

**TO: Old Orchard Beach Planning Board**  
**FROM: Planning Staff**  
**SUBJECT: January Planning Board Meeting Summary**  
**DATE: 12 January 2017**

Below is a brief summary of pertinent issues related to the January Planning Board Agenda items:

**ITEM 1 & 2**

**Proposal: Conditional Use Amendment of Approved Plan/Appeals from Restrictions on Nonconforming Uses (Overnight Cabins): Change use of 7 units from seasonal to year-round (currently 5 year-round use for a total of 12)**  
**Action: Site Walk; Public Hearing; Schedule Final Review**  
**Owner: SRA Varieties Inc., D.B.A. Paul's II**  
**Location: 141 Saco Ave., MBL: 311-1-10, GB2**

At the December meeting the PB determined the application complete but felt more information was needed. This additional information includes a revised plan that has the following: 1. Drawn to scale (something that looks like a survey plan); 2. Location of dumpster; 3. Parking spaces with dimensions that meet ordinance standards; 4. Parking aisle and access way dimensions; 5. Unit #'s on cabins; 6. Cabin interior space layout. In response the applicants submitted a revised plan and attached description of each units use (seasonal or year-round). Also included in your January packet:

- Building plans. Note these plans were included with the 2015 submission and appear to offer the best available representation of the buildings, including interior layout. I asked the applicants if these are accurate to which they said they are.
- Applicant's response to PWD, PD, FD comments. These responses were provided by the applicant as their reply to Department Head comments received during the spring and summer of 2016. They do not specifically address the Department Head comments received as part of the application resubmission; although, you'll see that most of the department Head comments are the same or similar as those from last spring and summer. The applicants included these responses as part of their November 2016 resubmission application. See below for further discussion.
- 12 Conditional Use standard responses. These are the same CU standard responses submitted as part of the November 2016 resubmission application.

The PB asked about the 2016 license status including any condition(s) the Council may have attached to license approval. We checked the license files and Council minutes and found:

- 2.16.16: Council approved 5 year-round units in buildings 1 and 3.
- 3.17.16: License file notes show 3 seasonal units added in building 5. No documentation of Council approval for this.
- 4.19.16: Council approved 6 seasonal units in buildings 2 and 4. This brings the unit count licensed by the Council to 11. Remember, the 3 units added in building 5 were not approved by Council so they're not legally licensed.
- 11.1.16: License file notes show that common space in buildings 2 and 4 were approved as units (approved on 4.19.16). This would increase the licensed amount by 2 units and if the 3 units in building 5 are eventually approved the total unit count will be 14. This exceeds the PB approval of 12 units. License reduced by 2 total units and referred back to Council.
- 11.15.16: Council approved amendment to the license approved on 4.19.16. This amendment reduces the number of units in buildings 2 and 4 to 4 total units (two units in each) which supersedes the previous license for 6 total units (three in each). This brings the licensed unit count to 9. Building 5, which is still not licensed, has 3 units so if this is licensed the total units will equal 12 which is what the PB approved.

- We found no conditions from the Council attached to the approvals.

So, as of today, there are a total of 9 licensed units approved by the Council. 5 year-round units approved in buildings 1 and 3 and 4 seasonal units in buildings 2 and 4. Building 5 which includes 3 units does not have Council license approval. We checked building 5 status with Codes and it has not received an occupancy permit. The PB's decision should not be based on the whether the occupancy permit has or has not been secured (the PB approves projects all the time before occupancy permits are issued- think of new subdivisions with unbuilt homes); although, its issuance could be linked to a condition associated with other parts of the project (e.g., completion of parking areas as shown on the plan).

In regards to the revised site plan included with your January packet and how the units are licensed, things don't quite match up.

- Building 2 license includes 2 units with a center common space. The revised plan shows 3 units including one unit in the common space.
- Building 3 license includes 4 units. The revised plan shows 2 units and common space.
- Building 4 license includes 2 units and common space. The revised plan shows 3 units including one unit in the common space.
- Building 1 license reflects the plan.
- Building 5 is not licensed and does not have an occupancy permit but does reflect the unit count (3) intended for the building.

One concern is can the PB approve a proposal that is different than what the Council approved. Even though the units in buildings 2, 3 and 4 do not reflect what was licensed, the current occupancy of these units does match what the Council approved (e.g., 2 units in building 2 are licensed to be occupied and currently occupied while the 3<sup>rd</sup> unit is vacant). But, we are still left with a proposal and occupancy that does not match the Council's approval. This may be something Codes needs to sort out as their occupancy permits may not match this proposal, too. Also, Codes is responsible for licensing so it makes sense they review and offer a recommendation.

