grill, for the period of April 2011 – April 2012.

**Department of Public Safety  
Division**



**Liquor Licensing & Inspection**

Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded.  
To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

**BUREAU USE ONLY**

License No. Assigned:

Class:

Deposit Date:

Amt. Deposited:

**PRESENT LICENSE EXPIRES** \_\_\_\_\_

**INDICATE TYPE OF PRIVILEGE:** ☒ MALT ☒ SPIRITUOUS ☒ VINOUS

**INDICATE TYPE OF LICENSE:**

☐ RESTAURANT (Class I,II,III,IV)

☐ HOTEL-OPTINONAL FOOD (Class I-A)

☐ CLASS A LOUNGE (Class X)

☐ CLUB (Class V)

☐ TAVERN (Class IV)

☐ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL (Class I,II,III,IV)

☐ CLUB-ON PREMISE CATERING (Class I)

☒ GOLF CLUB (Class I,II,III,IV)

☐ OTHER: \_\_\_\_\_

**REFER TO PAGE 3 FOR FEE SCHEDULE**

**ALL QUESTIONS MUST BE ANSWERED IN FULL**

<b>1. APPLICANT(S)</b> –(Sole Proprietor, Corporation, Limited Liability Co., etc.) <i>Lowell Smith</i> DOB: <i>4-2-55</i> <i>Lloyd Smith</i> DOB: <i>10-6-56</i> DOB: _____ Address <i>3 Brookview Lane</i> City/Town <i>North Yarmouth</i> State <i>ME</i> Zip Code <i>04097</i> Telephone Number <i>207-846-0103</i> Fax Number <i>207-846-7704</i> Federal I.D. # <i>27-5380488</i>		<b>2. Business Name (D/B/A)</b> <i>Rachel's On The Green</i> Location (Street Address) <i>60 Val Halla Road</i> City/Town <i>Cumberland</i> State <i>ME</i> Zip Code <i>04021</i> Mailing Address <i>Same</i> City/Town <i>Same</i> State <i>Same</i> Zip Code _____ Business Telephone Number <i>207-749-0350</i> Fax Number <i>207-846-7704</i> Seller Certificate # <i>1149663</i>	
--	--	--	--

3. If premises are a hotel, indicate number of rooms available for transient guests: N/A

4. State amount of gross income from period of last license: ROOMS \$ 0 FOOD \$ UNK LIQUOR \$ UNK

5. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐

complete Supplementary Questionnaire, If YES

6. Do you permit dancing or entertainment on the licensed premises? YES ☐ NO ☒

7. If manager is to be employed, give name: Lloyd Smith

8. If business is NEW or under new ownership, indicate starting date: 04/01/11

Requested inspection date: April 2011 Business hours: 0600-2200

9. Business records are located at: 60 Val Halla - Cumberland, ME 04021

10. Is/are applicants(s) citizens of the United States? YES ☒ NO ☐

11. Is/are applicant(s) residents of the State of Maine? YES ☒ NO ☐
12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:  
Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
Lowell Smith	4-2-55	Winterhaven, FL
Lloyd Smith	10-6-56	Winterhaven, FL

Residence address on all of the above for previous 5 years (Limit answer to city & state)

North Yarmouth, Maine  
North Yarmouth, Maine Gray, Maine

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES ☐ NO ☒
- Name: \_\_\_\_\_ Date of Conviction: \_\_\_\_\_
- Offense: \_\_\_\_\_ Location: \_\_\_\_\_
- Disposition: \_\_\_\_\_

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?  
Yes ☐ No ☒ If Yes, give name: \_\_\_\_\_

15. Has/have applicant(s) formerly held a Maine liquor license? YES ☒ NO ☐

16. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner:  
Town of Cumberland Tuttle Road Cumberland, ME 04021

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required)  
Restaurant / Bar Area adjacent to Pro Shop & MSGA

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?  
YES ☒ NO ☐ Applied for: \_\_\_\_\_

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 1.5 miles Which of the above is nearest? School

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☐ NO ☒

If YES, give details: \_\_\_\_\_

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

**NOTE:** "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Cumberland, ME. on MARCH 7, 2011  
Town/City, State Date

Signature of Applicant or Corporate Officer(s)  
Lowell Smith

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)  
Lloyd M. Smith



STATE OF MAINE

Dated at: Cumberland, Maine Cumberland SS  
City/Town (County)

On: \_\_\_\_\_  
Date

The undersigned being: ☒ Municipal Officers ☐ County Commissioners of the  
☐ City ☐ Town ☐ Plantation ☐ Unincorporated Place of: \_\_\_\_\_, Maine

Hereby certify that we have given public notice on this application and held public hearing thereon as required by Section 653 Title 28A, Maine Revised Statutes and hereby approve said application.

Samara P. O'Donnell, Town Clerk  
for the Municipal Officers

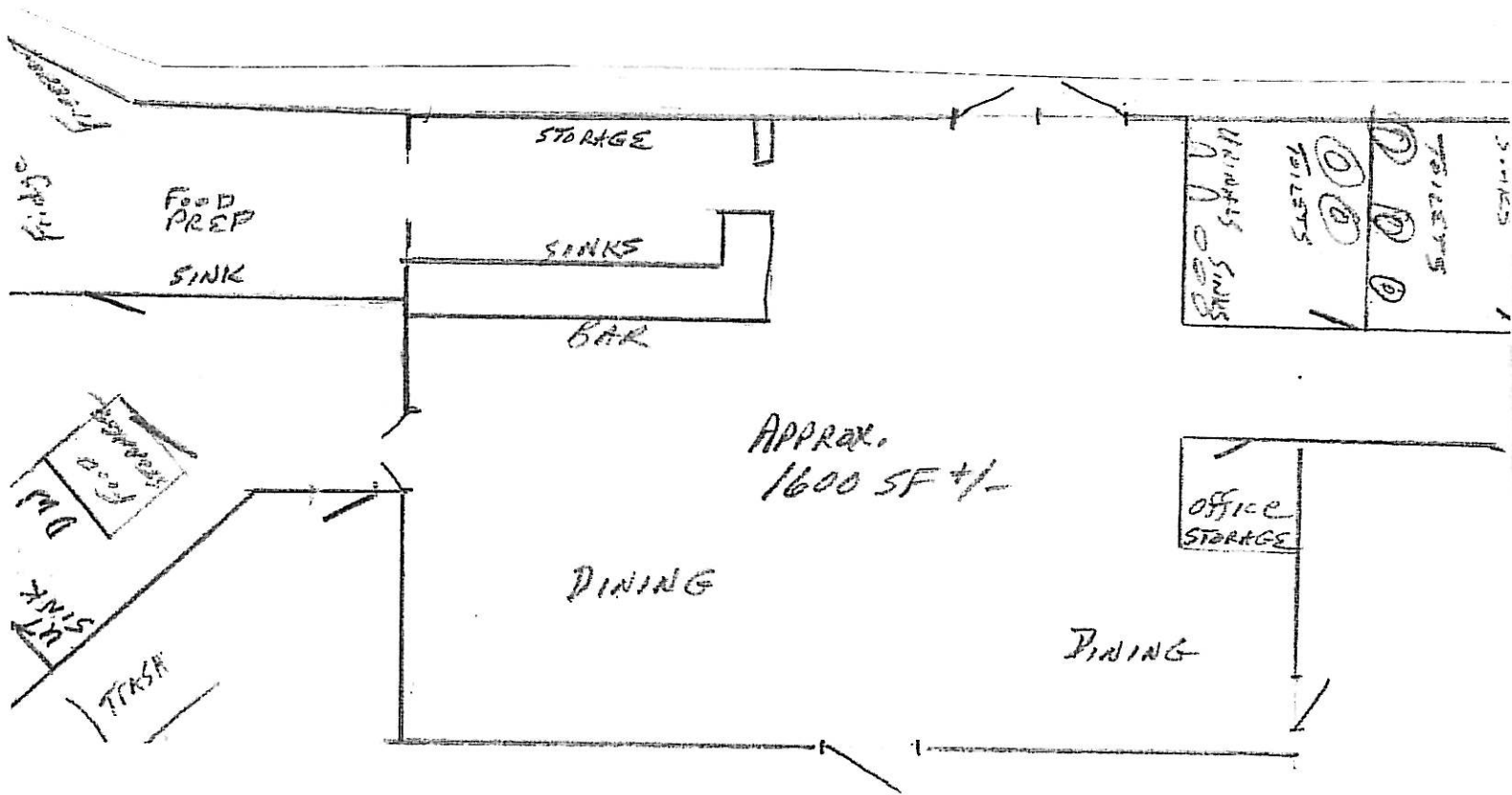
THIS APPROVAL EXPIRES IN 60 DAYS

NOTICE - SPECIAL ATTENTION

§ 653. Hearings; bureau review; appeal

1. **Hearing.** The municipal officers or, in the case of unincorporated places, the county commissioners of the county in which the unincorporated place is located, shall hold a public hearing for the consideration of applications for new on-premise licenses and applications for transfer of location of existing on-premise licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses, except that when an applicant has held a license for the prior 5 years and a complaint has not been filed against the applicant within that time, the applicant may request a waiver of the hearing.
    - A. The bureau shall prepare and supply application forms. [1993, c.730, §27(amd).]
    - B. The municipal officers or the county commissioners, as the case may be, shall provide public notice of any hearing held under this section by causing a notice, at the applicant's prepaid expense, stating the name and place of hearing, to appear on at least 3 consecutive days before the date of hearing in a daily newspaper having general circulation in the municipality where the premises are located or one week before the date of the hearing in a weekly newspaper having general circulation in the municipality where the premises are located. [1995, c.140, §4 (amd).]
    - C. If the municipal officers or the county commissioners, as the case may be, fail to take final action on an application for a new on-premise license, for transfer of the location of an existing on-premise license or for renewal of an on-premise license within 60 days of the filing of an application, the application is deemed approved and ready for action by the bureau. For purposes of this paragraph, the date of filing of the application is the date the application is received by the municipal officers or county commissioners. This paragraph applies to all applications pending before municipal officers or county commissioners as of the effective date of this paragraph as well as all applications filed on or after the effective date of this paragraph. This paragraph applies to an existing on-premise license that has been extended pending renewal. The municipal officers or the county commissioners shall take final action on an on-premise license that has been extended pending renewal with 120 days of the filing of the application. [1999, c.589, §1 (amd).]
  2. **Findings.** In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a copy to the applicant. A license may be denied on one or more of the following grounds:
    - A. Conviction of the applicant of any Class A, Class B or Class C crime: [1987, c.45, Pt.A§4 (new).]
    - B. Noncompliance of the licensed premises or its use with any local zoning ordinance or other land use ordinance not directly related to liquor control; [1987, c.45, Pt.A§4(new).]
    - C. Conditions of record such as waste disposal violations, health or safety violation or repeated parking or traffic violations on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises or other such conditions caused by persons patronizing or employed by the licensed premises that unreasonably disturb, interfere with or affect the ability of persons or businesses residing or located in the vicinity of the licensed premises to use their property in a reasonable manner; [1993, c.730, §27 (amd).]
    - D. Repeated incidents of record of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licensed premises and caused by persons patronizing or employed by the licensed premises; [1989, c.592, §3 (amd).]
    - E. A violation of any provision of this Title; and [1989, c.592, §3 (amd).]
    - F. A determination by the municipal officers or county commissioners that the purpose of the application is to circumvent the provisions of section 601. [1989, c.592, §4 (new).]
- [1993, c.730, §27 (amd).]
3. **Appeal to bureau.** Any applicant aggrieved by the decision of the municipal officers or county commissioners under this section may appeal to the bureau within 15 days of the receipt of the written decision of the municipal officers or county commissioners. The bureau shall hold a public hearing in the city, town or unincorporated place where the premises are situated. In acting on such an appeal, the bureau may consider all licensure requirements and findings referred to in subsection 2.
    - A. [1993, c.730, §27 (rp).]
  4. **No license to person who moved to obtain a license. (REPEALED)**
  5. **(TEXT EFFECTIVE 3/15/01) Appeal to District Court.** Any person or governmental entity aggrieved by a bureau decision under this section may appeal the decision to the District Court within 30 days of receipt. Upon resolution of the appeal, if an applicant's license renewal is denied, the bureau shall refund the applicant the prorated amount of the unused license fee.

