

**Old Orchard Beach Joint Planning Board & Town Council
Workshop Meeting Minutes
Thursday, November 4, 2010 at 7:00pm in Town Hall Council
Chambers**

<p>Meeting Called to Order at 7:03 pm</p>	
<p>Members Present: Council Chair MacDonald, Vice Chair Tousignant, Councilor Dayton, Councilor O’Neil, Councilor Bolduc, PB Chairman Winch, Vice Chair Cote, Tianna Higgins, Eber Weinstein, Mark Koenigs Members Absent: Councilor Bolduc & David Darling (family emergency) Staff: Town Manager Jack Turcotte, Assistant Town Manager Louise Reid, Gary Lamb & Staci Grazioso</p>	
<p>ITEM 1: Discussion of Proposed changes in Shoreland Zoning:</p>	<p>ITEM 1</p>
<p>Town Manager Jack Turcotte welcomed everyone to the meeting and introduced Planning Board Chair Win Winch and Town Chair Sharri MacDonald. Mr. Turcotte explained that this is a joint workshop with the Planning Board and Town Council and explained that the Shoreland Zoning information is still in draft form and how it came about that Attorney Vaniotis became involved. Attorney Vaniotis is here this evening to answer your questions and concerns. The meeting was turned over to Chair MacDonald</p> <p>Chair MacDonald thanked everyone for coming to the meeting. She asked for Mr. Lamb to give an overview of the old and the new Shoreland Zoning.</p> <p>Mr. Lamb discussed both existing and proposed maps explaining the differences between the two of them.</p> <p>Chairman Winch asked Chris to explain the whole basis of why we are here this evening</p> <p>Attorney Vaniotis gave an overview of how Shoreland Zoning works in the State of Maine. It is indeed a State mandate, back in the 1970’s the legislature mandated through the Shoreland Zoning Act that municipalities must adopt Shoreland Zoning ordinances within the Shoreland zone which is basically defined as within 250’ of a water body. The State legislature said every city and town in the State of Maine must have a Shoreland Zone Ordinance. The State did not impose those ordinances but instead through the legislature had DEP create guidelines for municipal Shoreland Zoning ordinances. Chapter 1000 of the DEP rules are those guidelines. The DEP guidelines were designed to be one size fits all for all Maine towns. They were designed for towns which otherwise had no zoning, no Code Enforcement Officer and no Board of Appeals. The DEP put together a complete ordinance which contained establishing a Board of Appeals, detailing how a Code Enforcement Officer was appointed, detailing the duties of a Code Enforcement Officer in addition to having the nuts and bolts of protection in the Shoreland Zone. The DEP needed to do that, because otherwise towns that did not have that in their own zoning administration didn’t know where to go or what to do. The DEP changed their guidelines in 2006 and that is why we are here tonight. DEP told municipalities to look at your existing ordinances and</p>	

make sure they are up to date and consistent with the 2006 modifications to the guidelines. The DEP gave everyone a deadline and it has continued to be extended. Currently in OOB we are beyond the deadline, but that is with the DEP being fully aware that the town is working towards doing what it needs to do with its zoning ordinance.

Attorney Vaniotis explained how he became involved with the Shoreland Zoning project. He was asked by the Town Planner and Town Manager to review the document for any legal issues and to point out any policy questions that the Council and PB may want to consider. He stated that he looked at the document with (3) three principles in mind: **1. Don't change things that don't need to be changed. 2. Recognize the unique character of Old Orchard Beach. 3. Preventive Medicine in making sure that all the pieces fit together.** The draft that I was looking at was prepared by SMRPC at the request of the Town. The approach that SMRPC took used the State of Maine guidelines and cut and pasted them into the Old Orchard Beach Zoning Ordinance with the goal of making our Ordinance look a lot like the State guidelines. Attorney Vaniotis thought the reason SMRPC took this approach was that DEP would look at our ordinance and say that they look close enough to their guidelines and approve it. He didn't feel that was the right approach to take for Old Orchard with some parts. The approach that he took was to start with the existing Old Orchard Beach Ordinance and see what had to be changed to bring the ordinances into DEP compliance. I started with the SMRPC draft and took out a lot of things. Looking at the red it appears that I have slashed and slashed, what I was doing was removing things that SMRPC had put in and bringing it back to what the current text of the Old Orchard Beach Ordinance looks like. In the end when the final document has been completed, it will be much shorter than what we are looking at now. That is background on how I approached making the changes in the document.