Seasonal vs. Year-Round Units (Reference: 11 Sept. 2015 In-Office Meeting Notes- Gee and Jeffrey H; 11 June 2015 PB Minutes). According to my (Jeffrey) information, the number of approved year-round units is 5. According to my 11 Sept. meeting notes, I outlined the next steps associated with the cabin project. Based on these notes and my memory, the owners approached me to see what they need to do to add additional year-round units. I informed them that 5 units were grandfathered and already approved for year-round occupancy. My notes indicate the owners wanted to add 4 more year-round units to bring the total to 9. I informed them that they need to go to the PB to amend their June 2015 approval. I outlined what they need to do for PB submissions. No further action taken by the owners regarding securing PB approval to add 4 more year-round units. The 11 June PB minutes state that 5 units were grandfathered by Code Enforcement- Unit 1 (an original building adjacent to Saco Ave) and Units 4,5,6,7 (an original building parallel to rear property line). In addition the above, the minutes state: "Mr. Bouthiller stated that part of the season these cabins will be used for the J-1 students and the rest of the year they will use them for tourist and longer stay winter rentals and also use some of the % for year round rentals." Although the quote mentions 'longer winter stay' and '% for year round rentals' the only specific statement concerning grandfathering was for Units 1,4,5,6,7. Based on my 11 Sept. meeting notes, I feel my comments continue to recognize that 5 of the 12 units are allowed for year-round use.

The revised site plan appears to show all items requested by the PB and staff. The plan is drawn to scale and used a surveyor's plan data (see plan notes). The parking stall dimensions meet the compact car 90 degree angle standard. The parking aisle and access width also is acceptable. Dumpster location is shown. Unit locations and numbers are shown on the plan and a description of their use (year-round or seasonal) is attached;

although, this does not entirely reflect what has been licensed by the Council. The building plans show cabin space layout.

In addition to the above, Department Heads continue to have concerns about the proposal. The applicants feel they acceptably addressed these concerns in their November submission (see responses to PWD, PD, FD and the 12 Conditional Use standards). Below are comments received from Department Heads *after* the applicants provided their responses to PWD, PD and FD.

- Public Works

I just walked around that site and I don't see how the drainage is contained in any way. I think you are going to find silt washing onto the abutters property in the spring.

- PD

Jeffrey, regarding the Omni's proposal to license several more units as year round rentals, I am still adamantly opposed to allowing more of these types of housing units to become year round rental properties. They are not designed to accommodate the needs of a family and never were. They were designed as seasonal cottages and were never meant to house entire family's from September to June. The owners of the property suggest that because they have not had any issues yet, that that it is an indicator that their management skills will prevent any future issues. I strongly disagree with that premise and can tell you that in my many years of experience with this type of housing, that it attracts an element that this community does not want or need. We are not doing the children who end up in these properties for the winter, any favors, by allowing this kind of housing. We see entire family's move into these types of units for the winter, that typically have one bedroom. Sometimes it's just one room. Where do you think everyone sleeps in these kinds of properties when you have two or three children and a couple of adults? We respond to call after call to these kinds of properties for, domestic disputes, drug and alcohol issues, mental health issues, people with warrants for their arrest, and the list goes on. It is almost inevitable that people living in this kind of an environment will have issues. The Omni, regardless of how well they manage their property, will be subject to these kinds of issues, because of the element that they will attract. I do not mean to lump all winter rental properties and the people that rent them into this category, as it certainly doesn't apply to everyone, but, with the type of housing the Omni offers, It is almost a certainty that they will experience these kinds of issues. I hope the planning board will also consider what properties like this do to the owners of abutting property. It certainly impacts the quality of life for the abutters as well as their property values.

- Codes

I have had a meeting with the owners today 11-01-16 and they have agreed to remove the 2 oil trucks from the property responding to my request that they move them- We agreed they would be off site on 11-07-16. My issue is fire apparatus cannot enter the site and make the radius turns it would need . The corridor must be at least 20ft. wide and if there was a fire the oil trucks would be right in front of several units possibly adding to the already close conditions- remember the loading there is near 50 persons and then you have the gas station and the convenience store.