PREMISE DIAGRAM





STATE OF MAINE  
Department of Public Safety  
Liquor Licensing  
164 State House Station  
Augusta, Maine  
04333



APPLICATION FOR AUXILIARY LICENSE - \$100.00  
Check Payable: Treasurer State of Maine

The undersigned hereby applies for an auxiliary license and certifies that the applicant is the holder of a spirituous, vinous and malt restaurant, hotel license or club license located at a ski area / golf course.

1. Full Name of Applicant: SMITH LOWELL M.  
(PLEASE PRINT) Last First Middle Initial  
Date of Birth: 4/2/55 Telephone #: 207-846-0103 FAX #: 207-846-7704  
Address: 3 Brookview Lane North Yarmouth ME 04097  
Mailing Address City/Town State Zip Code

2. Describe auxiliary premise and the location at the ski/golf area: Golf Course @  
60 Val Halla Road

3. Do you have all necessary permits from the Department of Human Services for your auxiliary premise?  
Yes ☒ No ☐

4. What is the distance from the premise to the nearest school, school dormitory, church, chapel or parish house, measured from the main entrance of the premise to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 1.5 Miles

Which of the above is nearest? School

**NOTE:** The above application must be signed by the individual(s) or a duly authorized officer of the corporation executing the application and approved by the **Municipal Officers/County Commissioner** and filed with the Liquor Licensing & Inspection Division.

Dated at: Cumberland on \_\_\_\_\_, 20\_\_\_\_  
City/Town Date

Samana P. O'Donnell, Town Clerk  
for the Municipal Officers  
\_\_\_\_\_  
Signature of Individual(s) or Duly Authorized Officer(s) of Corporation or if Partnership by Members of Partnership Print Name

AuxLicApp/2008

Office Located at CENTRAL MAINE COMMERCE CENTER 45 Commerce Drive Suite 1, AUGUSTA, ME 04330

(207) 624-7223 and 624-7224 Licensing and Inspections  
(207) 624-7230 Referrals and Training

(207) 287-3424 FAX



# MAINE DEPT OF PUBLIC SAFETY

STATE OF MAINE  
Liquor Licensing & Inspection Division  
164 State House Station

Augusta ME 04330-0164

Tel: (207) 624-7220 Fax: (207) 287-3424



## SUPPLEMENTARY QUESTIONNAIRE FOR Auxiliary Mobile Golf Cart License

1. Exact Name Of Golf Course: VAL HALLA

2. Name, birth date and telephone number of each person authorized to operate and sell from mobile golf cart. (All operators of the mobile service bar must be 21 years of age and have successfully completed alcohol server education)

NAME	DATE OF BIRTH	TELEPHONE	T.I.P.S. I.D. number
<u>Lloyd Smith</u>	<u>10-6-56</u>	<u>749-0350</u>	<u>0338081</u>
<u>Lowell Smith</u>	<u>4-2-55</u>	<u>838-8381</u>	<u>8218069</u>
<u>Michelle Smith</u>	<u>6-27-69</u>	<u>831-0059</u>	<u>7633171</u>

3. Are all operators of the mobile service bar employees of the golf course? Yes

4. DOES THE OPERATOR OF THE MOBILE SERVICE BAR HAVE MEANS TO MAKE IMMEDIATE CONTACT WITH AN EMPLOYEE AT THE LICENSED ON-PREMISE LOCATION AT THE COURSE? YES X NO       

Describe. Operator will have cell phone access to restaurant/bar

5. How many additional security employees will be on the course to ensure adherence to the laws and rules applying to the selling, serving and consumption of alcohol? 1 - Ranger

6. Do you have signs on cart stating legal age for service and consumption? Yes

7. Are signs posted stating that patrons may not bring alcoholic beverages on to the golf course or licensed premise? Yes How Many? 3

Location. Pro Shop, 1st Tee and 10th Tee

## STATE OF MAINE

Dated at: Cumberland, Maine Cumberland ss  
City/TownOn: \_\_\_\_\_  
DateThe undersigned being: ☒ Municipal Offices ☐ County Commissioners of the☐ City ☐ Town ☐ Plantation ☐ Unincorporated Place of: \_\_\_\_\_  
MaineHerby certify that we have given public notice on this application and held public hearing thereon as required by Section 653  
Title 28A, Maine Revised Statutes and herby approve said application.

Signature	Print Name
<u>Jamara P. O'Donnell Town Clerk</u>	
<u>for the Municipal Officers</u>	

**TOWN OF CUMBERLAND, MAINE**  
**APPLICATION FOR VICTUALER'S (Food Service Establishment) LICENSE**

Business or Trade Name: RACHEL'S ON THE GREEN  
 Business Address: 60 Val Hall Rd. Cumberland, ME  
 Name of Manager: Lowell Smith Bus. Phone: 838-8381

Date of Event or New License: 4-1-11

Signature of Authorized Person: [Signature] Date: 3/4/11

+++++  
**CHECK THE PROPERTY CATEGORY OF REQUESTED LICENSE:**

- (a) Restaurant or Victualer not serving malt beverages on the premises \$50.00 \_\_\_\_\_
- (b) Restaurant or Victualer serving malt beverages on the premises \$50.00 \_\_\_\_\_
- (c) Class A Restaurant, as defined by the Revised Statutes of Maine, serving both malt liquor and spirituous and vinous liquor \$50.00 X
- (d) A business establishment such as, but not limited to, retail grocery stores, food storage warehouses, bakeries, delicatessen stores, and dairy product stores, where food is stored or is kept for sale and where the total area of the establishment is less than 10,000 square feet \$25.00 \_\_\_\_\_
- (e) Same as (d) but total area of the establishment is more than 10,000 square feet \$25.00 \_\_\_\_\_
- (f) Eating and Lodging places. Any place where eating and sleeping accommodations are furnished to the public such as hotels, motels and bed and breakfasts \$100.00 \_\_\_\_\_
- (g) Establishment operated by Non-Profit organization NO FEE \_\_\_\_\_
- (h) Vending Machine \$10.00 \_\_\_\_\_
- (i) Temporary Vending Unit operating at a fair. Per Unit: \$10.00 \_\_\_\_\_  
 Name & type of vending unit(s): \_\_\_\_\_
- (j) Mobile Vending Unit \$10.00 X

Enclose CHECK payable to: Town of Cumberland  
 SEND TO: TOWN CLERK, 290 Tuttle Road, Cumberland ME 04021

Application Rec'd: \_\_\_\_\_ Date of Issuance \_\_\_\_\_ Cert No. \_\_\_\_\_



**TOWN OF CUMBERLAND**  
**APPLICATION FOR A SPECIAL AMUSEMENT PERMIT**  
**FOR MUSIC, DANCING AND/OR ENTERTAINMENT**

Name of Applicant: Lowell Smith Phone: 838-8381

Residence Applicant: 3 Brookview Ln. North Yarmouth, ME. 04097

Business Name: Rachel's On The Green Bus. Phone: 829-2225

Business Address: 60 Valthalla Rd. Cumberland, ME. 04021

Name of Manager: Lloyd Smith Phone: 749-0350

Residence of Manager: N. Pownal Rd. No. Yarmouth, ME. 04097

Type of Entertainment Applied for: Music

Has applicant ever had a license to conduct the business therein described either denied or revoked? No If so, the applicant shall describe specifically those circumstances?

Has applicant, Partners, Associates or Corporate Officers ever been convicted of a felony? No If so, the applicant shall describe specifically those circumstances.

Additional information may be required by the Town Council prior to the issuance of said permit, including but not limited to a copy of the applicant's current liquor license.

The fee for a Special Amusement Permit shall be \$10.00, non-refundable and payable when application is made for said permit.

[Signature]  
Applicant's Signature

3/9/11  
Date

Municipal Officers:

Approved: \_\_\_\_\_

Disapproved: \_\_\_\_\_

Comment: \_\_\_\_\_

Application Received: \_\_\_\_\_

Public Notice Posted: \_\_\_\_\_

Date Issued: \_\_\_\_\_

Date of Expiration: \_\_\_\_\_

# ACORD<sup>TM</sup> CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/10/2011PRODUCER (207)829-3450 FAX (207)829-6350  
Norton Insurance Agency  
275 US Route 1  
Cumberland Foreside, ME 04110

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.

## INSURERS AFFORDING COVERAGE

NAIC #

INSURED Rachel's On the Green  
3 Brookview Lane  
North Yarmouth, ME 04097

INSURER A: The Travelers Insurance

INSURER B:

INSURER C:

INSURER D:

INSURER E:

## COVERAGES

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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY	PENDING	04/04/2011	04/04/2012	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/>	COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 350,000
	<input type="checkbox"/>	CLAIMS MADE <input checked="" type="checkbox"/> OCCUR				MED EXP (Any one person) \$ 5,000
	<input checked="" type="checkbox"/>	Liquor Liability				PERSONAL & ADV INJURY \$ 1,000,000
	<input type="checkbox"/>	Included				GENERAL AGGREGATE \$ 2,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO- JECT <input type="checkbox"/> LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident) \$
		<input type="checkbox"/> ANY AUTO				BODILY INJURY (Per person) \$
		<input type="checkbox"/> ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
		<input type="checkbox"/> SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
		<input type="checkbox"/> HIRED AUTOS				
		<input type="checkbox"/> NON-OWNED AUTOS				
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$
		<input type="checkbox"/> ANY AUTO				OTHER THAN EA ACC \$
						AUTO ONLY: AGG \$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE \$
		<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE				AGGREGATE \$
						\$
		<input type="checkbox"/> DEDUCTIBLE				\$
		<input type="checkbox"/> RETENTION \$				\$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	PENDING	04/04/2011	04/04/2012	<input checked="" type="checkbox"/> WC STATU- TORY LIMITS <input type="checkbox"/> OTH- ER
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT \$ 100,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE \$ 100,000
		OTHER				E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
Town of Cumberland is included as an additional insured and Waiver of Subrogation with respects to the General Liability.

## CERTIFICATE HOLDER

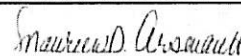
Town of Cumberland  
290 Tuttle Rd.  
Cumberland, ME 04021

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER 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 INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Maureen Arsenault CISR/MDA



# ITEM 11-035

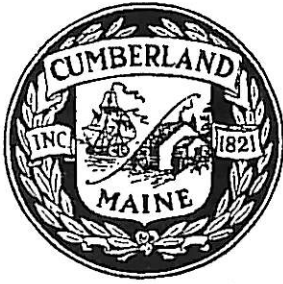
To appoint a member to the Twin Brook Facility Advisory Committee.



# ITEM

## 11-036

To consider and act on extending the date of the moratorium on gravel extraction to June 28, 2011.