Attorney Vaniotis had a discussion regarding the beach. Currently, under the current Old Orchard Beach Zoning Ordinance the beach is not in its own zoning district. It's DD1, DD2, etc. as you go along the beach. The SMRPC draft proposed to put the beach in a Resource Protection District, which is the most restrictive of all the districts in the state. Go back to the original provisions in the guidelines that towns can recognize unique circumstances in their towns and don't have to follow the guidelines literally. Then the question was do we keep the beach in the DD1, DD2 zones. Attorney Vaniotis came up with an idea, which is only an idea, and that was to call it a Public Park Zone, because it is unique, owned by the Town, and under control of the Town Council. If the town wants it to be Resource Protection, that is a policy decision for the town. He suggested the Public Park Zone based on how the beach is intensively used in Old Orchard.

Chairman Winch I believe the other thing that you changed is moving definitions unique to the Shoreland Zone to the end of the Shoreland Zoning section.

Attorney Vaniotis my view was where there are definitions that only apply in the Shoreland Zone it made sense to put them in with the Shoreland Zone

provisions in Article 17 and not at the beginning of Chapter 78

Chair MacDonald the old ordinance that we had before the 2006 DEP changes, did that comply with the 2006 guidelines at all?

Attorney Vaniotis pretty much

Chair MacDonald could we have used the our existing ordinance and state that we feel this fits the 2006 changes?

Attorney Vaniotis no, there have been some 2006 changes that need to be accommodated, the most significant one being definition of the Shoreland Zone itself and how you measure it. The DEP measures from a surveyor's elevation point to determine the 250' buffer. It is no longer based on vegetation and some of the other aspects. Attorney Vaniotis goes to explain tide table elevations There are some changes in the 2006 State law that do need to be accommodated for Old Orchard. My guess is if we stayed with the current guidelines and submitted those to DEP they would send them back requesting changes

Ms. Higgins should we go through the packet?

Chairman Winch yes, explaining what the strike over means, items in red, lettering on the side.

Mr. Cote makes the suggestion to review the key with everyone

Chairman Winch reads through all the definitions on the key and continues through the document

Mr. Weinstein I have a question on page 22, Shoreland Zone means the land area located with (and the 4 examples given). My question is on #2, why is jurisdictional taken out?

Attorney Vaniotis this was not my change, but I think the reason for the change is due to terminology changes that the state uses. The used to refer to certain wetlands as jurisdictional, but they do not use that terminology any more in the State of Maine guidelines.

Mr. Weinstein I asked if the 250' buffer is measured along the gradient or is it truly horizontal?

Attorney Vaniotis replied the 250' buffer is measured horizontally and does not follow contour of the land

Mr. Weinstein also, I'm not sure why it says upland

Attorney Vaniotis you may have a circumstance where the wetland is adjacent to another body of water, pond or stream for example so this is just making it clear that you are measuring not from where the wetland ends and the stream begins but from where the wetland ends and the upland begins

Mr. Lamb discussion on pg. 23 #5. Mr. Lamb points out that there are some properties by definition in Shoreland Zone today and they do not have to be per DEP. Attorney Ordway has a client in this area; he is here and will be speaking in regards to this.

Ms. Higgins just to clarify for everyone, that language is in our ordinance today, not an addition that we have made recently?

Mr. Lamb yes, that is correct

Chairman Winch called up Attorney Ordway to address this issue

Attorney Ordway the property that I am discussing is located on E. Grand Avenue. There are more than a handful of properties that are affected by this. In

the current Shoreland overlay District 78-1177 that current section describes a Shoreland area. The parcel that we were looking at is not in a Shoreland Zone by any definition from Chapter 1000 guidelines. Do you want an ordinance that is unnecessarily restrictive in terms of restricting this property and other properties similarly situated just based on convenience of having a line east of the railroad?

Chairman Winch with the mapping by elevation that we have we could really define that line more accurately, correct?

Mr. Lamb absolutely, we don't need this arbitrary railroad line anymore. We can go 250' from the coastal wetland which is the Atlantic Ocean and Old Orchard Beach portion of Scarborough Marsh. Where they don't overlap does not have to be in the Shoreland Zone. Mr. Lamb refers to the map for everyone to see.