The issue and my response to how many units are there is 12- That is the number they were approved for by the PB. There seems to be some confusion on what they requested and what was approved. I have information that

documents the number 12 both from the PB ,myself and information you supplied earlier this year. They will alter their application to reflect 12 units. When the buildings were connected there was some thought to use bonus space and making them into suites to accommodate J-1 workers which they did. They are not to be used as two additional units without coming back to the PB. We will monitor this during this year.

Kathy I and Megan met with Gagon and Gee this morning regarding Omni and the 12 v 14 units at this location. as from today on it is and will remain 12 units. They can petition for the 2 they claim Pierre

said they could have These 2 will remain part of the units that open as a suite for j-1 students. They are not separate units to be rented individually.

We will monitor these units occasionally to ensure they don't reappear as #13, and 14.....(units.....)

Further, I instructed them to remove the two oil trucks as they are parked in the fire lane area of these structures and may impede fire apparatus from maneuvering around this site. They both agreed to have them out of this property by Monday November 7,2016

- FD: In regards to the Red Rocket on Saco Avenue, I refer to the notes from the previous chief (previous notes below).
  1. A project of this size and being a motel type property we would require a complete and monitored fire alarm system not just a hard wire residential system. This would include a fire alarm panel connected to a monitoring company and a panel showing each zone and each building. Clearly marked.
  2. A Knox box on the front of the "main building" usually located on the front of the building where the fire alarm panel is located.
  3. All doors need to be mastered so we only have to use one key to gain access to any door.
  4. I am concerned with the current gravel driveway as our trucks weigh up to 68,000 lbs. and I am afraid in the spring we will get stuck.
  5. All buildings need numbers that we can see plainly visible. Each unit would also need a number on or near the door.
  6. I have a concern entering or exiting on the Union Ave side as I believe we will not be able to make the swing.
  7. Concern over winter operations and where the snow will be piled and access for us during this time of year.
  8. Is there an onsite manager 24 hours a day?
  9. To my knowledge no Fire Inspection has been done.
  10. A walk through with each shift would be needed.
  11. Access to the rear of the buildings appear to be an issue.
  12. CO detectors in each unit.

The question of use has been asked and it is staff's opinion the current and proposed use is a Hotel. A Hotel is defined as "a building used for transient or permanent lodging of individuals, with or without meals, having ten or more guestrooms." Interestingly, a Hotel is a permitted use in the GB2 District (it falls within the Lodging Establishment definition). Its former use appeared to be Overnight Cabins which is not a permissible use in the GB2. So, establishment as a Hotel actually makes this proposal more conforming.

Finally, it is important to remember this proposal is to be reviewed in accordance with the Responses to the Appeals from Restrictions on Nonconforming Use standard (78-180). In order for the applicant to secure approval under this standard the PB must find "that the impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different form or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use." The proposal is to convert 7 seasonal units to year-round use. The applicant provided a response to 78-180 (December submission) but the PB should not use this response alone when ruling on this proposal. The plans, CU standard responses, management plan, and Department Head responses should all be considered when determining if or if not the applicant has met their burden of proof.

**RECOMMENDATIONS:** The PB should consider:

- Has the applicant acceptably addressed Department Head comments? Note that some may require conditions or further work (e.g., knox box, exit/right turn only sign and Union Ave).

- The revised plan is an improvement but what is the likeliness what is shown will exist? For example, some of the proposed parking will block an internal property vehicle access that leads to property entrances/exits. Will the proposed parking be ignored at some future time to allow for vehicle passage? The PB could make occupancy of building 5 contingent upon completion of site work, including parking and access layout according to plan.
- The licensed units are not entirely consistent with the revised plan. How should this be resolved? Maybe Codes should review and provide comment by our next meeting.
- Interested in the PB's thoughts concerning the unit management plan (in your December packet. One problem is the applicant states 7 units of the 12 are currently occupied when only 5 are permitted for year-round use. Note- seasonal use is 1 April – 31 October.
- Does the PB believe the proposed conversion of 7 units from seasonal to year-round use will not be substantially different form or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use?
- Ultimately a big question is how will this project perform and work over time. Staff does have concerns.

