

**TOWN OF CUMBERLAND  
BOARD OF ADJUSTMENT AND APPEALS MINUTES  
Thursday, August 8, 2024**

**Roll Call: Present:** Matthew Manahan – Chairman, Andrew Black, Ronald Copp, Sr, Michael Martin, Sally Pierce, Amanda Vigue and Bill Longley - Code Enforcement Officer.

Chairman Manahan opened the meeting.

**1. Election of Chairman and Clerk per Town of Cumberland Zoning Ordinance Chapter 315-77. A. (1).**

Mr. Black nominated Matthew Manahan as Chairman of the Board of Adjustment and Appeals, seconded by Ms. Vigue. There were no other nominations. The nomination of Matthew Manahan to serve as Chairman of the Board of Adjustment and Appeals was then **VOTED 5 yeas, 1 abstained (Manahan) – motion carries.**

Ms. Peirce nominated Christina Silberman to serve as Clerk to the Board of Adjustment and Appeals, seconded by Ms. Vigue. There were no other nominations. The nomination of Christina Silberman to serve as Clerk to the Board of Adjustment and Appeals was then **VOTED 6 yeas, unanimous – motion carries.**

**2. PUBLIC HEARING: Interpretation/Decision Appeal as allowed in Chapter 315.77.B.(1) and Chapter 232-11:** Justin Levesque - 16 Hope's Way, Douglas Mason – 11 Hope's Way and Gregory Goding – 12 Hope's Way have filed this appeal regarding issuance of Building Permit #24-148 issued on June 17, 2024 for installation of a 48 panel solar array on a dual axis tracker issued to Kevan and Dwight Deckelmann of 135 Tuttle Rd. as shown on Tax Assessors Map R04, Lot 15A in the RR1- Rural Residential Zone.

Chair Manahan read the agenda item and reviewed the Board of Adjustment and Appeals Rules of Procedure.

TOWN OF CUMBERLAND BOARD OF ADJUSTMENT AND APPEALS RULES OF PROCEDURE

1. No business may be transacted by the Board without a quorum consisting of four members. The concurring vote of a majority of those voting, but at least three votes, is necessary to grant any application. If any matter fails to receive a favorable vote of a majority of the Board members voting, the application will be deemed to have been denied.
2. All testimony must be presented at the podium so that it can be recorded. Testimony will be videotaped. The videotape will be available for inspection at the Town Office during regular business hours.
3. Applicants will first state their case and may present testimony and offer evidence. The burden of proof is on the applicant to present all the evidence the Board needs to determine whether the project will comply with every applicable requirement of the Ordinance. Applicants are strongly encouraged to provide with their written submissions all evidence in support of their application.
4. Following the conclusion of the applicant's case, members of the public may present testimony and offer evidence, in the following order: first, those in favor of the application; second, those opposed to the application; and third, those neither for nor against the application.
5. Applicants may then offer rebuttal evidence.
6. Parties, acting through the Chair, may cross-examine witnesses. The Chair may limit irrelevant, immaterial, or unduly repetitious testimony. Members of the Board may ask questions at any time, with the permission of the Chair.

7. At the conclusion of the rebuttal evidence, the public portion of the proceeding will be closed, and the Board will rule on the application pursuant to the applicable provisions of Cumberland's Zoning Ordinance and Maine law. The Chair may reopen the public portion during deliberations if the Chair determines it is necessary to do so in the interests of a full and fair hearing and a complete record.

8. After a decision has been made, the Board will not entertain a new appeal of similar import concerning the same property until one year has elapsed from the date of the decision, unless the Chair believes that an injustice was done because of a mistake of law or misunderstanding of fact or if the Chair believes a change has taken place in some essential aspect of the case sufficient to warrant a reconsideration of the appeal.

9. The Board's procedures also are governed by Maine law (30-A M.R.S.A. §§ 2691 and 4353, or any successor statutes) and §§ 15-77 of the Cumberland Code.