# • M E M O R A N D U M

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

**To:** Town Council  
**From:** William R. Shane, Town Manager  
**Date:** March 10, 2011  
**Re:** Gravel Extraction Moratorium Extension

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Attached is the extension for the Gravel and Water Extraction Moratorium. I anticipate having the Planning Board recommendation for you to act upon in late May. This would allow you to wait until the referendum is decided on June 14<sup>th</sup> and then adopt the new zoning language from the Planning Board should the referendum fail on June 27<sup>th</sup>. If the referendum passes then the new referendum language would take effect on June 14<sup>th</sup>.

I recommend that the entire proclamation be read... sorry!

EXTENSION OF MORATORIUM ORDINANCE REGARDING  
EXTRACTION OF EARTH MATERIALS AND WATER EXTRACTION,  
PUMPING AND/OR BULK STORAGE

The Town Council of the Town of Cumberland hereby ordains that the Moratorium Ordinance Regarding Extraction of Earth Materials and Water Extraction, Pumping and/or Bulk Storage enacted on November 8, 2010 be, and hereby is, extended as follows:

WHEREAS, the Town of Cumberland is under threat of increased development pressure from the extraction of earth materials in the Town and the extraction, pumping and/or bulk storage of water for wholesale commercial purposes, which uses as currently allowed, are inconsistent with other allowed and existing uses in the areas where such uses are allowed and further due to the potentially serious environmental and other impacts from such uses, including potential impacts upon groundwater and surface water quality and levels and upon abutting uses; and

WHEREAS, this development pressure was unanticipated and has not been adequately provided for in the Town's current zoning or other land use ordinances; and

WHEREAS, there is a strong likelihood that the Town will continue to be subjected to this development pressure due to the lack of adequate regulations or restrictions on the location and effects of these uses, especially in close proximity to incompatible land uses that could be adversely impacted by the noise, vibration, emissions, hours of operations, odors and other impacts resulting from these high intensity and high impact uses, as well as the environmental consequences of such uses and further due to the high demand for the minerals and water extracted and the manufactured materials and services resulting from these uses; and

WHEREAS, amendments to the zoning and other land use ordinances require public hearings by the Planning Board and a vote by the Town Council; and

WHEREAS, the Town has previously enacted a Moratorium Ordinance Regarding Extraction of Earth Materials and Water Extraction, Pumping and/or Bulk Storage and is in the process of developing new ordinances but has not had sufficient time to finalize and adopt those ordinances; and

WHEREAS, in the judgment of the Town, these facts continue to create an emergency within the meaning of 30-A M.R.S.A. § 4356(1)(B) and require extension of the Moratorium Ordinance as immediately necessary for the preservation of the public health, safety and welfare;

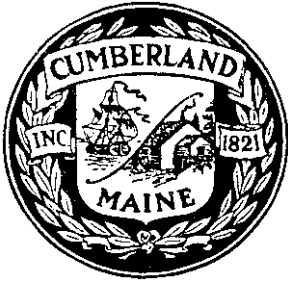
NOW, THEREFORE, the Town of Cumberland hereby ordains that the Moratorium Ordinance Regarding Extraction of Earth Materials and Water Extraction, Pumping and/or Bulk Storage be, and hereby is, extended until June 28, 2011, unless earlier repealed by action of the Town Council.



# ITEM

# 11-037

To hold a Public Hearing to consider and act on adoption of the  
FY'12 Municipal Budget.



# M E M O R A N D U M

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

**To:** Mike Perfetti, Chairman Finance Committee  
**From:** William R. Shane, Town Manager  
**Date:** February 28, 2011  
**Re:** Budget FY 2012

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I submit the FY 2012 Budget to you this evening having cut expenses and with no impact to the future FY 12 mil rate from municipal operations.

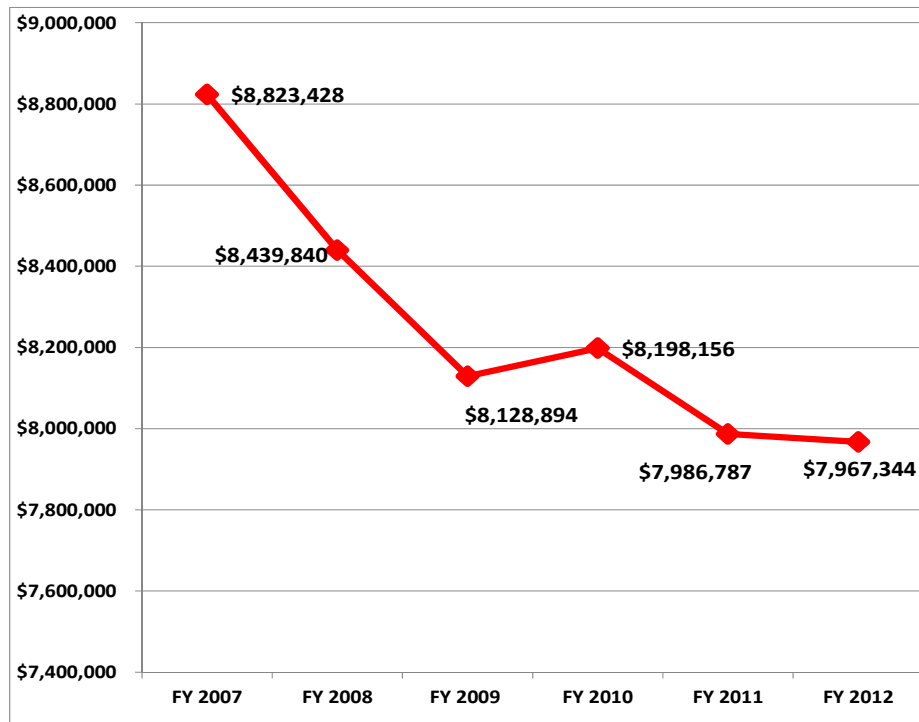
**Executive Summary** is as follows:

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	\$\$	%
	ACTUALS	ACTUAL	ACTUAL	Budget	PROPOSED	Change	Change
Town Only	\$ 8,439,840	\$ 8,128,894	\$ 8,198,156	\$ 7,986,787	\$ 7,967,344	\$ (19,443)	-0.24%
Reduced from Previous Year	(\$383,588)	(\$310,946)	\$69,262	(\$211,369)	(\$19,443)	(\$856,084)	

**Municipal spending over the past 5 years has decreased by \$ 856,084**

## **What has changed in FY 2012?**

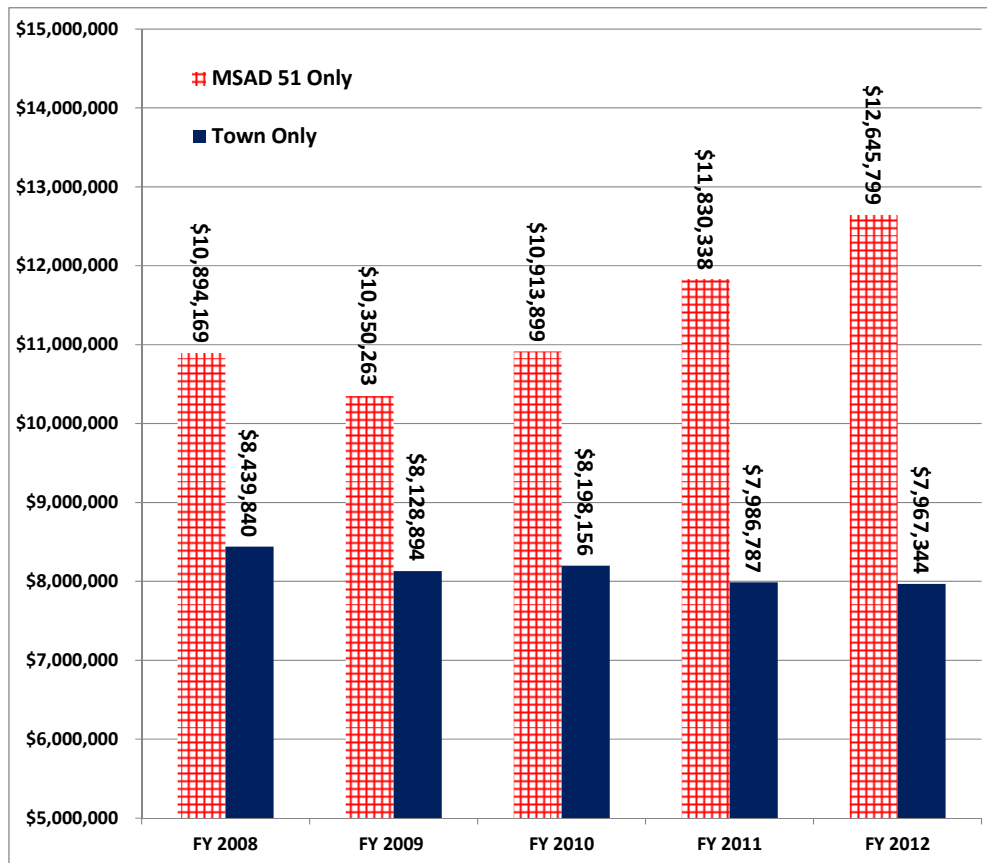
- Reduction in trash contracts and tonnages to Ecomaine
- Did not replace HR Director
- Did not replace Clerk at front counter
- Health insurance premiums contribution 20%
- Higher deductibles in health plans (\$7,000 and \$3,500)
- 5% Increase in insurance costs
- 10% increase in utility costs
- 2% wage adjustments
- New 3 year Public Works contract
- Pending new 3 year Police contract
- Loss of \$274,043 in projected State Revenue Sharing for FY 2012



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***Town Budget Last 6 years***





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*Even with 4 years of no increase in Operation Expenses, the reduction of revenues from the State to MSAD 51 has caused a significant increase to the Town of Cumberland.*

The FY 2012 presented to you has no increase in Operations. Should additional savings be found through the budget process or through the State's release of some of the Revenue Sharing projected monies, I would recommend consideration for putting the money into funding of road paving projects.

It is difficult to predict the outcome of the School Budget process and therefore estimating at tax rate at this time is a best guess. I anticipate even with our Zero budget increase, the School may see additional revenue reductions causing a mil rate increase of 2.5% to 4.5%. We will know more in the next few months.

I also have included North Yarmouth as part of our recreation and library services. I am confident that we will be able to come to a mutual agreement over the next few months that would receive a favorable vote at their annual Town meeting in June.

I look forward to working with Finance Committee and the full Council on Saturday March 5, 2011 at 8 AM, to begin work on the FY '12 budget. I believe we will be ready for a public hearing on March 14, 2012 at 7 PM.

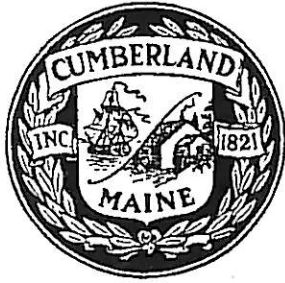
Please let me know if you need any additional information not included in this year's budget book.

# ITEM

## 11-038

To set a Public Hearing date (March 28<sup>th</sup>) to consider and act on amendments to Main Street zoning as recommended by the Town Center Advisory Committee.





# M E M O R A N D U M

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

**To:** Town Council  
**From:** William R. Shane, Town Manager  
**Date:** March 10, 2011  
**Re:** Main Street

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I am not certain you have as a Council decided on a path to tackle the Main Street Zoning changes. There are essentially three options on the table:

- 1) Do nothing and allow the current zoning to stand and continue the use of contract zoning agreements.
- 2) Discuss and debate Steve Moriarty's proposal to allow the current non-residential uses to remain and essentially become permitted uses (instead of their current non-conforming status). This would allow the properties a host of options should they are sold or transferred in the future, but it would be limited to those identified on the attached map.
- 3) Review, discuss and debate the zoning forwarded to you by the Committee. Uses could be debated and determined if the Council supported those uses. The design standards could be reviewed and discussed and the performance standards reviewed and discussed as well.