### **ITEM 3**

**Proposal: Determination of parcels inclusion with 2004 Campground Registration**  
**Action: Discussion; Decision**  
**Owner: Paradise Acquisitions LLC**  
**Location: 60 Portland Ave, MBL: 205-1-32; 50 Adelaide Rd, MBL: 106-2-2 (portion of)**

#### January 2017 Update

Following-up on PB request to discuss with the Assessing Department, we spoke to Assessor Bill DiDonato concerning how their records view the Tousignant to Paradise Park land transfer and the pistol-shaped lot (MBL 205-1-32). As a result of this discussion we have more confidence that the area associated with the Tousignant to Paradise Park land transfer was part of the 2004 Campground Registration Application approval because this area was merged with the Paradise Park Campground lot (MBL 106-2-2) before the 2004 Campground Registration; therefore, already included within the Campground. Regarding the pistol-shaped lot, we did not find any more clarity to assist the PB with their determination as to if it was/was not part of the 2004 Campground Registration Application approval. Further information for each is briefly discussed below.

Regarding the Tousignant to Paradise Park land transfer, a portion of Tousignant land was transferred to Paradise Park during October 2002 (Note- the deed was included within the 2004 Campground Registration Application). This land was merged with the Paradise Park MBL 106-2-2 so it became part of 106-2-2 before the 2004 Campground Registration process. There are questions regarding where the property boundary line dividing Tousignant and Paradise Park exists as a result of the 2002 transfer. Attached (Tousignant to Paradise Park Base Survey Map 2002) is a formal survey plan prepared for Tousignant during 2002. The diagonal blue boundary line that runs almost due north is the line created as a result of the 2002 land transfer that separates the Tousignant and Paradise Park lots. To verify this line, we plotted the metes and bounds description in the Tousignant to Paradise Park October 2002 deed and found it matches this line. So, it appears quite clearly that the area to the left of the diagonal blue boundary line is Paradise Park and to the right is Tousignant. And it is our opinion the area transferred to Paradise Park as shown on the attached plan is part of the approved Paradise Park Campground. One question is why was the land transfer not shown on the "Boundary Survey" included with the 2004 Registration Application, especially since the area was merged before 2004. We do not know the answer but Paradise Park stated they included the October 2002 deed in the Registration Application to show that it was part of the campground.

Regarding the pistol-shaped lot (205-1-32), this lot has remained a lot separate from the main Paradise Park Campground lot (106-2-2) since Paradise Park acquired it during 1997. Unlike the Tousignant transfer, this area was not merged into 106-2-2. Although, the pistol-shaped lot and 106-2-2 do have the same ownership and

tax bills are mailed to the same address. Based on our research we could not find an answer as to why this lot was not merged with 106-2-2. Also, we could not determine if this lot was or was not included with the approved 2004 Campground Registration. The only information we have to show that it was included is the "Boundary Survey" that was part of the Paradise Park's 2004 Application. But what concerns us is that it was clearly a separate lot before, at the time of and after the 2004 Campground Registration. So, why was the MBL not identified on the application? Why was this deed not included with the application (like the Tousignant to Paradise Park deed)? Why was the Vision property card not included with the application? But we are left with the question-why would Paradise Park show this area on the Boundary Survey if they did not want to include it as part of their campground and why would Paradise Park exclude this lot from future use as a Campground?

So, it comes to the PB's determination as to whether they believe, with all the information that has been provided, that the area associated with the Tousignant to Paradise Park October 2002 Deed and the pistol-shaped lot (205-1-32) was included with Paradise Park's 2004 Campground Registration Application and approved by the PB. It does appear the Tousignant to Paradise Park area was included with the 2004 Campground Registration Application and approved by the PB. Regarding the pistol shaped lot, it's difficult to say with certainty the lot was or was not included and approved. But, it does not make sense why Paradise Park would not include this lot as part of their Campground Registration Application. Nonetheless, it comes down to what the PB feels the Board approved during 2004. One important note- The land adjacent to the pistol-shaped lot acquired by Paradise Park during 2016 has been merged with the pistol-shaped lot. If the PB determines the pistol-shaped lot was approved to be part of the Campground, the area recently merged must be excluded as this was clearly not part of the 2004 Campground Registration Application. This should be specifically included in the decision through language such as ...includes the land area as shown on...and excludes a land transfer identified...