Chairman Manahan asked Code Enforcement Officer Bill Longley to introduce the item. Mr. Longley reported that on or about June 17th, a proposal was brought before him for a solar permit. Mr. Longley noted that this solar project is unique in that it is on a pole while most of the solar permits he has issued, numbering in the hundreds, have either been on roofs or on the ground. This is the first pole mounted solar permit that Mr. Longley has approved. Mr. Longley said he reviewed the Solar Energy Systems Ordinance and, in his opinion, the application met the requirements. The proposal met the 15-foot setback from a side or rear yard line and approval was limited with a condition on the permit that it be no greater than 24 feet in height. Mr. Longley said that this moving on access type solar system has the ability to go higher than 24 feet and his discussion with the applicant limits the height to no greater than 24 feet. Mr. Longley said the 24-foot height condition was placed on the permit to comply with the Solar Energy Systems Ordinance.

There was Board discussion about which party should speak first and it was decided that the appellants would speak first.

Justin Levesque, Appellant, said that there are basically three parts to their appeal. Mr. Levesque referred to the site plan that was originally submitted with the application and said the site plan has had a lot of evolution. Mr. Levesque referred to a description that structure tilts upward and can go to a maximum height of over 30 feet and this exceeds the current ordinance for solar structures in Cumberland which is 24 feet. Mr. Levesque referred to Mr. Longley's statement that the structure will be flat and restricted to being flat and not tilting or moving. Mr. Levesque said he will outline how by design the system does need to move, tilt and rotate according to how it was designed for it to be safe and how from that safety issue the height will be violated.

Mr. Levesque said he feels like there's a lot of uncertainty currently in the Chapter 232 Ordinance in Cumberland for solar and he asks that the Board help to interpret some of the uncertainty that he will present.

Mr. Levesque referenced Solar Ordinance chapter 232, section nine noting a side setback of 15 feet from any lot line and how pole mounted systems have a maximum height of 24 feet. Mr. Levesque said there is no other language quantifying the array size in this section of the ordinance. Mr. Levesque said the 24 feet max height and the side, rear and front setbacks are the only quantifiable metrics allowing for size of these structures.

Mr. Levesque showed an aerial photo of the location and said this project is of a commercial nature in a rural residential zone. Mr. Levesque said he wrote to Mr.

Longley and members of the Town Council on June 29<sup>th</sup> after becoming aware of this permit. Mr. Levesque is concerned with the lack of detail on the site plan submitted and said the site plan shows a dot and does not give detail as to the structure size and if the dot indicates the pole or the entire array. Mr. Levesque said there are setback measurements in four directions from a dot and information is missing at the two closest corners. Mr. Levesque said he pointed this out in a letter shared with multiple parties and movement is going forward on a much more detailed site plan. Mr. Levesque is concerned that the full setback requirements will be met because if it abuts close to the property lines and if the setbacks are violated this could potentially taint the abutters' deeds. Mr. Levesque outlined the size of the solar tracker and said he would like more information about how the tracker will move and if the movement will impact setbacks and sight lines.

Chairman Manahan asked if Mr. Levesque's concerns are that if it rotates, it might be within the 15-foot setback. Mr. Levesque confirmed this was his concern.

Mr. Levesque reported that the permit was approved the same day it was submitted and said the ordinance provides for permits to be reviewed within 10 days. Mr. Levesque said that additional aspects could have been thought about, namely the International Residential Code (IRC) that deals with standards for photovoltaic systems.

Mr. Levesque referred to the height of the structure and said the original permit was really confusing with language that it will be 30 feet, 2.5 inches at its max and is 1200 square feet, however, it will not exceed 24 feet in height. Mr. Levesque reported that Mr. Longley said that when flat, the system is about 20 feet high and this is in compliance with the 24-foot height restriction. Mr. Levesque said the structure tilts to operate and will rise up in the air and, if it were to go to its full height, it will no longer be in compliance. Mr. Levesque said this is a structure with moving parts and software that governs its behavior and is designed to rotate so it can follow the sun and tilt to catch the sun's rays. Mr. Levesque questioned how it will operate safely if it stays flat or if there will be a bypass of the manufacturer's software. Mr. Levesque reported that appellant Doug Mason's son Sam contacted Sun Action Trackers, the company that manufactures these devices and the company representative indicated that there is no way to defeat the sensors that guide this device's behavior and set manual directions. Mr. Levesque questioned if the device can even do what it needs to do to be in compliance. Mr. Levesque reported that it's touted in many places on the company website that this structure is a commercial and agricultural tracker and noted that it is proposed to be placed in a residential zone. Mr. Levesque said the manufacturer indicates that it can operate in heavy snow regions with good ground clearance and can tilt to 60 degrees upward so it sheds snow to keep the trackers working. Mr. Levesque outlined information from the company website regarding the tracker operation in inclement weather. Mr. Levesque said when the tracker's flat, it's in wind mode and it's safe and meeting code. The software automatically governs that if the winds go above 45 miles an hour it goes into an automatic flat mode. The tracker also has what's called a snow mode that sends the tracker to 60 degrees so it'll shed the snow and is a safety feature as well.