Chairman Winch stated that Atlantic Avenue and Union Avenue is another area that they may want to look at. Is it possible to have a map drawn up within a week or two?

Mr. Lamb yes, I will have that for you at the meeting on the 18th

Chairman Winch moving through the document

Mr. Bird referring to pg.29 coastal wetland – the note should be left in and not removed

Attorney Vaniotis the notes are not part of the ordinance. They can be published along with the ordinance, but when the council adopts the ordinance language it's not part of the ordinance

Mr. Guarino discussion regarding pg. 29 (Goose Fair Brook) last sentence. Special definition for Goose Fair Brook.

Mr. Lamb that is in our ordinance today

Discussion on set backs

Attorney Vaniotis explains what DEP uses for highest annual tide definition

Councilor Dayton requesting an explanation from Chris on why the deletions are being made in procedural matters and why you are deleting CEO violations text?

Attorney Vaniotis Procedural changes deals with procedures for administering and enforcing the ordinance which already exist in the Old Orchard Beach text. I am suggesting you already have adequate procedures so don't change those just to mirror DEP Guidelines. As was stated in the beginning, this is a work in progress and the red text is just to illustrate proposed changes

Mr. Cote asked Attorney Vaniotis why we have the CEO job description in here?

Mr. Vaniotis first of all Mr. Tousignant, the Planning Board will make the recommendations on removal of information and then the Town Council will have final say. The duties of the CEO in Old Orchard Beach are already known by ordinance and charter

Councilor Dayton I wish to express concern about the violation process, on site inspection regarding "dunegrass massacre", and ordinances in place that didn't work in that situation. I can't stress enough how important it is for the CEO to have every tool at his disposal even if it is overstated what he can and should do when there is a violation on the beach. I stress and encourage the Planning Board to seriously consider the unintended results on taking it out.

C.E.O Nugent I believe Chris is saying current section 78-32 & 78-33 as written,

does adequately spell out CEO responsibilities. Dune grass and beach damage is outside of the towns authority and is clearly DEP's authority

Chairman Winch so you agree that these are redundant?

C.E.O Nugent yes, adequate enforcement procedures currently exist

Councilor Dayton I don't feel this document makes it clear anywhere that there may be other permits required, i.e. State permits, Federal permits, etc.

Attorney Vaniotis I would say to this, E on pg. 35 does no harm, it is a statement that doesn't need to be in the ordinance. My approach was to take it out because it is not currently in the ordinance. If the Planning Board or Council would like that in it is a provision that I can't see having any unintended consequences. It is not a rule in the ordinance it is just a statement to advise people that they may need other permits from other agencies.

Mr. Weinstein reading the information on pg. 53, he wanted to know if you needed to hire an engineer or an expert

Attorney Vaniotis going back to Mr. Weinsteins question, how does the Planning Board look at written documentation from the applicant? Does that mean something in writing from an expert or simply from the applicant explaining the situation? In reviewing the information, I believe that it is asking the applicant to be very specific in putting the information down in writing that will help the Planning Board make their decision. You may want to change that from written documentation to a statement in writing from the applicant

Mr. Koenigs I believe it says it has to be in writing stating that there is nothing that will harm the environment. Each case will be judged on it's on merit

Chairman Winch the key word in there is shall

Councilor Tousignant asking if the word shall could be changed to may. May is less restrictive than shall

Attorney Vaniotis stated that you can change the language on what the applicant needs to do (meeting the burden of proof), but you can't change the standards. In the end, it is up to the Planning Board and what they are going to be satisfied with

Mr. Weinstein have you been involved in Shoreland Zoning in any other towns, and has this question come up before?

Attorney Vaniotis yes I have, and no this question has not come up before

Councilor Dayton on pg. 55 sub-district stated that the word **shall** needs to remain where it was.

Attorney Vaniotis the reason for removing the word **shall** is due to the debate in Shoreland Zoning with litigation on whether the map or text dominates. The courts state that the map rules and not the text. The map allows you to adjust boundaries.

Councilor O'Neil my question is for Chris, can it be either map or text that prevails? Is it appropriate to state one or the other prevails?

Attorney Vaniotis it is appropriate to identify one or the other. If you don't do that you will not have sufficient guidelines for the citizens, for the CEO and the Planning staff.

Mr. Weinstein there is an answer to this in Chapter 1000, pg. 4. Mr. Weinstein proceeds to read definition on boundaries. The map prevails.

Attorney Vaniotis gives a discussion on boundaries, referring to steep slopes and

states the map will tell you a Resource Protection Zone and the field verification will tell you the boundaries

Mr. Guarino had a discussion regarding steep slope areas on his property (resource protection section) and referred to pg. 55 Resource Protection and the current 250' setback

Mr. Lamb stated Mr. Guarino is confusing setbacks with boundaries and explained the difference

Chairman Winch continuing on through the document, Resource Protection and comparing it to the Public Park designation

Councilor Dayton asking Mr. Vaniotis for a better understanding of why he came up with zoning the beach a Public Park, when it is not in the State Guidelines?

Attorney Vaniotis in response to your questions, there are lots of municipalities in Maine that have zoning districts that are not in the State Guidelines. Towns are free to look at their own circumstances and come up with something that would make sense provided the DEP agrees. SMRPC suggested putting the beach into Resource Protection. Whereas the town owns the beach, I thought that would be too restrictive for how Old Orchard intensively uses the beach. This was just an idea that I floated to staff and now to the Planning Board and to the Council to separate the beach and look at how it is being used.

Councilor Dayton is the only reason you came up with this PP idea because the beach is town owned?

Mr. Vaniotis no, it is due to the intensive use of the beach

Mr. Lamb Mike Morse from the DEP did receive a draft of the packet and I have yet to hear any feedback from him. Look on pg. 60 and look under row 20 which is Governmental and Institutional. One of the things that figured into Chris's thinking was the definition of Institutional which is right out of the State Guidelines

Councilor Tousignant would I be wrong in saying that your version gives the town more control than Resource Protection would? Would we retain more control as a Public Park than Resource Protection?

Attorney Vaniotis I would say yes it would give you more flexibility depending on the uses

Mr. Bureau my question is for Councilor Dayton; don't you think that the Town of Old Orchard Beach is doing a great job with our beach? Don't start making infringements on people that own property along the beach. Don't give the Government more power to control us when they can't do a good job. Keep things to a minimum, don't strip everyone of the rights that we do have.

Councilor Dayton explained to Mr. Bureau that her concern is that we protect the beach and not what people who live on the beach can and can't do

Mr. Weinstein made a request, instead of calling it Public Park, call it Public Beach subdistrict

Ms. Higgins made the comment that just because we have made it a different zone doesn't mean we're not going to protect it

Attorney Vaniotis discussed uses allowed in the RP Zone under the DEP Guidelines and it states non-intensive recreational uses such as hunting, hiking,

<p>and fishing. Someone could say council approved intensive uses on our beach are not allowed by DEP Guidelines. DEP may just say they are only concerned about structures. To leave it to non-intensive use leaves a lot of room for interpretation for arguments.</p> <p>Mr. Bird stated non-conforming uses are allowed even in Resource Protection</p> <p>Mr. Cote referring back to Councilor Dayton’s comments about the bulldozers going up and down the beach. Public Works has to do their job and do it correctly. If they are not, than the Town Manager has to act on it.</p> <p>Councilor Dayton stated she was not referencing normal maintenance</p> <p>Chairman Winch proceeding through the document pg. 64 Mr. Lamb have there been changes made?</p> <p>Mr. Lamb some changes have been made concerning lot area with RA, LC & GD showing “same as the underlying district”</p> <p>Attorney Vaniotis DEP is flexible with existing conditions and already developed areas</p> <p>Attorney Vaniotis pages 81, 82 & 83 are where definitions were moved to</p> <p>Attorney Vaniotis the definitions are typically found in the front or at the end of Shoreland Zoning</p> <p>Mr. Lamb and Chair MacDonald thanked everyone for coming</p>	
<p>Meeting Adjourned at 10:20 pm</p>	<p>ADJOURN</p>
<p>Chair, Win Winch</p>	

I, Staci Grazioso, Secretary to the Planning Board of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of seven (7) pages is a true copy of the original minutes of the Planning Board Meeting of November 4, 2010.