#### December 2016 Memo

This proposal is back to the PB not as a zoning amendment or campground development proposal but for a decision by the PB concerning whether two areas were included with the approved Paradise Park 2004 Campground Registration Application. These two areas are: 1. A pistol-shaped parcel; and 2. The land area associated with the Tousignant to Paradise Acquisition, LLC 2002 deed. The PB last considered this (August 2016) as part of a zoning amendment proposal and decided to remove from the agenda because:

1. We need to determine, beyond a reasonable doubt, which lots were part of the PP's 2004 registration. Based on the information in the hard copy files it appears one of the lots (205-1-32) was part of the 2004 campground registration. This is actually why the question came up. Staff spoke about this in the Paradise Park Campground Overlay Public and PB comments memo
2. If one or more lots are part of the registered campground then it appears the proposal can move forward without any zoning amendment. Lots that are registered appear to be able to move forward with a Site Plan Review application.
3. If the lot or lots were not included with the 2004 registration, then the base zoning districts (R1 and GB1) need to go through the zoning amendment process if PP wishes to establish campground uses. Amending the CO as a zoning district appears to do nothing as the CO was not intended to be a district. As our town attorney states, it should not have been shown on the zoning map.

Basically, only the lot or lots included in the 2004 campground registration can move forward with a campground proposal without zoning amendments. Any lot or lots not included in the 2004 registration need an amendment to the base zoning district (R1 and possibly GB1) to allow campgrounds as a use before a campground can be proposed. It appears the PB can't provide a recommendation anyway because the CO as a zoning district does not exist.

After the August meeting, staff continued to research and could not definitively conclude if the lots in question were or were not included with PP's 2004 Campground Registration. So, we consulted our town attorney for more direction and received the following response:

As I noted in my August 10<sup>th</sup> email, the purpose of the overlay district was to allow existing campgrounds to "expand"—*i.e.* add more sites or more facilities--but only within the boundaries established by the April 1, 2004 registration. A registrant seeking existing campground status had to provide an existing conditions site plan consisting of either an aerial photograph accompanied by a site plan showing the boundaries of the property or a property survey. Section 78-1226. Whether or not a property is registered campground for purposes of Section 78-1226 is ultimately a decision for the Planning Board to make as part of a proposed expansion.

An existing campground that registered in 2004 and now wishes to expand must show that land for any proposed new sites is within the 2004 boundaries. It is the applicant's burden to show that the proposed expansion is in the overlay zone, and must submit proof that the project is within the permitted boundaries. Although it does appear that the "pistol shaped lot" has a dark outline around it suggesting it was included in the boundary, the site plan that accompanied the 2004 application is difficult to read so it may be helpful for the applicant to submit a survey or other evidence to the Planning Board to allow the Board to make a proper determination. You also mentioned that the Town may have provided the aerial photograph required by 78-1226(1)(a)(i) which should also be reviewed.

Regarding the other property associated with the deed - I do not believe that a deed alone is sufficient since Section 78-1226 requires that an application for a registered existing campground had to include a site plan showing the boundaries.

The Planning Board should review the 2004 application and approval, together with any other information the applicant wishes to provide to proof that the proposed expansion is within the 2004 approved boundaries.

The town attorneys last sentence brings us to where we are today- a decision by the PB concerning whether two areas (or one of the two) were or were not included with the approved Paradise Park 2004 Campground Registration.

To follow-up on a comment at the workshop, staff found the two PP expansion plans approved by the PB (2008 and 2014) after the 2004 Campground Registration. Regarding the 2008 plan, it does appear to show the pistol-shaped area and area associated with the Tousignant to Paradise Acquisitions deed as part of the Paradise Park overall campground. The pistol-shaped area has a darker shaded line marking the property boundary which is consistent with and connects to the other identified campground property boundaries. Although, there is a lighter shaded dashed line that appears to show some kind of separation between the pistol-shaped area and the main PP lot. The Tousignant to Paradise area does appear to be included within the main PP lot as the property boundary shown on the town's zoning map does not exist on the 2008 plan. But, why is the Tousignant reference still in the area where the Tousignant lot existed (or exists) on the town's zoning map? Maybe a typo but we're not sure. Regarding the 2014 plan, the Property Overview inset on the signed plan does appear to show both the pistol-shaped area and Tousignant to Paradise lot as part of the main PP lot and campground.

This is a tough one but what it comes down to is does the PB feel that there is enough evidence to show the pistol-shaped area and/or the Tousignant to Paradise Acquisitions area was part of the approved Paradise Park 2004 Campground Registration. Remember, you are not deciding on a development proposal (e.g., campsite expansion, access road construction) at this time. But, if the one or both areas are found to be part of the 2004 Campground Registration, PP has the right to apply for new campground development in these areas.

#### **ITEM 4**

**Proposal:** Major Subdivision: 20 lot cluster subdivision for single-family residential use  
**Action:** Sketch Plan review  
**Owner:** Kevin Beaulieu & Steven Beaulieu  
**Location:** Ross Rd, MBL: 107-1-4, 14 & 16, RD

#### ***Project Background:***

This is a Sketch Plan proposal for a Major Subdivision – 20 lots – off of Ross Road adjacent to Easy Street and across from “Reclaim the Plains – Blueberry Plains.” The current use is an undeveloped wooded lot.

#### ***Comments from Planning Staff and Wright Pierce:***

There is an area on the plan designated as “future development” – the development of up to 20 lots will occur in Saco at a later date after the Old Orchard Beach portion. There is the potential for access concerns with only having one entrance to the lots. This concern could be further exacerbated knowing the future development potential on the Saco side. A conversation has already begun with Saco’s Planner Bob Hamblen. Staff felt it was important to get them involved early on in the process and keep them involved as the project moves forward.

Per the Town’s Ordinance (74-231(f)): If a subdivision is located within 500 feet of a municipal boundary, a public hearing shall be held. The Planning Board shall notify the clerk and the Planning Board of the adjacent municipality involved at least 10 days prior to the hearing. Comments and recommendations made by the Planning Board of the adjacent municipality shall be given due consideration in the deliberations and decision-making process of the Planning Board.

This project is in the Rural District of Town. There could be opportunities for open space/trails as part of this development that the Planning Board could take into consideration.

This project is over an acre and located in the Goosefare watershed. There will be Chapter 71 (Post-Construction Stormwater Ordinance) implications. The Town will be looking for the Developer to enter into a Maintenance Agreement, submit a Post-Construction Stormwater Management Plan and provide the Town with a list of all BMPs proposed on site with a designation on those that have the potential to discharge to the Town’s MS4 (i.e. Ross Road).

In addition, this project is in the Goosefare Watershed and because of its close proximity to Saco, there is the potential for the Developer to pay into Saco’s Compensation Fee Utilization Plan (CFUP). This would allow the developer to allocate funds toward future projects in the Goosefare watershed in lieu of additional improvements on site. The Town of Old Orchard Beach does not have this Plan in place, it is something the Planning Board will look into this year, however, it is something to consider as part of this proposal.

***Wright Pierce comments were received on December 22, 2016.*** A couple of things to point out specifically from Stephanie’s memo:

- A portion of the property to be developed (Lots 1-4) appears to be in what is designated as a wetland on the GIS, construction details will have to be provided for this area.
- According to the Town ordinance, any development with greater than 15 lots requires a second means of egress. There is the possibility of using Easy Street, however, this is a private dirt road and at this time it’s



unclear whether or not the street could be brought up to subdivision standards and used as access for the subdivision.

- In 2011 the Town reviewed the Land's End Subdivision which was proposed to be located in this area to the left of Easy Street. As part of the subdivision approval, Easy Street was to be upgraded and used as an access to the 8 proposed lots (*see attached plans & FOF*).
- The 20 lots are to be served by individual onsite subsurface disposal systems, there is the possibility of connecting each of the lots to one centralized collection system and given the fact that the project is in the Town's priority watershed, this is something that should be looked into. In the Town Ordinance Sec. 74-278(7): Planned Unit and Cluster Developments "all structures with required plumbing in a planned unit development or cluster development shall be connected to a public sanitary sewer system, if available, or to a central collection and treatment system in accordance with the sanitation sections of this chapter."

### **ITEM 5**

**Proposal:** Major Subdivision: 9 lot residential subdivision (Red Oak Phase II)  
**Action:** Sketch Plan review  
**Owner:** Mark Bureau  
**Location:** 141 Portland Ave, MBL: 104-2-2, RD

#### ***Project Background:***

In 2004, the Red Oak development located at 143 Portland Ave was approved as a minor, 3-lot subdivision. In 2005, the applicant came back for an amendment to extend the main road and create one additional lot (Phase 2). The last lot was completed in the summer of 2016.

#### ***Construction Background:***

In early February (2016), Codes staff noticed some severe erosion and sedimentation control issues at the last lot under construction on Red Oak Drive. As a result, the Town had Stephanie from Wright Pierce come out and complete inspections at the site. