

**Town of Old Orchard Beach
Planning Board Public Hearing
October 9, 2014**

<p>Item 5 : Proposal: Subdivision and Conditional Use: Establish 26 free-standing condominiums, Action: Discussion, Owner: Review Town Attorneys Opinion, Moving Forward, Location: Wild Dune Way, Adjacent to Dunegrass Section C, MBL: 105A -1-200</p> <p>Mark Koenigs: Introduces the Town Attorney from Bernstein Shur, Mr. Phillip Saucier. The purpose of bringing him in is to review questions asked by the board and answered in a letter dated Sept. 4, 2014. Correction to the record: “free-standing condominiums” are actually not accurate. The applicant stated that they were “single-family homes”</p> <p>Open Discussion to the Board: 7:12pm</p> <p>Phillip Saucier comments that the letter for “The Turn at Dunegrass” and the letter for “The Inn at Dunegrass” were submitted to him at the same time and the answers to questions about both projects are very similar to answers previously given (see notes from Sept. 11, 2014).</p> <p>Question 1: Does the 1988 town FOF and Declaration of Conditions include language that requires the town to enforce the 1988 DEP Site Location Order or is it DEP’s responsibility to enforce their order?</p> <p>Answer 1: Generally, the Town does not have the authority to enforce Department of Environmental Protection (DEP) orders, which are based on state law and enforced by the DEP. The town does have the authority, however, to enforce its own approvals, which may incorporate certain provisions from DEP orders.</p> <p>Comments: You would look to your findings and previous approvals by reference to DEP orders. Otherwise the DEP is separate approval and the DEP has jurisdiction over its own orders.</p> <p>Question 2: Is the town required to enforce the DEP order statement: “The project has been designed with large portions of the project area to be left as open space, i.e. 150 acre golf course, or with buffers adjacent to all streams and ponds.”? How does this standard apply when the town reviews projects that are apparently within the 150 acre golf course?</p> <p>Answer 2: This provision is located in Section 16 of the DEP’s 1998 Site Location Order pertaining to scenic character; any proposed changes to the design would likely require an amendment to the 1988 DEP approval and the DEP would consider the impact of the proposed changes on scenic character. As noted above, the DEP is responsible for the administration and enforcement of Site Location permits, unless the Town approval specifically adopted certain provisions (and Section 16 does not appear to be one of the specifically incorporated provisions).</p>	<p style="text-align: center;">ITEM 5</p>
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Comments: Applicant would have to go to DEP for an amendment to that approval. You would be able to enforce your own ordinances and open space requirements.

Mark Koenigs: Because this subdivision is in the PMUD zone it would require 35% open space. Does the 35% apply to each amendment as a "stand alone" project? Or do we take that as a total to the aggregate?

Phillip Saucier: There really is no such thing as a "stand alone" project at Dunegrass because the project was originally approved as a whole with all parts working together. So you would only approve amendments as they relate to the whole project with changing traffic patterns and use of utilities.

Question 3: Based upon your review of the attached documents and the 1988 Town and State approvals attached to Email 1, is there anything in the attachments that will clearly not allow a proposal to exceed the 589 unit sites? Note: this is assuming the proposal meets all applicable state and local standards.

Answer 3: Any such proposal would only be allowed if the Planning Board approves an amendment to the original Subdivision Plan (as subsequently amended). It is my understanding that prior amendments have not sought to exceed the originally approved 589 units but instead allocated the sites from the original 589 unit sites. As you note, such a proposal would need to conform to all applicable and existing zoning and subdivision requirements. In addition, density would need to be recalculated for the entire Dunegrass subdivision using current density standards. The 589 unit limit could be exceeded only if the proposed larger number of units would result in the whole subdivision complying with current density requirements. The Planning Board would review any proposed amendment in light of the previously approved plans and would also analyze the project for any impacts on the existing development in Dunegrass as it has been amended from the original approval and design, including impact on utilities and infrastructure.

Of course such a proposal would also likely require an amendment to the DEP SLODA permit.

Comments: I would note that all previous amendments did not seek to exceed, they would show where the units were coming from to replace other units unused.

Question 4: If a proposal exceeds the 589 unit count, is it correct to assume this is a stand-alone proposal and is treated as an entirely

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separate project within Dunegrass? For example, the proposal cannot take advantage of the setback, density and other zoning standards and approvals that Dunegrass approvals allow; therefore, as a stand-alone, the proposal must conform with all of the most recent applicable zoning standards including the requirements of the PMUD Zoning District.

Answer 4: Such a proposal is not a “stand-alone” proposal per se, but should instead be reviewed as an amendment to develop the property in a way that is not already approved by the Planning Board (the original plan has been amended from time to time), but the project must comply with existing zoning standards.

Comments: A “stand-alone” project would be a proposal for a whole other subdivision. That would be what we consider a “stand-alone” project. Here you have a subdivision that has already been approved and so you are looking at it as an amendment to the larger subdivision.

Question 5: If reviewed as a stand-alone proposal, should staff and PB consideration include the potential impacts and previous rulings of the surrounding Dunegrass development? For example, as part of the 1988 approvals traffic studies were required. Although the proposal may be a stand-alone project it will use the internal and access roads within Dunegrass. So, should the proposal take into account the previous Dunegrass studies and approvals and include information that evaluates the impacts to prior Dunegrass studies and approvals and how Dunegrass operates today?