Since re-hashing a lot of history is not constructive for anyone, I believe you need to decide how to move forward. I would recommend a simple straw poll at the start of your workshop, limit debate and move ahead by 6:10 PM. I am uncertain that you will be ready for a vote on March 28<sup>th</sup> unless you hold a workshop on another night dedicated to this item.

Let's see how the workshop goes and you can always table action on item 11-038 if the majority believes more time should be spent on the review process.



## MEMORANDUM

TO: Cumberland Town Council

FROM: Steve Moriarty

DATE: February 11, 2011

RE: February 28 Workshop on report of Cumberland Town Center Advisory Committee

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As you know, we discussed the Committee's report and the Planning Board's failure to endorse the report (the Planning Board voted 3-3 on December 14, 2010 on a motion to support the report, and then voted unanimously to advise the Council that they could not reach consensus) at a workshop on January 24. The issue is now scheduled for a further workshop on February 28.

I thought it might be helpful if I were to outline some of the thoughts that I expressed on January 24 in this memo. What I propose is essentially a compromise between the recommendations of the Committee and the opposition to the recommendations expressed by the residents of the proposed new district. My suggestions are as follows.

1. Instead of creating a new zoning district, I propose that a town center overlay district be created within the MDR. Because this area would be an overlay, all permitted uses and special exceptions within the MDR would continue to apply.



2. The boundaries of the overlay district would correspond precisely with the final map as adopted by the Committee. There are a total of 31 lots within the area, three of which are contract zones and seven of which are non-conforming uses. Therefore, of the 31 total lots approximately 1/3 are already nonconforming.

3. I would identify the seven existing non-conforming lots by lot number and/or name. They are:

Terry Snow's office;

Shell Station;

Food Stop;

Dr. Howard/Dr. Rybka's office;

Post Office;

Dr. Frost's office;

Dr. Hanson's office.

4. I would emphasize that current Section 500 of the Zoning Ordinance (titled "Non-Conforming Uses, Buildings, Structures and Lots") applies to the overlay district, with the following additional provisions:

- A. Repairs and alterations be carried out subject to the Site Plan Ordinance and the Town Center District Design Standards adopted by the Committee.
- B. The same as above with respect to rebuilding and expansion of a non-conforming use.

- C. With regard to change of use, provide that changes are subject to the Site Plan Ordinance and the Design Standards but are limited to the following uses as recommended by the Committee:

Personal services;

Business and professional offices;

Retail stores: 2000 square foot maximum;

Small markets: 2500 square foot maximum with no drive through;

Cafes: 2500 square foot maximum with no drive through and  
accordance with Section 204.13.5.3;

Health and fitness studio.

5. From among the list of special exceptions as recommended by the Committee, I would personally support the deletion of the following:

Home based retail;

Bed and Breakfast Inns;

Daycare homes;

Adult daycare;

Once again, all uses which are currently either permitted or allowed as special exceptions within the MDR would continue to be available within the overlay district.

I believe that this proposal retains the essence of the Committee's key recommendations (i.e., the addition of new uses as defined, but subject to Site Plan Review and the Design Standards) while taking into account the opposing comment that

we have heard by restricting any new uses to those lots which are already non-conforming.

As a final matter, the contract zone option would continue to exist within the overlay district exactly as it does now with no change or modification.





## MEMORANDUM

TO: Cumberland Town Center Advisory Committee  
FROM: Steve Moriarty  
DATE: February 11, 2011  
RE: Upcoming February 28, 2011 Workshop with Town Council

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As you know, I served as one of three Council liaisons to the Committee, and after the Committee made its recommendations to the Council on July 26, 2010, we referred the recommendations to the Planning Board as required by the Zoning Ordinance. The Planning Board conducted a public hearing on August 17, as well as two workshops on September 14 and November 16. Ultimately the matter came back before the Board on December 14, and that night the Board tied on a 3 – 3 vote (with one member abstaining) on a motion to support the recommendations of the Committee. The Board then voted unanimously to inform the Council that the Board could not reach consensus.

I had anticipated that the Board would take whatever time might be necessary and go through the recommendations of the Committee with a fine-tooth comb. In my personal opinion the recommendations did not receive the detailed analysis that I had anticipated, to include possible changes or modifications.

Bearing in mind the Board's failure to approve the recommendations, and mindful as well the comments made by residents during the various public proceedings, I plan to discuss with the Council a possible compromise solution which I believe preserves the

essence of the Committee's recommendations while taking the neighborhood reaction into account. I have briefly summarized my thoughts in a memo to the Council, a copy of which is attached for your review and consideration.

Without repeating my thoughts at length, I am suggesting that we create an overlay district with the MDR (corresponding with your final map) and provide that the new uses that you defined be limited to the existing non-conforming lots, subject to Site Plan Review and your Design Standards.

I will be happy to discuss my thoughts with you at any time. You can reach me via e-mail at [smoriarty@nhdlaw.com](mailto:smoriarty@nhdlaw.com), at work 774-7000, or at home at 829-5095.

Thanks very much for your consideration.







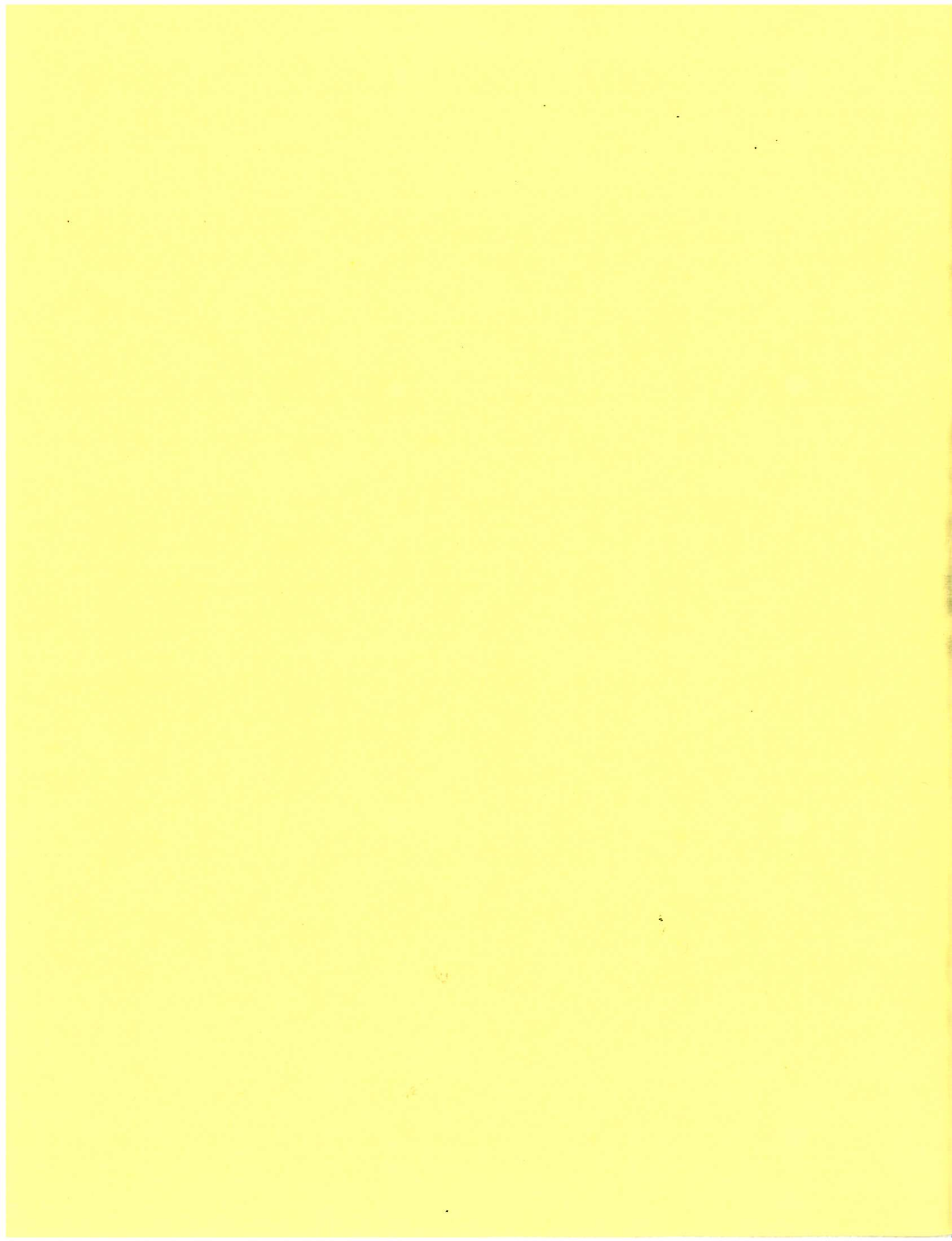
**Presently Non Conforming Use in current Zoning District (7)**



**Contract Zone (3)**



**Final Committee Zone add Red and Blue for Final Map (21 + 7 + 3)**



**Section 204.23**      **Town Center District**

204.23.1 The purpose of the Town Center District (TCD) is to provide an area in the center of Town that will allow for a mix of residential and low intensity commercial uses that will enhance the livability and sustainability of the community.

- .1 All multi-plex and non-residential development shall be subject to the Town Center District Design Standards.
- .2 All multi-plex and non-residential uses shall be subject to the Town of Cumberland Site Plan Ordinance.
- .3 All development in this area shall be connected to public water and sewer, when available.

204.23.2 The following uses are permitted in the TCD:

1. Dwelling; Single Family Dwelling
2. Dwellings, Duplex
3. Dwellings Multiplex; subject to the provisions of Section 406A (Multiplex Dwellings).
4. Personal Services;
5. Business and Professional Offices;
6. Retail Stores: 2,000 sq. ft. maximum;
7. Small Markets: 2,500 sq. ft. with no drive-through;
8. Cafes: 2500 sq. ft. maximum with no drive-through and in accordance with Section 204.13.5.3
9. Residential Care Facilities, subject to Section 432;
10. Health and Fitness Studio;
11. Day Care Centers and Nursery Schools for no more than 20 children, subject to the provisions of Section 408A and Site Plan Review;
12. Municipal uses and buildings;
13. Sewer Pumping Stations, subject to the provisions of Sec. 419.4;
14. Uses and buildings accessory to those above.

204.23.3 The following uses are allowed as special exceptions in the TCD, requiring the approval of the Board of Adjustment and Appeals:

1. Home Occupations;
2. Home Based Occupations;
3. Home Based Retail;
4. Bed and Breakfast Inns;
5. Daycare Homes
6. Adult Day Care
7. Accessory structures of public utilities;
8. Above Ground Utility Lines;
9. Uses and buildings accessory to those above.