Chairman Manahan referred to Mr. Levesque's statement about a safety issue and asked if there is something that says that the snow mode is a safety issue. Mr. Levesque said he will get to this and he shared a picture from the Korean parent company Peru. Mr. Levesque noted the structure being discussed is shown on the left.

Double-axis tracking (left) without snow damage and fixed (right) installation with damage caused by snow load. Both are on the same site.



<https://iparu.com/sub/pro/pro02.asp?scriD=0000000245&pageNum=2&subNum=2&subNum=1>

Mr. Levesque reported on communication he had with Peru that even with heavy snowfall, there's less risk of damage to equipment compared to a fixed installation. The safety modes are governed automatically by the software and the system knows when snow is happening and when wind is happening. There's a manual function to make it go into snow mode. Mr. Levesque said the manufacturer indicates that tilting to its full height is a feature to prevent against damage and when the wind speed is reached, it goes into flat mode. Mr. Levesque said if it is flat all the time and isn't going to tilt at all, it's in wind mode and if it is programmed to only tilt 23.9 feet, then it's in compliance with the height. Mr. Levesque said it can't be both ways, if it's flat and in compliance with height, this doesn't necessarily guard well against snow, and if it's tilted to 23.9 feet, it's guarded slightly against snow but if it's frozen, and won't automatically move to track the sun, how is it guarded against wind?

Mr. Levesque said he reviewed IRC Section 324 and Cumberland's Code refers to the IRC as being a key guide for eliminating against safety risks. IRC 324-3 indicates that photovoltaic systems shall be designed and installed in accordance with other sections and in the manufacturers installation instructions. Mr. Levesque said this structure is designed to be installed and governed by automatic software that tracks the sun in a 270-degree arc throughout the day. Mr. Levesque said it can be inferred that the operating instructions are very important for safety. Mr. Levesque said this system can be thought of as a very large appliance and the IRC states for appliances to operate safely, the operating instructions need to be followed and with this very large structure, we are not following its operating instructions, we're just going to make it sit flat. Mr. Levesque pointed out that this structure uses automatic tracking with the two safety modes, wind and snow, that is integral to its safe functioning.

Mr. Levesque referred to the meeting minutes where the Town adopted Chapter 232 in October of 2020. Mr. Levesque said the Town defined residential solar system as accessory to residential dwelling units. The residential solar energy system complies with all height and bulk requirements. Mr. Levesque referred to the keyword "subordinate" in the permitted use ordinance language and said there is no wording on square footage. Mr. Levesque said there is a lot of ambiguity in the ordinance. The company that makes this system states it is a commercial and agricultural device. Mr. Levesque noted that when the Town was establishing this ordinance there was a

provision for a size of 900 square feet but this was taken out. Mr. Levesque reported that a ReVision Energy representative stated during the consideration for adoption of the ordinance that most towns have used 1,000 square feet as a maximum. Mr. Levesque noted the permit indicates this system is 1,200 square feet.

Mr. Levesque said the Appeals Board is here to address uncertainty and there is uncertainty in the bulk requirement limits, the overall square footage of the structure and a qualitative word "subordinate." Mr. Levesque said a solar structure taller than the buildings on the property is no longer subordinate and there is a bulk requirement size violation here. Mr. Levesque referred to ordinance language regarding for the rural residential zones with the need to provide safety, such as the wind and snow mode for this structure, adequate light & air, and coordinated development of unbuilt areas.

Mr. Levesque said the Appeals Board has to cut through the uncertainty and give some certainty based on what has been said, the active marketing from the manufacturer that it's commercial/industrial/agricultural, it not being subordinate to buildings in the area and how it needs to operate to function safely under the established IRC.