Answer 5: Yes, because any proposal to develop any part of Dunegrass in a way other than what is shown on the original approved subdivision plan (and subsequent amendments) requires a subdivision amendment. In that respect, there is really no such thing as a “stand-alone” proposal in Dunegrass. See answers #3 and #4 above.

Comments:

Question 6: If the proposal is a stand-alone project, how do private utilities, infrastructure, DCCR apply since the proposal may need to use and/or be part of these?

Answer 6: As noted, such a proposal would not be a “stand-alone” project but would be an amendment to the original approval. See #3 and #4 above.

Question 7: As I understand from the October 22 Vaniotis (Email 1, Attorney Opinions attachment), in regards to town staff and PB review, the controlling documents associated with future development within

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Dunegrass are the 1988 FOF and 1988 Declaration of Conditions (and I assume any subsequent amendments to the documents) – am I correct? How does this apply if it's a stand-alone project?

Answer 7: That is correct. The Planning Board should review any proposal within Dunegrass as it would amend the 1988 approval (as amended).

Comments: It is the basis but the amendments would have to be taken into account. It's really a compilation of the various approvals over the years.

Question 8: Based upon your read of town approvals attached to email 1 and other documentation you may have, is it your opinion that town staff and PB has the legal authority or is required to apply or use MOU's, the DCCR, DEP orders as a basis for town decisions and/or enforcement?

Answer 8: Restrictive covenants "are distinct and separate from the provisions of the zoning law and have no influence or part in the administration for the zoning law." *Whiting v. Seavey*, 159 Me. 61, 68 (1963); *Our Way Enterprises, Inc. v. Town of Wells*, 535 A.2d 442 (Me. 1988). The Town has neither the responsibility nor the authority to interpret or enforce a private deed covenant or any memorandum of understanding that accompanied any sale of land; that is a matter for private civil litigation in the courts.

Further, the Town does not generally have the authority to enforce Department of Environmental Protection orders, which are based on state law and enforced by the DEP, unless certain standards are specifically adopted by reference in a Planning Board approval.

Instead, the Planning Board should review the project to determine whether it would comply with the approved plans or with the current zoning requirements.

Comments: The state of Maine is really clear that private covenants are not ordinances. Because that is a private covenant you do not have authority over those contracts. Same with DEP orders.

Question 9: If the DCCR considers the golf course as a "common element", how should the town treat this? Should the town require the applicant of a project on golf course land to secure approvals from the DCA before the town makes a ruling? Should the town even be involved?

Answer 9: See #8 above. The DCCR is a private restrictive covenant that could potentially contain certain private restrictions on the use of the land, but it is distinct from the Town's requirements and should not be

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considered by the Planning Board as part of its review of a subdivision amendment. Of course, any change to the layout of the course as it has been previously approved from the Planning Board would require an amendment to the subdivision plan.

Comments: At the end of the day you are just approving an amendment.
Win Winch: Would it be prudent to require the applicant to go to the DEP first and get approval? Correct?

Phillip Saucier: It is not required for DEP approval according to the ordinances so you would be delaying the applicant process. It is not advisable to do that as the delay could be an actionable legal matter.

Mark Koenigs: There appears to be multiple owners of Dunegrass with different phases of development, we would still need to maintain open space requirements for the subdivision of the whole. That is why there are so many questions about "stand-alone" because we want to treat each applicant separately. That's why we need a matrix to show all the amendments and applicants so that we can keep track of the larger project. Should we do our "homework" first and then deal with each amendment to reach the maximum build out?

Phillip Saucier: The applicant should actually have to show that they meet those requirements.

Mark Koenigs: Can we put that on the applicant? Can we require the applicant to show that? How they achieve the PMUD requirements should be their responsibility.

Phillips Saucier: The problem is that it (the entire Dunegrass project) was approved that way, that's what was recorded with the deed, and it was approved in its entirety. If it was approved separately, that would be different but it was done as a whole.

Representative for Dominic Pugliares approaches podium and is allowed to ask questions of the board but no direct exchange with the Town Attorney Phillip Saucier at 7:33pm

Mark Koenigs: We can hear your questions and pass them along to the Town Planner but we may not be able to answer them.

Representative asks: What will determine what exceeds the 589 unit count?

Mark Koenigs: We can't give you an answer tonight. We do have to wrestle with that.

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Phillip Saucier: I can give a partial answer. Prior amendments were presented as replacing units, which was pretty straight forward. I don't know if you want to just take 26 units off the board or from another area. Do they have to show that they are taking them from someone else? Real Estate contracts are not part of our responsibility. The applicant would show whether they were using 26 units from the total count or replacing 26 units.

Win Winch: Originally the density was much higher but the project gave way to single-family homes and this is where the DEP would need to approve.

Mark Koenigs: As I understand it, we're not the judge of who owns those units that were originally built. We make sure that the density requirement of the amendment meets the approval of the overall project.

Phillip Saucier: What an applicant does need to show you is that they have right and title to the land. That's the necessary threshold for you to move forward.

Representative asks: If I could ask one further clarification: It seems that the board can see there is no way the 589 unit count can be reached; therefore it is safe to approve any future developments?

Mark Koenigs: I appreciate you asking the question but I'm not going to give you an answer.

Representative asks: How do you plan on allocating ownership of the remaining units?

Mark Koenigs: We can't.

Representative comments: I understand the planning board has no interest in figuring out ownership of those units, but is there another way?

Mark Koenigs: Until the last project or amendment being approved gets to that number it sounds like the remaining units are fair game.

Representative asks: How does the Planning Board verify the number of units coming from elsewhere?

Mark Koenigs: Based on the facts or the evidence that people give us.

Representative asks: Outside of private contracts?

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Win Winch: It's up to you to prove right, title and interest.

Phillip Saucier: I know that the last two amendments from last year quite literally showed that they were not using units from B to put here.

Mark Koenigs: My point is that previously these phases were owned by the same person and he had right, title and interest in all the phases. With his lawyer he shuffled units around and we just made sure they were under 589.

Phillip Saucier: I think it's important to look more and more at those density requirements so that going forward, as you're amending the plan, does it meet the requirements of the PMUD. You have to take an application on its face.

Representative asks: Are we operating under the current density requirements or the 1988 density requirements?

Phillip Saucier: For changes to the original plan you are always looking at the current standards.

Representative asks: I understand then going forward we would make our application around the density and the density requirements?

Mark Koenigs: Do we use the count (589 units) as a density requirement or the square foot per unit? Is that what you are asking? My recollection is that the plan covered the number of units and the density ratio.

Win Winch: You still have to go to the DEP because the different areas were approved for different things. For instance, I think the space you are proposing to build on was designated open space which is used toward the original density calculations. You can get all kinds of approvals but if the DEP gets wind of it...

Representative comments: As you may remember we've been working with the DEP since last December and the DEP doesn't consider the golf course open space.

Win Winch: Well if the DEP doesn't consider it open space, does the Town consider it open space?

Mark Koenigs: I wouldn't consider it open space because of its restricted use. It's only open to the members who pay to use it, while it's not open to the public.

7:51 Discussion closed with Representative.

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<p>Item 6 : Proposal: Subdivision: 27 lot cluster subdivision for single-family homes, Action: Sketch Plan Discussion, Owner: Diversacorp LLC, Location: 202 Portland Ave., MBL: 103-1-45</p> <p>Bill Thompson from BH2M to the podium: The proposal is for 27 units along Milliken Mill Pond. There is public water at the entrance, a fire hydrant, which would be extended into the neighborhood. There are two entrances in the loop road which is 1,900sf. Each lot is 25,000 sf with lots of open space for storm drainage. This property abuts Beachmont.</p> <p>Jeffrey Hinderliter Recommendations:</p> <p>This proposal is to create a 27 lot single-family residential cluster subdivision with 11 acres of open space on a 27 acre lot off Portland Ave. The proposal includes public water and private septic systems for each lot. Each lot is a minimum of 20,000 sq. ft. The property has water frontage on Milliken Mills Pond and is located within the Stream Protection Shoreland Zoning District (SP) and Rural District (RD). Also, a portion of the property is located within the regulated 100-year floodplain. But what I believe is most important, especially at this time since it is simply sketch plan review (and I sincerely appreciate the proposal is brought to us this way at this time), is the historic significance of this property to the town of Old Orchard Beach. There are a number of ordinance and engineering details that need to be considered but I believe we first must consider the history of the property and how to preserve this while still allowing the density the applicant seeks. My thought's below.</p> <p>First, as I understand, there are two structures that are part of the cultural history of OOB- a brick home constructed in 1834 and a cellar hole where Capt. Isaiah Milliken's homestead was constructed during 1798. Although the foundation and brick home are not on the registry of historic places or have any specific regulations that apply in regards to state or local preservation, I sincerely hope the owner and applicant (BH2M) will recognize the importance of these structures and work with the town to preserve them.</p> <p>To preserves these structures, I believe the subdivision layout needs to be redesigned. I have a number of creative ideas how to do this which includes a trail network, dock for the future residents to access Milliken Mills Pond, open space corridor along the Pond's</p>	<p style="text-align: center;">ITEM 6</p>
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shore frontage and connection to Beachmont Subdivision open space, preservation of the structure which may also include offering structures as a gift to the town so upkeep, taxes etc. is not the responsibility of developer or future property owners, and a redesign of the subdivision that will take advantage of preservation of the structures and using this a theme for the development- from lot layout to building design. All while allowing the owner to meet his/her financial expectations.

In order to do the above, I ask the PB to support this as well as the applicant and owner to work with me to create the design. I see this as a fantastic opportunity to create a unique, historical based development that is one-of-a-kind for our area. If all agree to allow me to assist with redesign, I'd like to meet with the applicant and owner within the next week to discuss my thoughts in further detail.

RECOMMENDATIONS: For this meeting, I ask the PB to provide a recommendation that will allow me to work with the applicant and owner on a redesign that will include preservation of the structures. Also, I believe it is important for the PB to visit the site before snowfall, so I recommend a site walk is schedule to be held during November. Note- if you choose to schedule a site walk this may take 1 hour and please remember the amount of daylight available.

Open for board discussion: 8:03pm

Mark Koenigs: There is ongoing work across the way with the Conservation Commission to look at putting trails in the property that abuts this project. 51 acres were donated to the town along the waterway which connects areas of the wetlands owned by Beachmont development with this property in between as the link. I don't see it being built as it's currently designed.

Win Winch: Well, 20,000sf on septic is a concern because of our experience with _ Park. There have been major septic problems because people are on double lots. Have we done any PERC testing?

Bill Thompson: No, not yet. We've walked it.

Win Winch: Retaining that brick house would be a nice entrance to that.

Mike Fortunato: I just agree that we should set a site-walk.

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<p>Mark Koenigs: Recommendation to proceed with an interest in historic preservation and working with the Town Planner.</p> <p>Bill Thompson: Our next steps would be to do a survey and see and get a better sense of the fit.</p> <p>Site Walk scheduled for 11/6/14 at 4pm.</p>	
<p>Item 7 : Proposal: Site Plan Review: Construct 50' X 90' Retail Building, Action: Discussion, Schedule Site walk and Public Hearing, Owner: Ike Naim, Location: 36 Old Orchard Street, MBL: 205-3-8</p> <p>Jeffrey Hinderliter's Notes & Recommendations:</p> <p><u>ITEM 7 & 8 (Note: these are separate agenda items but similar so are combined for this memo)</u></p> <p>Proposal: Site Plan Review: Construct 50 x 100 Retail Buildings</p> <p>Action: Discussion, Schedule Site Walk and Public Hearing</p> <p>Owner: Ike Naim</p> <p>Location: 36 Old Orchard St., MBL: 205-3-8 29 Old Orchard St., MBL: 206-31-5</p> <p>This proposal involves the construction of two, 50' x 100' buildings on vacant lots. Each building is 1 story, will have two separate suites with a proposed retail use. The proposal requires both Site Plan Review and a Design Review Certificate as administered by the Design Review Committee (DRC) and the PB.</p> <p>First, I'd like to thank Mr. Naim for making this significant investment at two important locations in town. Also, I thank Mr. Naim again and Weger Architects for their careful consideration of building design. I think both projects are fantastic and look forward to working with all involved throughout the permitting process and completion of construction. Below are a few comments and questions:</p> <ul style="list-style-type: none"> • The submitted packet is quite complete. The one piece that is lacking, which is important for PB review purposes, is the site plan. According to the Architects, the plan will be prepared in time for the November meetings. • Because the proposed buildings are within the DD1 Zone, zoning standards are quite lenient for non-residential uses. 	<p>ITEM 7</p>

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For example, there are no setback and off-street parking requirements.

- Design standards for new construction in the DD1 state, in part, that “all buildings should be a minimum of two stories.” This standard (78-686 (b) (2)) further states “If market conditions cannot justify multiple stories, the owner is encouraged to either: a. Construct but not finish off the second floor; or b. Construct with adequate loadbearing walls and truss roof construction to enable addition of additional floors when market conditions can justify additional floors.” Currently, the proposal is 1 story. Has the owner considered the above-mentioned design standard to either include a second floor or design or construct a building that will enable future vertical expansion?
- Please document how the stormwater management system will work.
- Regarding the building that is proposed to be attached to adjacent buildings (Lot 36)- does the owner have permission from the abutting property owners to attach the buildings? How will the design allow for adequate fire protection if one or both of the existing buildings does not have adequate fire protection built into the common wall?
- Where will loading/unloading vehicles park?
- Does either property have any easements of ROW's?
- In addition to the PB, DRC has jurisdiction over this project. As you may know, DRC review of a proposal is primarily associated with aesthetics and how building design fits within a particular setting. The DRC is an advisory Committee that provides a recommendation to the PB. Upon receiving the recommendation, the PB provides the final decision. The DRC use Design Review Criteria (78-686, attached to this memo) to rule on a proposal. Due to the location and importance of building design, I believe DRC consideration and their recommendation is a critical part of town review of this proposal. DRC began review on 6 October and it was well received. DRC will hold a site visit on 17 October and continue consideration at their November meeting.

Summary:

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1. Submission of a site plan
2. Vehicle loading/unloading location
3. Permission to attach to existing buildings (Lot 36)
4. Fire protection
5. Consideration of adding second floor or design building to allow future construction of a second floor
6. Explanation of stormwater management
7. Existence of any easements or ROW's on both properties
8. Building aesthetics and consideration of how design fits into the Old Orchard Street area

RECOMMENDATIONS: I recommend the applicant address my above-mentioned comments and the PB schedule a site walk on 6 November.

Mark Koenigs: RE item 1. Submission of a site plan
The site plan covers all of the requirements but we are looking for more detail.

Jeffrey Halferty: We are working with BH2M on the site survey.

Mark Koenigs: It is encouraged that the new buildings in the Downtown be two story to encourage year-round store fronts and residents. If you wanted a waiver for that you would have to apply for that.

Is that true that there isn't going to be any space between buildings on lot 36? Is that with Beach Bagel? You're going to have a fire protection wall. Is that something you already own?

Jeffrey Halferty: They are working that out with the adjacent neighbor. On lot 36 with the downhill abutter. Currently they have some existing equipment. There's no egress but we have to work out some ventilation issues with them. We are checking in with the survey company to honor the egress requirements and the buildings that are there.

Open to Board discussion: 8:20pm – no comments

Mark Koenigs: So we would like the site plan revisions by the workshop on Nov. 6th or submittal to Town Planner by 10/27.