- 204.23.4 The following lot standards shall apply within the TCD:
- .1 10,000 sq. ft. minimum lot size per unit if on public sewer; 20,000 sq. ft. if not on public sewer.
  - .2 In the case of duplex or multiplex developments, the minimum lot area per dwelling unit shall be no less than 5,000 sq. ft. if on public sewer.
  - .3 There shall be no less than 80 feet of lot frontage.
  - .4 There may be multiple uses on one parcel as long as each use meets the required lot standards.
- 204.23.5 The following minimum setbacks are required for all structures in the TCD district, except that sheds and driveways are permitted to a minimum setback of eight (8) feet from the side and rear lot lines:
- .1 Front: 15 feet
  - .2 Rear: 15 feet
  - .3 Side: 10 feet
- 204.23.6 The following performance standards shall apply within the TCD, provided however that the Planning Board may determine, based on the specific elements of a proposed development, that the standards be modified. For additional requirements relating to building and site improvements, refer to the Town Center District Design Standards.
- .1 **Building Design:** New structures within the district shall be of a New England architectural style and materials. This includes clapboard, shingle, or brick siding (composed of natural or composite materials), pitched rooflines, and neutral colors.
  - .2 **Lighting:** The use of exterior lighting shall be only as required for safety and to identify, during business hours only, businesses, parking areas and sidewalks. Fixtures shall be fully shielded, giving off no light above the horizontal plane. There shall be no internally illuminated signs. No greater than 1 foot-candle lighting permitted on the site; and there shall be 0 foot candles at the property line.
  - .3 **Cafe Standards:** Cafes within the TCD shall only be permitted within buildings in existence on July 1, 2010, and will conform to the following standards:
    - .1 Seating shall be limited to 48 seats.
    - .2 No more than 20 square feet of advertising shall be permitted on site. There shall be no advertising placed in windows or doorways of the building. Advertising shall not include internally illuminated signs.
    - .3 No kitchen ventilation hoods will be mounted on the front door street side of the building and will be located to minimize impact on neighboring properties.



- .4 Outdoor seating is permitted but must be buffered from adjacent uses by fencing and plantings unless located between the front of the structure and the public right of way.
- .5 All parking and loading facilities shall be located to the side or rear of the building, and shall be screened from abutting residences within 200 feet. Screening shall be comprised of a continuous landscaped area not less than eight feet in width, containing evergreen shrubs, trees, fences, walls, berms, or any combination, forming a visual barrier not less than six feet in height.
- .6 Restroom facilities for the patrons shall be provided on the premises.

.4: **Parking Standards:** Parking shall be located to the side or rear of multiplex residential and non-residential structures. There shall be no garage doors facing the street. On-street parking may be allowed upon Planning Board approval.

.5: **Buffering and Landscaping:** All uses must provide for the buffering of adjacent uses where there is a transition from one type of use to another use and for the screening of mechanical equipment and service and storage areas. The buffer may be provided by distance, landscaping, fencing, changed in grade and/or a combination of these or other techniques.

.6: **Hours of Operation:** All non-residential uses in the TCD shall be open for business only within the time frame of 6:30 a.m. to 9:00 p.m.

.7: **Commercial Deliveries:** Commercial deliveries shall be limited to the hours of 7:30 a.m. to 5:30 p.m.

.8 **Noise**

.1 Intent

These Performance Standards governing noise are intended to insure that the rights of property owners, as well as the overall health and general welfare of the District, are not diminished by unreasonable noise levels generated by any permitted or special exception use within the District.

.2 Maximum Permissible Sound Level

The maximum permissible sound level produced by any continuous, regular, or frequent source of sound or noise, shall not exceed a measurable level of seventy-five (75 dB) beyond the property boundaries of the site upon which the sound or noise is generated or originates.

### .3 Sound or Noise Abatement

In order to comply with these maximum sound level requirements, sound or noise level abatement techniques may be used to mitigate levels of site generated sound or noise. To this end, modern acoustical technology may be applied to achieve compliance with these regulations.

### .4 Measurements of Sound or Noise

In cases where sound measurements are required in order to insure compliance with these regulations, measurements shall be taken:

- .1 With a device meeting the standards of the American Standards Institute, American Standard Specifications for General Purpose Sound Level Meters;
- .2 At a height of four feet (4') above prevailing grade at the property boundary in question;
- .3 With the instrument set to the A-weighted response scale;  
and
- .4 Recorded by an individual familiar with sound measurement and the particular device being used.

### .5 Exemptions

.1 Activities related to public and private construction or maintenance work, agriculture, emergency warning devices, and other similar short term or temporary uses may be administratively exempted from the requirements of this Section if, in the opinion of the Code Enforcement Officer or his/her agent, sufficient reason exists to do so.

.2 In these special circumstances, the Code Enforcement Officer may place reasonable conditions (such as time limitations and hours of operation) on such an exemption.

## **Town Center District**

### **Definitions for New Uses**

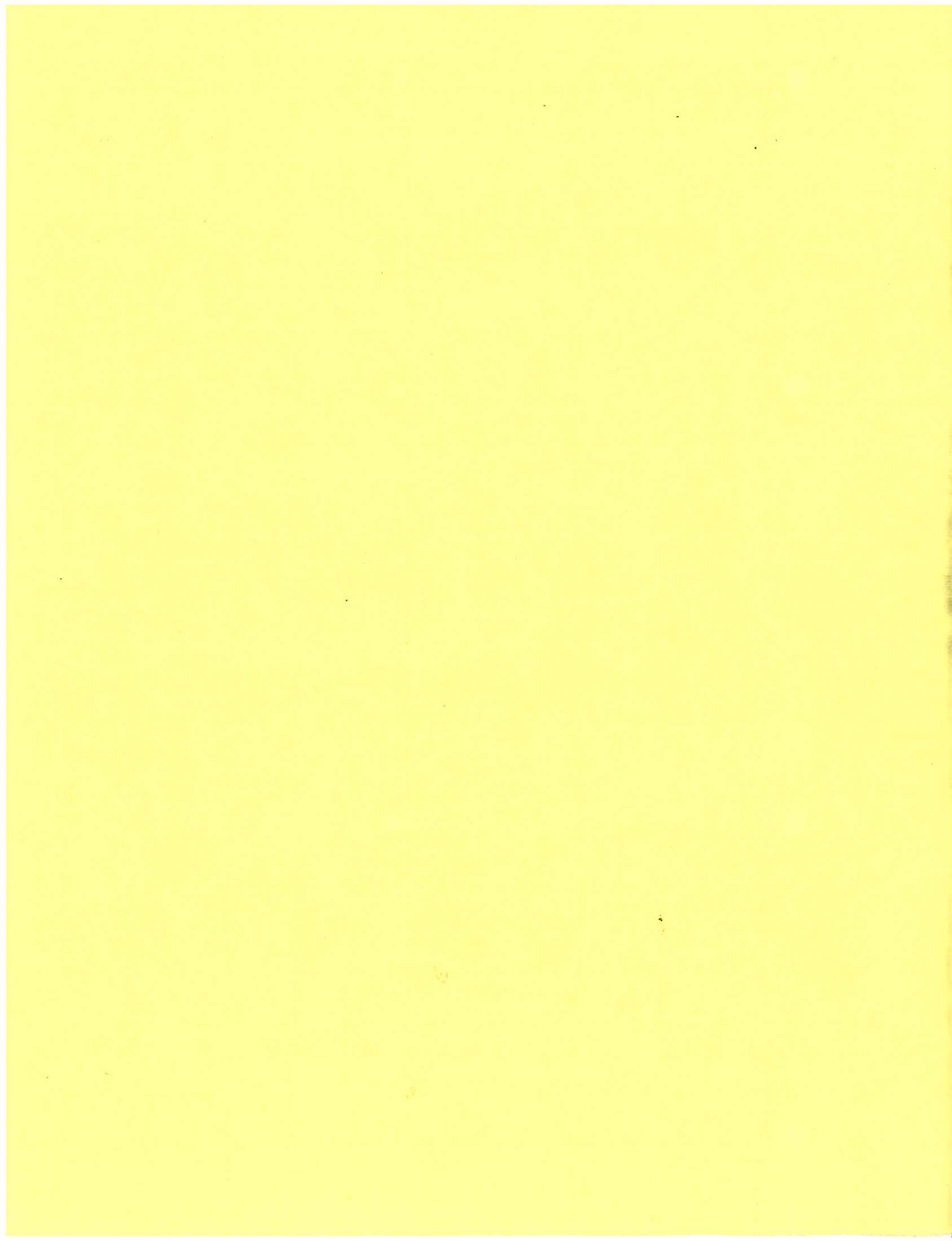
**NOTE:** There are four proposed uses for the new district that are not currently listed or defined in the zoning ordinance; below are these uses and their definitions.

**ADULT DAY CARE:** A facility providing care for the elderly and/or functionally impaired adults in a protective setting for a portion of a 24 hour day.

**CAFÉ:** An establishment no larger than 2500 square feet in size and characterized primarily by table service to customers in non-disposable containers, of drinks, meals and/or snacks with no more than 40 seats, no drive-through and with hours of operation not to exceed 6:30 a.m. to 9:00 p.m.

**SMALL MARKET:** A retail store that sells food products and other general household supplies and is no larger than 2,500 square feet in size.

**HEALTH AND FITNESS STUDIO:** A small-scale facility that provides an area for no more than 20 people at one time to utilize fitness equipment or attend classes.





## 204.3

### Medium Density Residential District (MDR)

204.3.1 The following uses are permitted in the MDR district: [Amended, effective 6/28/10]

- .1 Single family detached dwellings;
- .2 Duplex dwellings so long as each such dwelling is connected to sewer facilities;
- .3 Multiplex dwellings, so long as each such dwelling is connected to sewer facilities, and provided that multiplex dwellings are subject to the provisions of Sec. 406A; [Amended, effective 5/15/89]
- .4 Timber Harvesting, subject to provisions of Section 429
- .5 Antennas as defined in Sec. 100, subject to Site Plan Review, and Section 433; [Adopted, effective 12/13/99]
- .6 Agriculture; [Adopted, effective 4/24/00]
- .7 Cemeteries, subject to site plan review;
- .8 Religious institutions, subject to Site Plan Review;
- .9 Private schools, subject to Site Plan Review;
- .10 Residential care facilities (see Sec. 432); [Amended, effective 9/14/88]
- .11 Day care centers and nursery schools for no more than 20 children, subject to the provisions of Section 408A and Site Plan Review; [Amended, effective 12/13/89, Amended, effective 4/12/99]
- .12 Day care center adult for no more than 20 persons; subject to Site Plan Review or Special Exception as required.
- .13 Sewer pumping stations, subject to the provisions of Sec. 419.4;
- .14 Above ground utility lines not located within public ways;
- .15 Accessory structures of public utilities, subject to site plan review;
- .16 Extraction and/or bulk storage of ground water or spring water, subject to the provisions of Sec. 430;
- .17 Municipal uses and buildings, subject to site plan review;
- .18 Uses and buildings accessory to those above;

204.3.2 The following uses are allowed as special exceptions in the MDR district, requiring the approval of the Board of Adjustment and Appeals: [Amended, effective 6/28/10]

- .1 Home Occupations;
- .2 Home Based Occupations; [Amended, effective 2/12/07]
- .3 Uses and buildings accessory to those above;

204.3.3 The following lot standards shall apply within the MDR district:

- .1 2 acre minimum lot size, except that the minimum lot size for lots served by sewer shall be 1 acre; [Amended, effective 5/15/89]
- .2 In the case of duplex or multiplex developments, the minimum lot area per dwelling unit for a lot served by sewer shall be .5 acres; [Amended, effective 5/15/89]

- .3 There shall be no less than 150 feet of lot frontage. [Amended, effective 8/10/98]

204.3.4 The following minimum setbacks are required for all structures in the MDR district, except that sheds and driveways are permitted to a minimum setback of fifteen (15) feet from the side and rear lot lines:

- .1 Front: 35 feet
- .2 Rear: 50 feet
- .3 Side: 20 feet - combined width at least 50 feet.



**SECTION 500 -NON-CONFORMING USES, BUILDINGS, STRUCTURES  
AND LOTS [Amended, effective, 5/11/09]**

**Sec. 501**     The use of any building, structure or land which is made non-conforming by reason of the enactment of this Ordinance, or which shall be made non-conforming by reason of a subsequent amendment, may be continued subject to the following provisions:

**501.1            Non-conforming Uses, Buildings, or Structures**

**501.1            Nonconforming Uses, Buildings, or Structures**

- .1     Repairs and Alterations: A nonconforming building or structure may be repaired, altered, improved, or reconstructed. A nonconforming building or structure may be added to or expanded within the established setbacks for the underlying district after obtaining a permit from the same permitting authority as that for a new structure.
- .2     Rebuilding: A nonconforming building or structure which is damaged or destroyed by fire, explosion, or act of God may be rebuilt at any time. At the option of the owner, the building or structure may be rebuilt upon the original footprint of the destroyed building or structure. Otherwise, the rebuilt structure must be constructed within the established setbacks for the underlying district.
- .3     Expansion of nonconforming use: The number of square feet of floor space area devoted to a nonconforming use may be increased upon application to the Board of Adjustment and Appeals, but only if the Board finds that the proposed expansion of the nonconforming use will have no greater adverse effect upon other property in the same district and neighborhood and that the granting of such approval will not substantially depart from the intended purpose of this ordinance.
- .4     Change of Use: A nonconforming use of a building, structure, or lot of land may be changed to another nonconforming use upon application to the Board of Adjustment and Appeals and in accordance with the standards of Section 501.1.3 of this ordinance.
- .5     Abandonment: A nonconforming use of any building, structure, or lot of land which has been abandoned shall not thereafter be resumed. For purposes of this subsection, a nonconforming use shall be considered abandoned:
  - .1     When it has been replaced by a conforming use;



- .2 When it has been discontinued for a period of two (2) years; provided that a nonconforming commercial use which is not open and operating for at least five (5) days per week during traditional business hours for a period of at least three (3) months in any twelve (12) month period during the prescribed two-year (2) period shall be deemed to have been abandoned.
- .3 For any residential use that is nonconforming the discontinuance period shall be four (4) years.  
[Amended, effective 5/11/09]

# ITEM

# 11-039

To set a Public Hearing date (March 28<sup>th</sup>) to add Section 204.23,  
Route 100 Corridor Residential Overlay, to the  
Cumberland Zoning Ordinance.

## Notice of Decision

**Date:** February 23, 2011

**To:** William Shane, Town Manager  
Town of Cumberland  
290 Tuttle Road  
Cumberland, ME 04021

**Re:** **Public Hearing: To add Section 204.23: Route 100 Corridor Residential Overlay to the Cumberland Zoning Ordinance.**

### **Section 204.23 – Route 100 Corridor Residential Overlay**

The purpose of this overlay is to allow residential use within the Route 100 corridor commercial districts that are not developable for commercial use due to restrictions on Route 100 access by the Maine Department of Transportation.

#### **203.23.1 The following uses are permitted**

- .1 Dwelling, Attached**
- .2 Dwelling, Detached**
- .3 Dwelling, Duplex**
- .4 Dwelling, Multiplex**
- .5 Any use permitted in the underlying district.**

#### **203.23.2 Minimum Lot Standards**

The minimum lot size and setbacks for all new uses in this Overlay shall be those of the underlying district.

This is to advise you that on February 15, 2011 the Planning Board voted to approve and recommend draft zoning amendments to the Cumberland Zoning Ordinance to add Section 203.23 – Route 100 Corridor Residential Overlay.

**Findings of Fact:** None  
**Waivers granted:** None  
**Waivers Denied:** None

### **Standard Conditions of Approval**

This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents, except de minimus changes as so determined by the Town Planner which do not affect approval standards, is subject to review and approval of the Planning Board prior to implementation.

Cumberland Planning Board



Christopher S. Neagle, Board Chair



# ITEM

## 11-040

To set a Public Hearing date (March 28<sup>th</sup>) to consider and act on a Contract Zone Agreement for Phase One of the Doane Property Revitalization Project with Bateman Partners, LLC.

*The Notice of Decision with Planning Board recommendation will be in March 28<sup>th</sup> meeting packet*



**CONTRACT ZONING AGREEMENT**  
**BY AND BETWEEN THE TOWN OF CUMBERLAND**  
**AND**  
**VILLAGE GREEN CUMBERLAND, LLC**

**RELATING TO PHASE I OF THE**  
**VILLAGE GREEN REVITALIZATION MASTER PLAN**

**(The former "Doane" Parcel Consisting of Approximately 40.7 Acres)**

This Contract Zoning Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011 by and between the **Town of Cumberland**, a Municipal Corporation (the "**Town**"), and **Village Green Cumberland, LLC**, a Maine Limited Liability Company with a business address of PO Box 3572, Portland, ME 04104-3571, its nominee or assigns (the "**Developer**"), pursuant to the Conditional and Contract rezoning provisions set forth in 30-A M.R.S.A. Section 4352 (the "**Act**") and Section 606 of the Cumberland Zoning Ordinance, as amended (the "**Zoning Ordinance**").

WHEREAS, the property subject to this Agreement consists of a 40.7 +/- acre parcel of unimproved real estate located between Drowne Road and Wyman Way, identified on the Town's Tax Assessor map as MAP U10, Lot 7B, as more particularly shown on Exhibit A attached hereto (the "**Property**"), which property is currently owned by the Town by virtue of a certain Deed dated September 13, 2000, recorded in the Cumberland County Registry of Deeds in Book 15732, Page 22;

WHEREAS, the Property is located in the Village Mixed-Use Zone (V-MUZ) Zoning District (the "**V-MUZ Zoning District**") located in section 204.13 of the Zoning Ordinance;

WHEREAS, the Developer has entered into a Purchase and Sale Agreement - Land Only, dated \_\_\_\_\_, as amended (the "**Purchase and Sale Agreement**"), pursuant to which the Developer has agreed to purchase the Property from the Owner;

WHEREAS, the Town desires to sell the property to generate tax revenue and stimulate further economic development in the town center as recommended by the 2009 Comprehensive Plan.

WHEREAS, the Developer intends to develop the Property into a 59 lot residential subdivision, subject to the terms and conditions set forth herein, as further described in the Exhibit B attached hereto (the "**Project**");

WHEREAS, in order for the Project to be financially feasible for the construction and sale of residential dwelling units while meeting all applicable codes, certain Amendments with respect to dimensional, design and certain other performance standards of the Cumberland Zoning Ordinance are required, and;

WHEREAS, the Town and Developer desire to enter into this Contract Zoning Agreement relating to the Property, subject to the terms and conditions set forth herein.

NOW THEREFORE, pursuant to the provisions of 30-A.M.R.S.A. § 4352(8) and Section 606 of the Cumberland Zoning Ordinance, as amended, the Cumberland Town Council hereby finds that this Amended and Restated Contract Zoning Agreement:

- A) is consistent with the Comprehensive Plan duly adopted by the Town of Cumberland on November 9, 2009;
- B) establishes a contract zone area consistent with the existing and permitted uses in the original zone of the area involved;
- C) only includes conditions and restrictions which relate to the physical development and future operation of the proposed development; and
- D) imposes those conditions and restrictions which are necessary and appropriate for the protection of the public health, safety and general welfare of the Town.

In furtherance of these common goals, the parties agree as follows:

I. **Establishment of the Contract Zone:**

The Town hereby agrees that the Property as described herein shall be a contract zone (the "Contract Zone") pursuant to the provisions of 30-A.M.R.S.A. § 4352(8) and Section 606 of the Cumberland Zoning Ordinance. This Agreement shall create an overlay zone. Except as expressly modified or otherwise stated herein, the Property shall be subject to the requirements of the underlying V-MUZ Zoning District, as the same may be amended from time to time, together with all applicable lot requirements and general requirements, not modified herein.

II. **Permitted Uses Within the Contract Zone:**

The development permitted within the Contract Zone established herein shall be as follows:

All uses currently authorized either as permitted uses or special exceptions in the VMUZ Zoning District, or as specifically authorized herein.

III. **Restrictions and Certain Design Standards Within The Contract Zone:**

All restrictions as currently set forth in Section 606 of the Cumberland Zoning Ordinance, except as modified herein and as appears on Exhibit C, attached hereto and made a part hereof.

IV. **Performance Standards Within the Contract Zone:**

The following performance standards shall apply to the Contract Zone (Phase I of the VGRMP) as follows:

A. The Recreation Facilities and Open Space Impact Fee Ordinance of the Town of Cumberland shall be waived in accordance with Article 1.10 Waiver of Impact Fee subject to the following provisions:

- 1.6 Payment of Fees shall be modified as follows; the Developer shall submit to the Town a list of specific public improvements with corresponding values for said improvements to be provided by each Phase of the approved Village Green Revitalization Master Plan (VGRMP). All public improvements provided in lieu of the impact fee for each Phase of the approved VGRMP shall be completed prior to the final release of bonds or letter of credit(s) required to secure all public improvements for each Development Phase. Performance guarantees, including Letters of Credit and bonds, shall include the value of the in lieu payments attributed to Public Improvements, even where the Public Improvements are to be located upon future Phases which may or may not be constructed.
- The public improvements provided for each Phase of the approved VGRMP will, at a minimum, equal the value of the impact fee(s) otherwise due as provided in 1.11 Calculation of Fees.
- All public improvements to be located within the adjacent "Civic Lot" (Map U10-A, Lot 13) provided by the Developer as part of this Agreement shall be in accordance with a Site Plan approved in advance by the Town.
- Certain areas within the parcel purchased from the Town (Map U10, Lot 7B) by the Developer shall be subject to an easement which allows for public use and recreation (see Exhibit D Plan of Open Space/Recreational Easements). The value of these easements for the purposes of 1.11 Calculation of Fees (Land for Public Use) shall be based on the total purchase price paid for said parcel, divided by the total acreage of the parcel multiplied by the acreage finally included within the easement area(s). Provided, however, that the Developer shall not be credited for areas that would customarily be required by law or ordinance of any residential subdivision approved by the Town.

B. The Town of Cumberland's Growth Management Ordinance is hereby amended to include the following additional exemption within Section 106 of this ordinance:

**106.6 Lots included within the Phase I subdivision of the approved Village Green Revitalization Plan.**

Subject to the terms herein, the Cumberland Planning Board shall have review authority under the applicable provisions of the Cumberland Subdivision, Site Plan and Zoning Ordinances to impose conditions of approval pursuant to said Ordinances relating to the development and construction.

**V. Miscellaneous Provisions:**

- A. **Survival Clause:** The terms and conditions of this Agreement shall run with the land and be binding upon and shall inure to the benefit of the respective successors, heirs and assigns of the parties hereto except as specifically set forth herein. This Agreement shall not be assignable without the prior approval of the Cumberland Town Council, provided, however, that the Developer may assign this Agreement without such approval to a corporate entity or limited liability company solely owned and organized by the Developer for the purpose of developing the Project. A true copy of this Agreement shall be recorded in the Cumberland County Registry of Deeds.

VI. **Further Assurances:** In order to effectively and properly implement this Agreement, the parties agree to negotiate in good faith the terms and conditions of such further instruments and agreements as may be reasonably necessary from time to time to give effect to this Agreement.

VII. **Maine Agreement:** This contract is a Maine Agreement, entered into in the State of Maine and shall be governed by and enforced in accordance with the laws of the State of Maine.

VIII. **Binding Covenants:** The above stated restrictions, provisions, and conditions are an essential part of this contract and shall run with the subject premises, shall bind the interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by the Town, by and through its duly authorized representatives. This Agreement may not be amended except by mutual written agreement by the parties.

IX. **Severability:** In the event any one or more clauses of this Agreement shall be held to be void or unenforceable for any reason by any court of competent jurisdiction, such clause or clauses shall be deemed to be severable and of no force or effect in such jurisdiction, and the remainder of this Agreement shall be deemed to be valid and in full force and effect, and the terms of this Agreement shall be equitably adjusted if possible so as to compensate the appropriate party for any consideration lost because of the elimination of such clause or clauses.



X.     **Enforcement:** The Town shall also have the ability to enforce any breach of this Agreement or any other violation of the Zoning Ordinance through the provisions of 30-A M.R.S.A § 4452.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed as of the day and year first above written.

WITNESS:

Town of Cumberland

\_\_\_\_\_

By:

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

WITNESS:

Village Green Cumberland, LLC

\_\_\_\_\_

By:

\_\_\_\_\_  
David H. Bateman  
Its Manager

## EXHIBITS

**Exhibit A**

Survey of the Property

**Exhibit B**

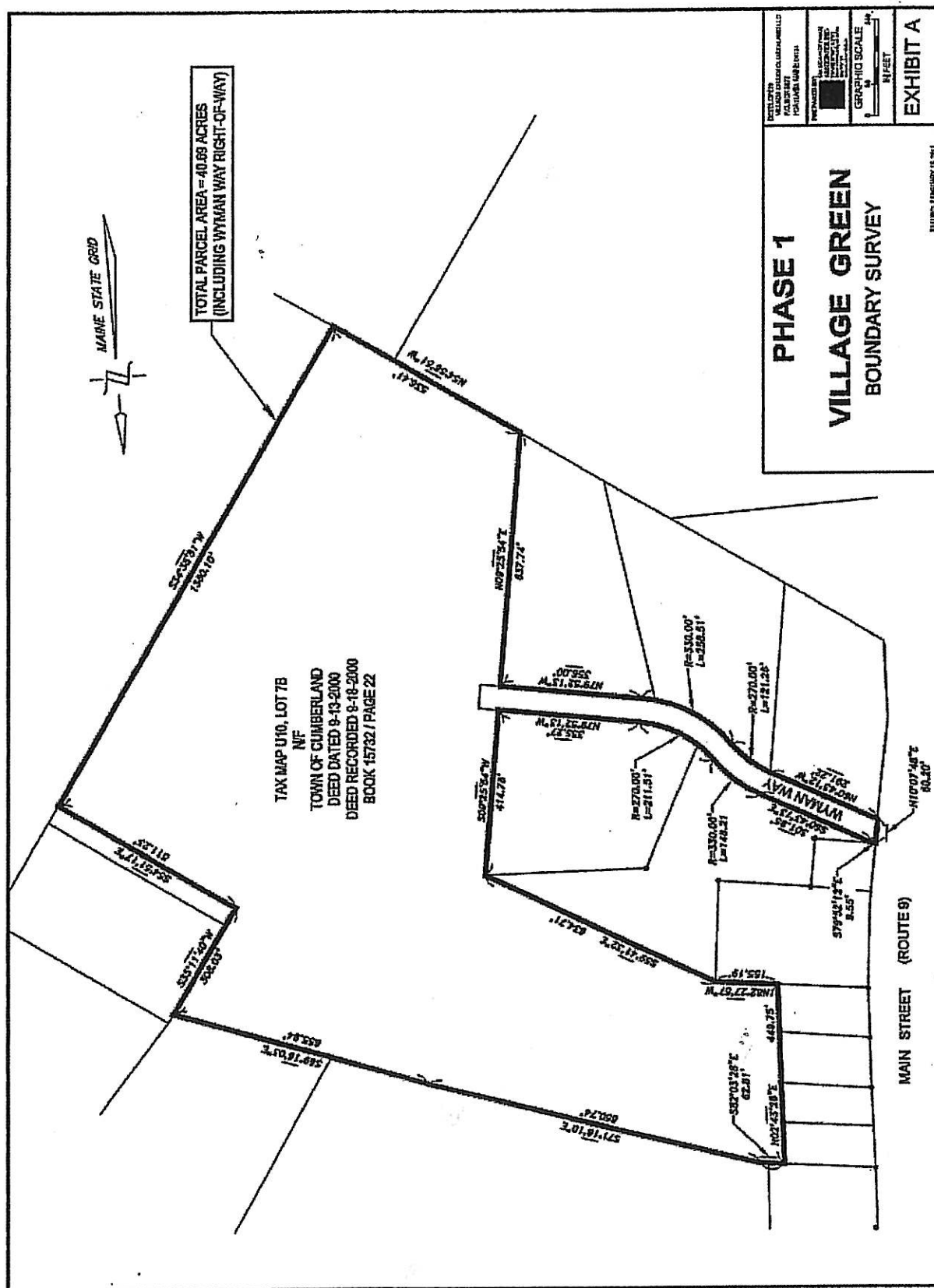
Approved Village Green Revitalization Master Plan (VGRMP) Phase I

**Exhibit C**

Summary of Zoning Amendments

**Exhibit D**

Plan of Open Space/Recreational Easement(s)









**EXHIBIT C**  
**Summary of Zoning Amendments**

A) The following minimum lot frontages shall be required on a Private Drive within the Contract Zone (Phase I of the Village Green Revitalization Master Plan, VGRMP) as follows:

Use	Min. Lot Frontage
Detached Single Family Residential Structure	15'
Attached Single Family Residential Structure	15'
Duplex Residential Structure	50'

Maximum Number of Residential Units Accessed from Private Drive = 6

B) The following minimum setbacks within the VMUZ District shall be modified for all structures within the Contract Zone (Phase I of the VGRMP) as follows:

Structure Type	Front	Side
Detached Single Family Residential Structure and Garage	15' *	
Attached Single Family Residential Structure and Garage	15' *	10' **
Duplex Residential Structure and Garage	15' *	
Driveways	0'	8' **

\* Setback between face of garage and sidewalk shall be minimum distance of 20'

\*\* Side setback reduced to 0' along common sideline between attached residential structures and garages

C) All public roads within the Contract Zone (Phase I of the VGRMP), including the full extent of Wyman Way connecting to Main Street, shall be designed in accordance with the residential sub-collector roadway standards as contained in Section 8.2 of the Subdivision Ordinance, as modified by Section 204.13.5.4 of the V-MUZ District and as further modified below:

Standard	Public Road
Grass Esplanade	6' * (one side)
Paved Sidewalk	6' (one side)
Min. Tangent Length Between Curves of Reverse Alignment	0'
Min. Distance Between Street Intersections on Same Side	100'
Min. Distance Between Street Intersections on Opposite Side	200'

Min. Pavement Radii at Intersections	35'
Min. K Factor, Crest Vertical Curve	15
Min. K Factor, Sag Vertical Curve	20
MPH Design Speed	25
Min. Property Line Radius at Intersection	15'
Dead End Turn Around	Cul-de-Sac Per 8.2.D.3

\* Reduce esplanade width to 0' along portion of Wyman Way extending between Parcel 1 (Tax Map U10, Lot 7B) – Former Doane Parcel and Main Street (Route 9).

D) All private roads within the Contract Zone (Phase 1 of the VGRMP) shall be designed in accordance with the private roadway standards as contained in Section 8.2 of the Subdivision Ordinance, as modified by Section 204.13.5.4 of the V-MUZ District and as further modified below:

Standard	Private Road
Grass Esplanade	4' (one side)
Paved Sidewalk	5' (one side)
Min. Tangent Length Between Curves of Reverse Alignment	0'
Min. Distance Between Street Intersections on Same Side	100'
Dead End Turn Around	Tee Turn Around 25' Length

E) The following roadway standards shall apply to private drives within the Contract Zone (Phase 1 of the VGRMP):

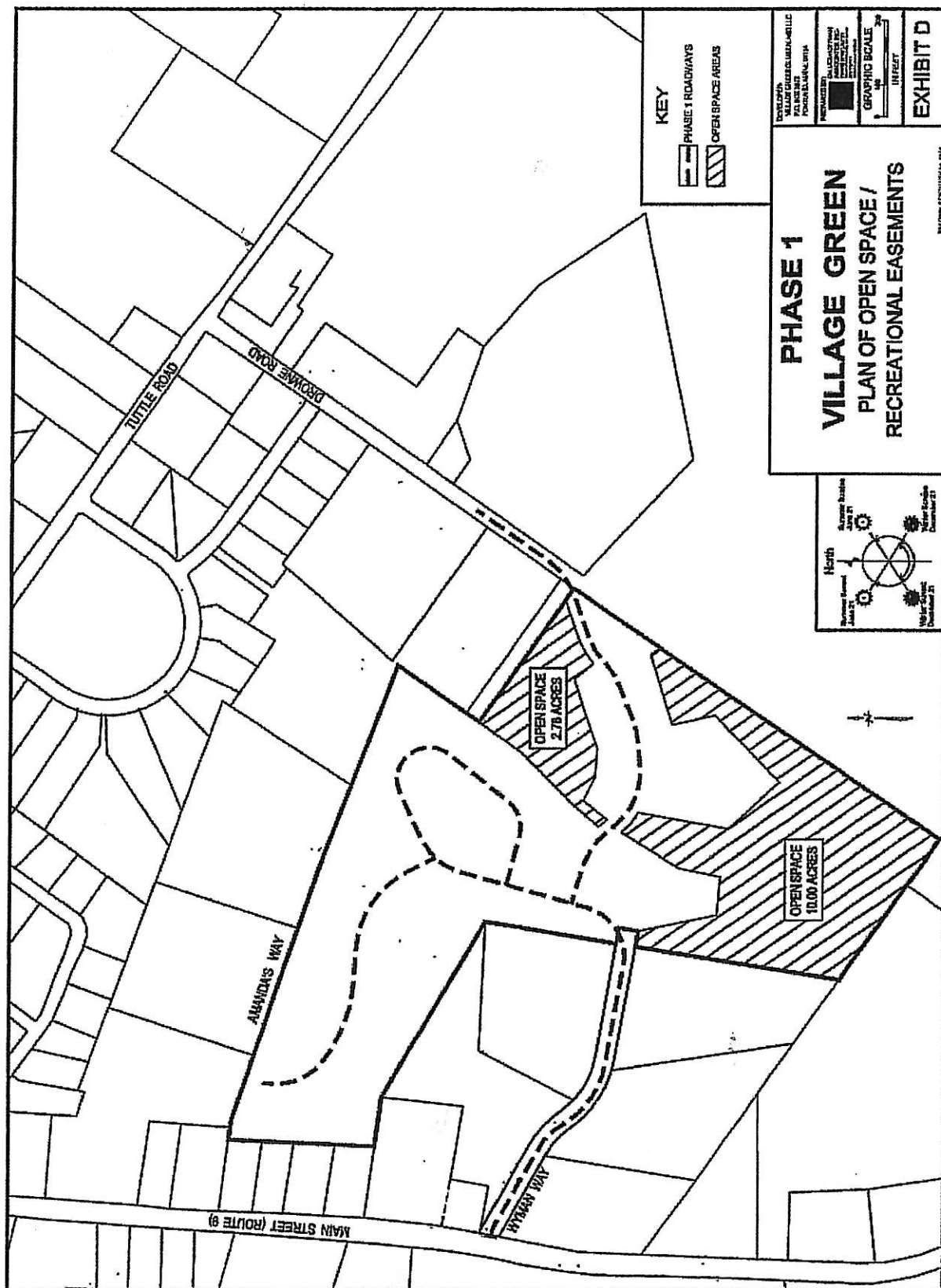
Standard	Private Drive
Right-of-Way Width	30'
Roadway Pavement Width	18'
Grass Esplanade	N/A
Paved Sidewalk	N/A
Max. Dead End Road Length	250'
Min. Roadway Centerline Grade (1.0% preferred)	1.0%
Max. Roadway Centerline Grade	10%
Min. Centerline Radius (100' Preferred)	100'
Min. Tangent Length Between Curves of Reverse Alignment	0'
Min. Angle of Street Intersections (90° Preferred)	75°
Min. Distance Between Street Intersections on Same Side	100'