Mr. Levesque said he got a notice from the town as an abutter to Twin Brook when the Town was moving a shed and this required a minor staff review and was reviewed by more than one person. Mr. Levesque said for this is something that's 1,139 square feet and rotating in the air and no staff review is required.

Mr. Black questioned Mr. Levesque's concern with a right of way or an easement for access to Mr. Levesque's property. Mr. Levesque said Hope's Way is a private road over the Mason property and Mr. Levesque has a right of way on that road but it is on the Mason property. Mr. Black asked if this proposed structure would impact that in any way. Mr. Levesque said it does not impact moving in and out of the property and if it were to impact the setback limits, he is uncertain how that would affect him if he were to sell his home.

Chairman Manahan invited the next appellant to speak and asked that they try not to repeat what Mr. Levesque said.

Doug Mason, 11 Hopes Way, displayed a plan showing the surveyed right away for Hopes Way. Mr. Mason said that there was a lack of transparency on the size of the solar tracker and the site changed from various places on the Deckelmann property. Mr. Mason said it was decided that it would get the most solar exposure by placing it at the mouth of the septic system that Mr. Mason's property wraps around on three sides. The system will have three side setbacks on Mr. Mason's property and will be right in his direct line of vision. Mr. Mason said Mr. Deckelmann told him that this location was never an option because it was in the way of a zip line, which he did not want to remove plus the solar tracker doesn't have the full sun exposure here. Mr. Mason said Mr. Deckelmann intends on maximizing the system to its full potential. Mr. Mason said apparently it doesn't matter which plot plan was submitted as long as it meets the setbacks and Mr. Deckelmann is allowed to change the location. Mr. Mason said the placement of this 48-panel solar tracker impedes his right to enjoy his open, rural view of his property. Mr. Mason said Mr. Deckelmann told his wife that they will cuss him out every time they drive on their property. Mr. Mason said they spoke with their realtor,

Linda McDonald, and were told that the real estate aesthetics value of their and their neighbor's houses will be impacted. Mr. Mason said he has worked too hard to build equity in his home to have it diminished by an industrial looking solar tracker that doesn't belong placed in his front yard. Mr. Mason questioned if this application should have been red flagged when it appeared on Mr. Longley's desk. This solar panel is the first of its kind in Cumberland and is so novel that there is no language in the ordinance that addresses its size. Mr. Mason said the Ordinance Committee expressed to them that no one foresaw a panel of this scale being built in this town. Mr. Mason suggested that the size of the project warranted additional time to get more eyes on it and said maybe the proposal should have been moved to the Planning Board first. Mr. Mason said if the system gets the green light to become fully operational, as it is meant to, it will be a full year before all of the implications of solar glare effects on their properties on Hope's Way and Tuttle Road are known. Mr. Mason reported that earlier today, Mr. Deckelmann spray painted another new location just inside the 15-foot setback that is roughly 105 feet from Mr. Mason's bedroom window.

Chairman Manahan invited the next appellants to speak.

Greg Goding, 12 Hopes Way, said when he and his wife Marianne moved back to Maine, they looked at several communities and found Cumberland was what they were looking for with a rural area. Mr. Goding said he is in favor of solar energy but is totally opposed to the placement of a commercial sized solar tracking system into their residential neighborhood. Mr. Goding said Mr. Levesque's arguments were very well thought out and well stated. Mr. Goding asked who's responsible for reporting it when the system goes above the 24-foot flat level. Mr. Goding said he looked at Northeast Solar Tracker's website and there are photos of commercial and agricultural locations and there are no residential locations. Mr. Goding said they take great pride in their homes and yards. Mr. Goding recently built a front porch on his house and it will look directly at the solar tracker and that is all they will see now. Mr. Goding said there are alternatives such as roof-mounted systems, solar farms, and solar gardens. Mr. Goding said at some point they will probably be selling their home and having a structure right next to their home, which is basically a commercial sized solar tracker, will greatly reduce the ability to sell and will greatly devalue their home.