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<p>Site walk 11/06/14 5pm at 36 with ten minutes at each and schedule the public hearing on the 13th.</p>	
<p>Item 8 : Proposal: Site Plan Review: Construct 50’ X 100’ Retail Building, Action: Discussion, Schedule Site walk and Public Hearing, Owner: Ike Naim, Location: 29 Old Orchard Street, MBL: 206-31-5</p> <p>Jeffrey Hinderlites Recommendations and Comments: (Combined in above Item 7 notes)</p> <p>Jeffrey Halferty: Back to the comments: The site plan is being worked on with BH2M, we will also address the loading and unloading with that. The building on this site will not be attached it will sit in its own footprint. We have addressed the fire protection and contacted the Department of Public Works. We have addressed the water pressure to sprinkler both structures. We haven’t spoken with the fire marshal yet. With consideration to the second floor we have addressed that with the client and he was not interested but we are designing the foundations and footings to accommodate that. As far as storm water management we are designing a system with BH2M that will accommodate existing run-off. If there are any easements we will respond to those. We will continue to address the design standards of Old Orchard Beach. We will respond to the dumpster and the loading/unloading as indicated.</p> <p>Mark Koenigs: We will schedule the site walk for the 6th as well, and the public hearing for the 13th.</p>	<p>ITEM 8</p>
<p>Item 9: Proposal: Sawgrass Subdivision Amendment: Approved 40 unit condo project modified into a 22 unit single family house lot project, Action: Discussion, Schedule Site Walk and Public Hearing, Owner: Sawgrass LLC, Location: Wild Dunes Way (Dunegrass Sections J & L) Map 105A, Lot 1</p> <p>Jeffrey Hinderliter’s Recommendations and Comments: 2013 BACKGROUND (11 April Meeting):</p> <ul style="list-style-type: none"> • This proposal amends another amended plan which was last approved (with conditions) by the PB during November 2008. • The November 2008 proposal amended portions of Dunegrass Sections J and L (and modifies unit numbers in Section M) in order to develop Sawgrass Condominiums: a five phase – 40 unit condominium project. One 8-unit building will be constructed in each of the five phases. The Plan is included within your packet. The owner at that time was Suncor LLC. 	<p>ITEM 9</p>

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- The November 2008 conditions of approval were:
 1. **The final site plan (to be signed by the Planning Board) will include:**
 - a. There shall be 5 iron survey markers to be set at the angular points of the property line between the development area and the golf course.
 - b. The lighting shall be shown on the plan and in detail to agree with Section 78-1026 of the ordinance (full cutoff light fixtures).
 2. **Prior to the commencement of construction**, the cost of the site work for the phase(s) to be constructed shall be approved by the Town's inspection engineer; a Performance Assurance for the cost of the site work shall be established; and 2% of the construction costs shall be put in an escrow account to pay for the necessary engineering inspections.
 3. **Prior to the issuance of building permits**, the Condo Association Documents shall be reviewed and accepted as satisfactory by the Town's Legal Counsel. They shall also be recorded in the York County Registry of Deeds, and a copy of the recorded document submitted to the Town Planner.
 4. **Prior to Planning Board Signatures**, the site plan shall be submitted in digital format for the Town GIS mapping system. Contact the Town Planning staff for the detailed submission requirements.
- The new, 2013 proposed subdivision amendments include a complete redesign of the 2008 proposal. Instead of 5 buildings with 8 units in each, the amendment now proposes 22 individual homes on their own parcel of land. The unit count, impervious surface will be reduced and the overall concept changes.
- During 1987/1988, Dunegrass was approved as 18 separate sections (Sections A – R) with a total of 589 dwelling units and a golf course. The Dunegrass development has evolved since the original 1987/1988 approval through various amendments. It is somewhat unique in the way it was approved by both the town and DEP so it is allowed to change overtime and adjust to market conditions. These changes have varied from minor to major revisions.
- I believe the primary question the PB should consider is if this 2013 change is minor enough to rule on this evening or is the change is major enough to warrant a more detailed review and additional meetings (e.g., site walk, public

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hearing). If the PB feels the change is minor, is their enough information to allow proper review? If the PB feels it is a major change, I believe the PB should indicate what additional material they need to provide a proper review and what meeting(s) will be held (e.g., site walk, public hearing, etc.).

- Stormwater/drainage management- The applicant provides a written response to the subdivision criteria but we don't have a plan or report; therefore, it is difficult to determine where the water is going and what systems will be in place to handle the flow. As I understand the 2008 proposal was to pipe stormwater across Long Cove Drive which would lead to an open drainage ditch along Wild Dunes Way and eventually draining into a pond by Hole 5. I believe the open drainage ditch along Wild Dunes Way no longer exists. If the 2013 proposal is to use the same method of stormwater drainage, this could be an issue- especially for the properties located at the Glen Eagle section.
- Note- the notice of decision in the applicant's packet is only for the 2008 amendment preliminary plan. This is not the final notice.
- Submission of home owner's association documents?
- The applicant should check with the Fire Department (Chief John Glass 934-4911), Police (Chief Dana Kelley 937-5805 Sewer Treatment (Chris White 934-4416), Public Works (Bill Robertson 934-2250) and Biddeford/Saco Water Department (Tom Carr) to be sure the proposal is ok with them. Note- I submitted the application packet to Public Works.
- I believe the applicant submitted plans to the town's engineer for peer review. I have not received a response form the town engineer as of 4 April.
- Will the proposal include new fire hydrants and street lights? I see none on the plan.
- How will the future residents dispose of solid waste?
- Water/sewer/road design, specs, plans?
- I know there have been concerns about water supply and pressure in Dunegrass and I believe there are two separate systems, one partially owned by Dunegrass and the other entirely under the control of Biddeford and Saco WD. Which water source will be used- where is the water coming from? Note that for the 2008 40-unit approval it was

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determined the project will not cause a burden on water supply. Biddeford Saco Water Co. has confirmed available capacity for this project in a letter dated 9/6/2007.

- Consider shared driveways?
- Snow plowing/disposal/storage method and location?
- DEP permitting status?
- Please provide a dwelling unit count update as a plan note. Please include where units are coming from and/or remaining in sections J and L.
- Proposed sidewalk- ADA accessible? The sidewalk is within the right-of-way. If the town accepted Wild Dunes Way, will the town be responsible for maintain the sidewalk? I'll check with Public Works.
- Currently there's an Island View Avenue in OOB- will this be an issue the proposed road name "Island Drive?" I recommend the applicant check with Police and Fire.
- Bill Robertson, PW Director comments:

1. Where is the design for the Sewer system, Drainage system and water utilities?

2. The Conservation Commission is already proposing a trail along the southerly side of Wild Dunes Way for a connection from Veterans Memorial Park to the Eastern

Trail, therefore is this sidewalk necessary. The proposed trail I believe will be 6 feet or so wide and be constructed of reclaim material. In fact it's already in place in this section and merely needs to be regarded and rolled.

3. I don't particularly care for the short distance between Long Cove Drive and Ponte Vedra Drive on Wild Dunes Way, and that may be the site distance but no one travels at 25mph. Perhaps the developer could eliminate this entrance make Ponte Vedra Drive a cul-de-sac with a partial cul-de-sac to the west and expand lot #17 back to get the required area.

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- Overall, I believe this plan is better than the 2008 proposal and will be a better fit with the surrounding development. Even though the 2013 proposal is scaled down from the 2008 approval, my primary concern is if we have enough information to properly evaluate this proposal.

2013 BACKGROUND (9 May Meeting):

- At the April PB meeting, the Board determined more information was needed in order to properly review the plans. The Board requested a full set of plans, scheduled a site walk and public hearing.
- The May submission includes a cover letter addressing comments from the April meeting, abbreviated stormwater management report and a set of plans.
- I believe the water supply issue is resolved because the supply is not part of the Dunegrass Community Association (DCA) water system.
- I have not received the HOA docs. Does the PB feel they need to review these before issuing a decision?
- Did the applicant check with Police and Fire about the Island Drive street name?
- The PW Director suggested eliminating the Ponte Vedra Dr. access to Wild Dunes Way. This has not be done- is this a concern to the PB?
- PW Director, Bill Robertson, offers the following:
I have not received comments from Bill- I know he's busy with construction projects. I expect his main concerns will be the Ponte Vedra Dr. access and stormwater drainage. He may recommend that the roads in the Sawgrass Subdivision remain private.
- I have not received a letter from Biddeford/Saco Water- what is the status of this?
- Stephanie Hubbard received her first set of plans on 30 April. I expect she will provide comments by the 9 May meeting. Will her suggestions require plan changes?
- Status of DEP permitting?
- As I understand, the DCA documents require structures to be located at least 10' from unit site lines (side and front) and there is a 25' no clearing (vegetation larger than 4" in diameter) for the rear lot line. Looking at Sheet 1, it appears most of these structures do not conform to these restrictions.

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- Stormwater- this seems to be the primary issue associated with this proposal. Based on the new submission, it appears the method of drainage is similar to what was approved in 2008. I have concerns about this because I can see a potential impact to the Glen Eagle development. Also, the ditches appear to be filled along Wild Dunes Way, so how will the water travel? Is the drainage pipe (on and off site) that will carry drainage appropriately sized? As I understand, drainage will travel to Basin 5- what systems are in place to insure the water can appropriately travel there? Also, does the developer have ownership rights to allow drainage in the basin? Are there other entity's that need to give permission in order for the developer to use the drainage basin?
- Stormwater- Gary Salamacha, acting on behalf of the Glen Eagle Board of Directors offered these comments:

I guess the big question is, if the water dumps onto Glen Eagle, where is the waterway to channel the water to the pond on Fairway 5, which is how it was planned to go.

Any waterway or piping system would have to be in the public right of way, they can't use our common land or my lots to create a ditch.

The other big question is, the culvert is only 12" between units 5 and 4, and I don't believe a culvert that small will handle all the water anyway.

To get to that culvert between 4&5, the only way to do so as I said.

Is go down the public right of way, and at some point they would also have to cross Glen Eagles common land.

- Stormwater- I see no reference in the Stormwater Report concerning conformance with the town's Post Construction Stormwater Ordinance. This can be a condition of approval but we must insure it is mentioned in the Home Owner's Documents.

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- Street Lighting- As discussed at the April meeting, the PMUD District has street lighting standards. The applicant's engineer, Les Berry, sent these comments:

Sheet 5 of the Sawgrass plans show a lighting plan with 0.93 average illuminance which is just below the standard of 1.0 average.

This is 9 light poles for 700+/- feet of road in the Dunegrass project that currently has no light poles. This just strikes me as a big overreach by the land use code.

1. Light pollution - I did not see any specific reference on the OOB ordinance to light pollution except from car lights but 9 lights is overkill. It will be so bright that one could read a book at night as they walked down the street. This in my opinion is creating a nuisance condition.

2. Dunegrass - This project does not have any lights. Why would the Town want to create one bright neighborhood next to all the other neighborhoods.

3. Construction Cost - The cost 9 poles with underground wires for a separate electric service is just unnecessary.

4. Operational Costs - This is a big monthly cost to the Homeowners Association.

5. Environmental Cost - Excess light and energy use just seems to be not in step with current public policy to conserve energy and minimize environmental impacts.

In summary, I live in a small lot subdivision in Gorham that I developed and I begged the planning board to not have light poles. They finally agreed with me and the neighborhood is now complete. That turned out to be an excellent outcome. There is plenty of ambient light for walking with need to get

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blackout shades so one can sleep at night. Perhaps we can talk about this at the site walk and invite the planning board to do a nighttime driveby.

- I agree with these comments but I have been unable to find something specific that clearly allows the PB to approve the proposal without street lighting in conformance with the PMUD standards. What I did find is the very last sentence in the subdivision ordinance (74-313 c): "Street lighting shall be installed as required by the Planning Board." Seeing "shall" means to me that street lighting is required; although, the PB appears to have flexibility as to how much street lighting is required. I looked through other Dunegrass approvals Findings of Fact and found the developments were required to have streetlights in conformance with the PMUD standards. Note: The most recent submission show conformance with the PMUD street lighting requirements.
- I have not received a landscaping plan but based on the PB's April discussions, this is not an issue to prevent the proposal from moving forward.

2013 BACKGROUND (13 JUNE MEETING)

- My primary concern at this time is the 8% road grade on Island Drive. Even if the roads are to remain private, I still believe they must meet applicable standards; therefore, a waiver of maximum grade standard (74-309 (m)) is needed for a road with an 8% grade. This road is defined as a "Collector" which has a maximum grade of 6.0%. The PB has the authority to grant waivers (74-34 as long as the PB finds the provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare or is inappropriate because of inadequate or lack of connecting facilities adjacent or in proximity to the proposed subdivision. As long as surface water drainage is properly planned for, I believe the PB can grant this waiver.
- The Home Owner's Association Documents that I have do not appear to include the following language: A. All stormwater system operations, maintenance and repair shall be the responsibility of the Home Owner's Association and B. All operations, maintenance, repairs of the streetlights and associated electrical systems shall be the responsibility of the Home Owner's Association. There were a few HOA documents emailed so I may not have the most

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recent or maybe I overlooked this language. If the most recent HOA documents do not include this language I recommend they be amended to include the language (see condition).

- The revised plans include site lighting and landscaping (Sheet 5).
- It appears the stormwater management questions/concerns, including conformance with the Post Construction Stormwater Ordinance has been addressed, including the addition of an operations and maintenance plan. Also, the revised plans should address the neighbors' concerns. There are concerns about short and long term functionality and maintenance of the dry wells (as you may recall, additional dry wells were added to avoid discharge to neighboring properties).
- I believe there are concerns about driveways close to intersections. 78-1466 (e) states that no driveway shall be located within 50 feet of the curblin tangent of an intersecting local street and/or private way. It appears several lots have driveways that do not meet this standard (Lots 11, 12, 16, and 19). 78-1568 (a) (2) of the OOB ordinances provides a waiver provision that allows the PB to waive the standards above-mentioned second bullet as long as the modification will not create unsafe conditions for vehicles or pedestrians.
- The DCA provided comments which they want to be part of the conditions of approval. As I understand, DCA is separate from the zoning standards the PB must follow. Prior decisions from the PB and town staff reflect this. I do believe the PB must carefully consider the DCA's comments but ultimately, I think it is separate from the PB's responsibility to ensure a development complies with applicable ordinances. If the DCA's comments tie directly to a zoning standard that will fall under the PB's jurisdiction. Otherwise, and as it appears to have been interpreted in the past, compliance with DCA rules and obligations must be worked out between the DCA and the developer. Ideally, the developer and the DCA will work these matters out before town approval or before construction begins.
- There were comments concerning the September 2005 Consent Agreement between the town and the Developer

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(part of your packet). Not all of the terms of the agreement are directly associated with the Sawgrass proposal (identified as a portion of Section L); although, Section L is specifically identified as part of obligations 21.a and 21.c (page 5 of the 20 September 2005 Consent Agreement). In regards to 21.a, I believe the remaining undeveloped portions of Long Cove Drive do not need to be completed with the development of Section L because the obligation states “prior to the completion of development of areas Q, M and L.” My interpretation of this is Q, M and L are tied together and because Q and M are undeveloped, by only developing L at this time does not mean Long Cove Drive needs to be completed because Q and M remain undeveloped. Once Q and M are developed, Long Cove Drive must be completed. Regarding 21.c, this appears to apply because the obligations states “at the time of development” and “to each of those areas.” This appears to be different from 21.a because 21.c treats each section separately and states at the time of development, not at the time of completion. Therefore, it appears Section L needs two sources of water.

- The PW Director prefers that Ponta Verde Dr. should not access Wild Dunes Way- and should terminate in a hammerhead or cul-de-sac. The plans have not been changed to reflect the PW comments. Is this a concern to the PB?
- I recommend setbacks be included as a note on the final plan.
- **RECOMMENDATIONS:** I believe the PB can rule on the revised Sawgrass residential subdivision. Before a decision is made on the subdivision as a whole, I recommend the PB first rule on a waiver of 74-309 (m) to allow a maximum grade of 8% on Island Drive and a waiver of 78-1466 (e) to allow the driveways of Lots 11, 12, 16, and 19 be within 50 feet of the curblin tangent of an intersecting local street and/or private way If you choose to approve I recommend the following conditions:

1. Construction shall not begin until all applicable Maine Department of Environmental Protection permit

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<p>application approvals are secured by the applicant and/or property owner. If these MDEP approvals change the plans and written documentation that were submitted and part of the Planning Board approval, those changes shall be presented to the Planning Board.</p> <p>2. The Home Owner's Association documents shall include the following language:</p> <p>A. All stormwater system operations, maintenance and repair shall be the responsibility of the Home Owner's Association.</p> <p>B. All operations, maintenance, repairs of the streetlights and associated electrical systems shall be the responsibility of the Home Owner's Association.</p> <p>3. Digital plans shall be submitted to the town and to the town's GIS consultant in accordance with Chapter 78, Sec. 78-215 (4) before any construction begins.</p> <p><u>2014 UPDATE (9 October Meeting)</u></p> <p>During the June 2013 meeting, the PB unanimously voted to table this item without prejudice. The proposal is now brought back to the PB with three changes since the June 2013 meeting 1. Updated application; 2. A letter from the former engineer (BH2M Les Berry) addressing various comments; and 3. A new engineer is involved (VED, Jason A. Vafiades).</p> <p>I recently met with the new engineer to discuss what I believe is needed to move the proposal forward. I recommended he address and/or submit the following:</p> <p>1. Address comments from the PB, staff, town engineer, abutters, etc. beginning 9 May 2013 – 13 June 2013. I believe the applicants' response to this is the Les Berry letter within your packet.</p> <p>2. Submission of updated Subdivision Amendment Application. This was submitted and in your packet.</p> <p>3. Submit other application information (e.g., plans, stormwater plan) as recently submitted as part of the 2013 review or as amended after June 2013. This information was not submitted.</p> <p>Although the proposal received considerable review last year and it appeared to be near conclusion, I believe the proposal still needs further review after this evenings meeting, especially in regards to various comments that I believe are unanswered and/or not</p>	
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<p>reflected on plans including, but not limited to, submission of the waiver requests, home owner’s association document changes and plan amendments. There are still decisions the PB need to make before they rule on the proposal (such as the waiver requests) and I believe we do not have all of the information to help us make these decisions. I recommend the applicant submit a plan set and waiver requests to me before the next formal submission to the PB. This will allow me to look at the complete application and advise the PB and applicant as to what I believe are outstanding issues. Also, the PB may want to hold another public hearing and site walk. As I recall, there was considerable abutter interest in this proposal last year and abutters may want another opportunity to speak.</p> <p>RECOMMENDATIONS: I recommend the applicant: 1. Submit a full set of the most recent plans; 2. Submit waiver requests as identified in my above-mentioned “background” comments from the 2013 meetings; and 3. Thoroughly review comments between 9 May 2013 and 13 June 2013 meetings to ensure they’ve been properly addressed. This includes the current engineer evaluation of the former engineers’ comments and plans to see if the current engineer agrees and supports the statements and plans from the former engineer. If the PB would like to schedule a public hearing and site walk, these meeting can be held during November (6 Nov. for the site walk and 13 Nov. for the public hearing).</p> <p>Mark Koenig: Jeffrey has given us the background (inserted above).</p> <p>Discussion of the Board 8:31pm</p> <p>George Hasseltine, Representative of DCA and a resident of DCA, we have never met the applicant or agent.</p> <p>Mark Koenigs: We don’t know. (read Jeffrey’s recommendations) I would move to table since the applicant isn’t here.</p> <p>Win Winch: I motion to table Mike Fortunato: I second it</p> <p>Unanimous 3-0</p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Tabled 3 Yes 0 No</p>
<p>Other Business - none</p>	<p style="text-align: center;">Other Business</p>
<p>Good & Welfare –</p>	<p style="text-align: center;">Good & Welfare</p>

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<p>Open to Planning Board</p> <p>Mark Koenig: I have noticed that a couple projects that we have approved are started. The police storage area foundation is poured and the skate park is has 2 sections done.</p> <p>Mr. John Bird: Thanks to the Board for the proposed area around Miliken Mills Pond. Appreciate the involvement of the board.</p>	
Adjournment at 8:35pm	Adjournment

*I, Molly Phillips, Secretary to the Planning Board of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of 26 pages is a true copy of the original minutes of the Planning Board Meeting of **October 9, 2014.***

Molly Phillips