Min. Distance Between Street Intersections on Opposite Side	100'
Min. Pavement Radii at Intersections	10'
Min. Pavement Crown	¼" per foot
Min. Slope of Gravel Shoulder	½" per foot
Min. K Factor, Crest Vertical Curve	15
Min. K Factor, Sag Vertical Curve	20
MPH Design Speed	25
Max. Grade within 75' of Intersection	3%
Min. Property Line Radius at Intersection	0'
Dead End Turn Around	N/A

F) The following design standards shall apply to the Contract Zone (Phase I of the VGRMP) as follows:

1. The portion of public roadway along the existing Wyman Way right-of-way shall conform to the existing right-of-way dimensions and geometry, which shall include the ability of the roadway not to be centered within the existing right-of-way.
2. The drainage system for public and private roadways shall consist of closed drainage to the extent practicable; however, shallow under-drained swales may be used alongside roadways where no sidewalk is proposed. Where sidewalks are proposed, they shall be constructed with curb and access to the closed drain system through catch basin inlets, for example.
3. Parking and garage doors facing towards the public right-of-way are permissible provided the garages are architecturally designed to not be the principal element of the structure. Parking and garage doors facing towards private roads and private drives are permissible.
4. No minimum wooded buffer strip is required to be maintained along existing public streets as referenced in Section 7.9 of the Subdivision Ordinance.
5. Curbing at roadways to be either bituminous or slip form concrete.
6. A minimum 50' buffer shall be maintained along the exterior of the VGRMP parcel (excluding Wyman Way right-of-way) and abutting residential development. The 50' buffer shall not be required to adjacent land owned by the Town.





# ITEM

## 11-041

To authorize the Town Manager to execute a 5-year lease with Wells Fargo on behalf of Club Cart Enterprises for the lease of 50 electric carts for Val Halla Golf Course.



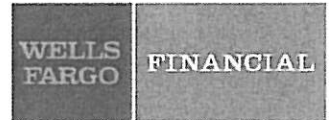
# M E M O R A N D U M

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

**To:** Town Council  
**From:** William R. Shane, Town Manager  
**Date:** March 10, 2011  
**Re:** Golf Cart Lease

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The attached document is the 5 year lease renewal for golf carts. Since this is a 5 year contract it does require your approval. The new carts will be electric – just in time! The break-even price between gas & electric is somewhere near \$ 2 per gallon.



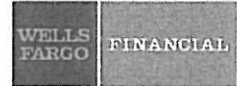
**Document Check List**  
**Application# 754385**  
Town of Cumberland  
dba Val Halla Golf Club

- Sign & date the Master Lease Schedule
- Sign & date the Master Lease Schedule – Equipment Addendum
  - Sign the Delivery and Acceptance Section
- Complete, sign & date the Insurance Form
- **Please have an elected town official sign and date all lease documents**
- Send all of the completed & signed documents to:

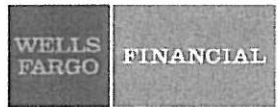
Wells Fargo Financial Leasing, Inc.  
Attn: Aaron Meyer  
MAC # F4031-040  
800 Walnut Street  
Des Moines, IA 50309



## Master Lease Schedule No. 019-0001408-



General Information						
Lessee's Name: Town of Cumberland dba Val Halla Golf Club			Co-Lessee's Name:		Master Lease Agreement No: 019-0001408-	
Lessee's Address: 290 Tuttle Road Cumberland ME 04021			Co-Lessee's Address:		Application #: 754385	
Billing Address (If different than Lessee Address shown above) 290 Tuttle Road Cumberland ME 04021						
Supplier (Dealer's) Name & Address: Country Club Enterprises					Dealer # 5208.19	
Lessor: Wells Fargo Financial Leasing, Inc.						
Equipment Information						
Wells Fargo hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Wells Fargo, the Equipment identified on <b>Addendum A</b> , attached hereto and incorporated herein by reference.						
Equipment Location (Address, City, State, County, Zip Code): 290 Tuttle Road Cumberland ME 04021				<input type="checkbox"/> Check Here if Equipment Location is outside of City Limits		Insurance:  <input type="checkbox"/> Proof of Insurance Attached
Lease / Payment Information						
Original Term:	Commencement Date:	Original Term Purchase Option Price:	Lease Payment:	Property Tax:	Use Tax:	Total Lease Payment:
67 Months	4/1/2011	NA	\$5,940.00	\$0.00	\$0.00	\$5,940.00
Renewal Information						
Renewal Term:	Renewal Date:	Renewal Term Purchase Option Price:	Renewal Lease Payment:	Property Tax:	Use Tax:	Total Renewal Lease Payment:
Date Payment Begins: 5/1/2011			Payments are due on day(s):			
<input type="checkbox"/> Monthly Payments			May through October 2011, 2012, 2013, 2014, 2015 & 2016			
<input checked="" type="checkbox"/> Payments other than monthly (if checked, payments are: <input type="checkbox"/> Quarterly; or <input checked="" type="checkbox"/> Payment Schedule Attached)						
Advance Lease Payment: \$0.00 includes the first 0 payment(s) and the last 0 payment(s).						
Total Finance Charges due during the Original Term of this Schedule: NA						
This Equipment Lease Schedule (this "Schedule") is made and entered into as of the Effective Date identified above and is entered into in connection with the above-identified Master Lease Agreement (the "Master Agreement"). All of the terms and conditions set forth in the Master Agreement are hereby reaffirmed and incorporated in and made part of this Schedule, as if fully set forth herein. This Schedule, inclusive of the terms and conditions set forth in the Master Agreement as aforesaid, constitutes a separate lease between Wells Fargo and Lessee that may be referred herein to as this "Lease". This Lease is not binding upon Wells Fargo until Wells Fargo accepts this Lease by signing below. A facsimile copy of this Lease shall have the same force and effect as the original. This Lease may not be modified except in writing, signed by Wells Fargo and Lessee. This Lease may be terminated early only in accordance with Section 5 of the Master Agreement.						
Lessee: Town of Cumberland dba Val Halla Golf Club			Co-Lessee:			
By: _____			By: _____			
Name/Title: _____			Name/Title: _____			
Date: _____			Date: _____			
Lessor: Wells Fargo Financial Leasing, Inc.			By: _____			
Date: _____			Name/Title: _____			



## Addendum A to Master Lease Schedule

This Addendum A is entered into in connection with Master Lease Schedule No. \_\_\_\_\_ (the "Schedule").

Wells Fargo hereby agrees to lease to Lessee, and Lessee hereby agrees to lease from Wells Fargo, the following-described Equipment upon the terms and conditions set forth in the Schedule:

Description of Equipment:	Serial Number	Maximum # of Hours Per Year:	Excess Use Charge Per Hour:	Beginning Hr. Meter #
(40) 2011 Club Car Precedent Electric IQ Golf Cars and (1) 2006 Club Car Turf 1 IQ Electric Utility Vehicle with all standard equipment plus canopy tops, windshields and bag covers				

Lessee agrees that Wells Fargo may insert the Serial Numbers for the Equipment after Lessee's execution hereof. A facsimile copy of this Addendum shall have the same force and effect as the original. This Addendum may not be modified except in writing, signed by Wells Fargo and Lessee.

Lessee:	Town of Cumberland dba Val Halla Golf Club	Co-Lessee:	
By:	_____	By:	_____
Name/Title:		Name/Title:	
Date:		Date:	
Lessor:	WELLS FARGO FINANCIAL LEASING, INC.		
By:	_____		
Name/Title:			
Date:			

### Delivery and Acceptance Certification

To: Wells Fargo Financial Leasing, Inc., MAC F4031-050, 800 Walnut Street, Des Moines, IA 50309 ("Wells Fargo")

Re: Master Lease Schedule No: \_\_\_\_\_ (the "Lease")

Lessee (and Co-Lessee, if applicable) hereby unconditionally certifies that: (1) all of the Equipment (a) has been properly delivered to it at the Equipment location described in the Lease, (b) has been installed and is in good working order, and (c) meets all of its requirements and is suitable for its purposes, (2) it has had a reasonable opportunity to inspect the Equipment and unconditionally and irrevocably accepts all of the Equipment for all purposes, (3) it has duly executed the Lease and no side agreements or cancellation rights have been granted to it with respect to the Lease or any Equipment, (4) all of its representations and warranties set forth in the Lease are true and correct, and (5) it has not been induced to sign this Certificate by any assurances of Wells Fargo or anyone else. Lessee (and Co-Lessee, if applicable) authorizes Wells Fargo to, at any time, insert the number of the Lease in this Certificate.

Date	By	Print Name and Title of Signor
	X	





## Customer Insurance Certification

Lessee: Town of Cumberland dba Val Halla Golf Club      Application Number: 754385  
Co-Lessee:      Master Lease No.: 019-0001408-  
Schedule No.:

Name of Insurance Agency:	Phone Number of Agency:
Mailing Address of Agency:	Fax Number of Agency:

We agree and understand that, under the terms of our Master Lease Agreement with you, we must at all times keep the Equipment under the Schedule referenced above insured against all risks, loss, damage or destruction for the full replacement cost with Wells Fargo Financial Leasing, Inc. named as sole loss payee. Additionally, we must maintain, throughout the term of the Schedule, public liability insurance in the amounts specified in the Master Lease and name Wells Fargo Financial Leasing, Inc. as an additional Insured. We must receive thirty (30) days prior notice before any termination, modification or cancellation for all types of Insurance. I authorize you to contact the agencies identified above and authorize the agents to release insurance certificates to Wells Fargo indicating the above.

\_\_\_\_\_  
Lessee Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Co-Lessee Signature

\_\_\_\_\_  
Date

Send to Wells Fargo Financial Leasing, Inc. via mail to: Wells Fargo Financial Leasing, Inc., Golf and Turf Division, MAC# F4031-050, 800 Walnut Street, Des Moines, IA 50309; or via Fax to: Wells Fargo Financial Leasing, Inc., attn: Golf and Turf Division Fax #866-336-8375.

### EQUIPMENT DESCRIPTION.

See Addendum A to Master Lease Schedule for the equipment description.

Office Use Only		
Contact Date:	Contact Name:	
Insurance Company(s):		
Policy No(s):	Expiration Date(s):	Insured Value:
Named Sole Loss Payee: Wells Fargo Financial Leasing, Inc.		Verified By:
<input type="checkbox"/> YES <input type="checkbox"/> WILL BE ADDED		
Additional Insured: Wells Fargo Financial Leasing, Inc.		Public Liability Insurance Limits:
<input type="checkbox"/> YES <input type="checkbox"/> WILL BE ADDED		