Chairman Manahan invited the Deckelmanns or their representative to speak. Chairman Manahan noted that because this is a de Novo hearing, meaning the Board is hearing it as if the evidence has not been presented yet, the Board has an obligation to listen to all the evidence and the applicant, the Deckelmanns, have a burden to show that they meet the requirements, in particular with respect to property setbacks, to height, and whether it's a permitted use.

Ryan Keith, owner of Northeast Solar Trackers, said he has been putting these systems up for over a year. Mr. Keith was in the business of building houses his entire life and he did Code Enforcement and knows the importance of setbacks. Mr. Keith said he guarantees that this will not encroach on setbacks and if the system impedes a setback, it is his responsibility to relocate it. Chairman Manahan said one issue with respect to setbacks is that if it were to rotate where it's currently proposed would the panels be any closer than 15 feet from the property line. Mr. Keith said it might be 20 feet from the

closest property line if it spins and would not encroach on the setbacks. Mr. Keith referred to the height issue and said the system has a manual setting that can be set to the degree and it will still rotate and it is very easy to set the height. Mr. Keith said leaving the system flat is also a setting but most likely it would be at a slight pitch. Mr. Keith said this unit has a sunlight tracker and will go to the brightest spot in the sky and typically, on a cloudy day, it does go flat. Mr. Keith said the system will not exceed the parameters that he installs. They can change the parameters at any point after it is installed.

Chairman Manahan asked Mr. Keith to respond to the point that there could be a safety issue with respect to snow loads. Mr. Keith said that the snow will not sit on the panel and he believes the snow poundage is 100 pounds per square foot. Mr. Keith added that the wind loading is 105 and this is above the wind loading for a house. Mr. Keith said when the wind speed comes up the system does go flat and will never exceed whatever height is set in the parameters.

Chairman Manahan asked about the appellants' argument that this is a commercial structure and whether the structure is so large that it's not subordinate to the residential use of the property. Mr. Keith said they have installed 20 units in the surrounding towns. Mr. Keith referred to a system in Freeport that went to the Planning Board because of a height restriction of 24 feet and reported that it was voted six to one. Mr. Keith said other towns are allowing these systems without questioning anything. Chairman Manahan said he doesn't think there's any doubt that people notice these systems but the question is whether the ordinance in Cumberland allows it. Chairman Manahan said members of the Board of Adjustment and Appeals are bound by the laws adopted by the Council and can't decide that this isn't allowed because it seems too commercial unless the evidence demonstrates that this is something that is not subordinate to the residential use of the property. Chairman Manahan said Mr. Keith is saying because he has done a lot of these in residential properties, it is his view that that it is subordinate to the residential use. Mr. Keith responded that the system is a little over 1,000 sf and a barn could be put up that is much larger than this on a property and still is considered residential. Mr. Keith added that this is a structure that houses solar on it and it is the size of a large garage. Mr. Keith added that one of these units will cover an electric bill entirely and every town has a sustainability committee so that we can be sustainable. Mr. Keith said with roof mounted systems, 75% of all homes don't have enough roof surface. This system is 1,000 sf and comes out of the ground on a 30-inch sauna tube. Mr. Keith noted that for the same kilowatts as this system, a ground mount system would be three times larger. Mr. Keith said this system is a very efficient use of space in a residential area. Mr. Keith said intends to ask the Town of Cumberland to increase the height but until then, the system will be put at an angle of about 25 degrees and the max height angle will be kept under 24 feet.

Mr. Black asked what the annual estimated production of energy is for this system with the 25-degree angle. Mr. Keith said it will probably produce 35 KW year, which is about \$8,000 worth of power. Mr. Martin asked if this amount is reduced because of the angle being limited. Mr. Keith replied yes, because the system needs to be perpendicular to the sun for the best gain. Mr. Keith said this system is bifacial and, in the wintertime, there will be reflective gain off the snow. Mr. Keith explained that in the wintertime the

system will hit its highest pitch and will actually be quite flat almost the entire summer. Mr. Martin asked if we didn't have these limitations what would the \$8,000 worth of power be likely? Mr. Keith replied that it would be a difference of 10 to 15%.

Mr. Black referred to Mr. Keith's remarks about the 25-degree angle and noted that earlier evidence indicated that an angle of 7.4 degrees would reached the max height. Mr. Keith said when he programs this unit he will measure so as not to exceed the 24-foot height maximum and will set this angle as the maximum tilt angle. Mr. Black inquired, based on certain drawings and certain assumptions of how far the pole is actually set into the ground, if Mr. Keith is talking about setting the pole into the ground to where the lower side of the panel may be just a couple of feet above the ground. Mr. Keith replied that this is basically what happens. Mr. Black asked if the system is set in at a 25-degree angle at the lower end how high will that be off the ground. Mr. Keith estimated it will be six to seven feet. Mr. Black asked if the homeowner could override how the system is set up. Mr. Keith said he has a password to set the parameters and homeowners will not be able change these.

Mr. Copp referred to the term "commercial" and asked if the purpose of the project is for residential or commercial. Mr. Keith replied that it is strictly residential. Mr. Copp asked if this unit is overkill for one residence. Mr. Keith replied it's not. Mr. Keith reported that CMP has a limit and 25 KW and over is a level two and this system is 21 KW and in Central Maine Power's eyes is a residential system.

Ms. Vigue said there was discussion about proposed locations and the location has changed through this process and asked if the abutters were taken into consideration. Mr. Keith replied that as long as they meet setbacks, the ordinance governs that. Mr. Keith noted that there is a sun positioner app that is used to locate the system by looking at the horizon of the trees to see where the sun dips down. Mr. Keith said initially the plan wasn't specific and gave them some wiggle room. Chairman Manahan asked if the structure were to be moved would this need a new building permit. Code Enforcement Officer Bill Longley said there could be an amendment of the existing permit for relocation. Ms. Vigue asked if the system is encroaching on any abutters, if there is a need to change deeds, or if it is part of an association. Mr. Keith replied absolutely not. Ms. Vigue asked about the reference to septic systems and Mr. Keith replied that the system is nowhere near encroaching on the septic at all.

Mr. Copp asked if anything would be transported or used on Hope's way for the construction of the system. Mr. Keith said no, they will need a concrete truck, a crane and will have trailers and a mini excavator but Mr. Deckelmann has an entrance that they will come in off of. Mr. Keith added that if there is a need to cross someone else's property, they will absolutely talk to them first but they don't have to touch anybody else's property to get to the site.

Chairman Manahan invited Mr. Deckelmann to speak. Mr. Deckelmann said this has been a really interesting process for him and kind of saddening as he thought he had really great relationships with his neighbors. Mr. Deckelmann said Mr. Levesque did an incredible job researching the unit but at no time did Mr. Levesque try to reach out to him or to Mr. Keith. Mr. Deckelmann said the reason why there's been some ambiguity about where the system was going is that he was trying to be accommodating to the

Mason's property. Mr. Deckelmann apologized to the other appellants and said it didn't occur to him to talk to them because they're over 300 feet away. Mr. Deckelmann said he looked at the Masons' house and the system will be in a place where they do see it when they come and go but it's kind of out of sight from their front porch and is out of sight from their back porch. Mr. Deckelmann said this is a NIMBY (not in my backyard) situation where the neighbors don't want to see it. Mr. Deckelmann explained that the system is a two-dimensional object and will blend in. The system will meet a hundred percent of Mr. Deckelmann's energy needs. Mr. Deckelmann has changed to heat pumps and geothermal and he runs two electric cars and will be off the grid with this system with a green house. Mr. Deckelmann said the appellants are worried about their property value, but if this doesn't go through and he doesn't do this solar project, he has other options to do solar which would interfere highly with the Masons and he has tried to avoid this. Mr. Deckelmann said he has a 1,000 square foot covered porch and this system is the same size as his porch.

Mr. Black asked if Mr. Deckelmann had any problems with the restrictions that were put in place by the building permit that was issued. Mr. Deckelmann replied no and added he will lose 10 to 15% and it would be better if it were producing 100%. Mr. Deckelmann hopes Mr. Keith does come before the Planning Board to change the ordinance. Mr. Black asked if Mr. Deckelmann could live with the restrictions put in place that it can't be above 24 feet and Mr. Deckelmann responded that he intends to.

Mr. Copp referred to the horizontal turn of the system and asked how many degrees it would follow the sun. Mr. Keith replied that it has the potential for 270, and he guesses it is only 190. Mr. Keith said there are two options for the parameters to set it to, light sensing or GPS. The GPS option has data logged in for that longitude/latitude and it will know exactly where the sun rises and sets.

Mr. Deckelmann said he has tried to be neighborly and tried very hard to reach out to minimize potential impacts the neighbors perceived but it was heels in the ground, not in my backyard.

Chairman Manahan invited public comments.

Shirley Story-King, retired Town Councilor and Ordinance Committee Chairman, reported that the height restriction was not arbitrary and it is consistent with other height restrictions within the town. Ms. Story-King said this is a commercial product and it is not marketed anywhere else, except by Mr. Keith perhaps. Ms. Story-King said if this were to go through a commercial permitting process, it would go to the Planning Board and none of those steps were followed. Ms. Story-King said she believes a structure of this size would require a 30-foot setback in a rural residential zone, 15 feet is the setback for sheds and small buildings. A barn would have to be setback 30 feet and Ms. Story-King said this is something to consider. Ms. Story-King said this clearly is industrial and commercial whether Mr. Keith markets it that way or not. Mr. Martin asked Ms. Story-King if she disagrees with the representation that this puts out enough power to power this one house. Ms. Story-King replied that she can't say and said if people are considering the green argument, she wants them to consider the forever chemicals that exist in solar panels and heat pumps and while this might be going green, it is flooding our environment with forever chemicals as well.

Tim Kearins, 11 Cumberland Common, said he is concerned with the precedent this sets. Mr. Kearins pointed out that Mr. Longley mentioned that this was a unique proposal and the first pole mounted one in Cumberland. Mr. Kearins is concerned about how fast this got approved and said he doesn't know how many residents would plan on doing this in the future. Mr. Kearins is concerned about the height. Mr. Kearins said the saying of not in my backyard is a crude way of saying we don't want to change the character of our surroundings and he agrees with this. Mr. Kearins said Mr. Longley said he approved this with a facet that said it had to lay flat and the builder said it is most likely going to be tilted and these statements conflict. Mr. Kearins said he is concerned with safety and having kids around and he can just picture one of these things looking like a perfect surface for a snow fort. Mr. Kearins said we heard about how easy it is to take these things down if the rules are violated and most of that information is coming from the person who's selling the equipment. Mr. Kearins urged the Board to rescind the building permit for further study. Mr. Longley clarified that when he gave the description that it would be closer to flat, it isn't that it would be exactly flat, it is that the 24 feet could not be attained in the up position. Mr. Longley read the condition on the permit as follows: "Installation of a 48-panel solar array on dual access tracker. Tracker will not exceed 24 feet per the ordinance. This is issued subject to the Maine Uniform Building and Energy Code and the IRC 2015 as adopted by the State of Maine."

Chairman Manahan called for a five-minute break after which he called the meeting back to order.

Chairman Manahan invited public comments in favor of the appeal.

Dave Brown, Cumberland, said from what he has heard, this is a huge structure and is not anything that anybody is used to. Mr. Brown said we go through great detailed processes when we build anything normal and to have this happen in one day, given all of the information investigated tonight, seems not proper. Mr. Brown said it seems that it is subject to further review.

Robert Timberlake, 25 Tuttle Rd., said he thinks this is a huge commercial structure and although it can be programmed to go lower, it also can be programmed to go higher. Mr. Timberlake said sooner or later someone is going to want to put it up higher because it'll be more efficient when it's tilted higher to get more sunlight. Mr. Timberlake thinks this system is out of keeping with the residential character of Tuttle Rd. Mr. Timberlake likes solar and has a solar hot water system on his roof and does not object to the solar trackers that he has seen. Mr. Timberlake said this system will be considerably higher if it goes up and is out of keeping with the character of the neighborhood. Mr. Timberlake urges the reconsideration of the proposal and supports those who want to have another look at the system.

Realtor Linda McDonald said she was asked by Mr. Mason when she was shown a picture of the solar tracker if it would affect property value and it was easy for her to answer that it unequivocally would. Ms. McDonald said the 1,139 square foot size has a commercial aesthetic and this system feels very different than everything her clients are looking for or what they expect in the Tuttle Rd. area.

Chairman Manahan invited public comments in opposition to the appeal. There were no comments.

Chairman Manahan invited public comments from anyone else. There were no comments.

Chairman Manahan asked if the appellants would like to respond to any of the comments that have been made.

Mr. Levesque said the system is going to move and tilt, but not above 24 feet and asked how will that affect solar glare to their properties. Mr. Levesque said the system is in their front yards and he doesn't want it in his front yard. Chairman Manahan asked Mr. Levesque if he is making an additional argument because of glare on neighboring property and said the Board hasn't had evidence on this. Mr. Levesque said he doesn't have anything else to add. Mr. Keith said they've done tons of studies to show solar panels actually absorb light and they don't glare.

Mr. Mason asked why there are not 30-foot setbacks and why push the 15 feet when there's enough property there.

Mr. Goding said this system is not in the backyard, it's right in front of his house and he will be looking directly at it every day.

Chairman Manahan closed the public comment portion of the meeting and invited Board members to make a motion to begin deliberations. Mr. Black moved to deny the appeal and the motion was seconded by Mr. Martin.

Ms. Pierce asked what determines whether a solar system is residential or commercial. Mr. Manahan references Mr. Keith's statement that CMP does not treat this as commercial and treats the energy production as residential. Chairman Manahan said the appellants have raised the question of whether or not this is allowed and the Board doesn't have to label this as commercial. Chairman Manahan stated that whether the manufacturer or other people call it commercial, it doesn't really matter as long as it's allowed under the solar ordinance in the residential zone. Chairman Manahan said Mr. Levesque raised the question of whether the system is somehow subordinate to the residential use of the property and if it predominates on the property because it's so huge. Chairman Manahan pointed out that the Board can't decide this is something that's commercial and doesn't like it in the residential zone. Chairman Manahan noted that the Town Council had a size restriction, which they removed and this tells the Board that we can't necessarily decide that the size of this structure is directly relevant to whether it's subordinate to the primary use of the property. Chairman Manahan said it seems to him that this is not subordinate to the primary use of the property.

Mr. Black said he does think the applicant for the permit has the burden in this case and that they have met that burden. Mr. Black said the issues that the Board is constrained to looking at is what the Town Council has said by adopting the ordinance. Mr. Black noted that issues about whether it's consistent or in keeping with the general character of the neighborhood are irrelevant, the Town Council has decided that is not a factor that the Board is to consider. Mr. Black said the Board is supposed to consider the height and all indications are that this will be set to where it will not exceed 24 feet in height and the offset (setback) with the 15 feet from any point was demonstrated to be

met as well. Mr. Black referred to the subordinate piece of this and said there's no indication that this is not subordinate to the property. Mr. Black said on the commercial piece of this, there is no indication that the use of this energy is for anything other than the residential property itself. Mr. Black continued by stating under the CMP net metering laws, CMP only reimburses you for up to what you actually use and you can't go and use this as a means of making money from CMP. Mr. Black said for these reasons, he thinks the system is subordinate to the property.

Chairman Manahan agreed with Mr. Black and said it's not the position of the Board of Appeals to decide what's right and what makes the most sense for the town from a solar energy perspective. The Board has to follow the ordinance. Chairman Manahan said quite frankly, it meets the setbacks, it meets the height restriction and it does not subordinate to the residential use. Chairman Manahan said this is the limit on the Board's jurisdiction. Mr. Martin said he agrees a hundred percent. Mr. Copp and Ms. Vigue agreed.

Chairman Manahan called for a vote of those in favor of the motion to deny the appeal and it was **VOTED 6 yeas, unanimous – motion carries.**

The Board discussed the steps needed to follow up and noted that the appeal was denied.

**3. ADMINISTRATIVE MATTERS:** Approval of the minutes for the May 13, 2021, meeting. Mr. Copp moved to approve the minutes of the meeting of May 13 2021, seconded by Ms. Pierce and **VOTED 4 yeas, 2 abstained (Martin & Vigue) – motion carries.**

**Adjournment:** Ms. Pierce moved to adjourn the meeting, seconded by Mr. Martin and **VOTED, 6 yeas – unanimous, motion carries.**

Respectfully submitted,

Christina Silberman  
Clerk to the Town of Cumberland Board of Adjustment and Appeals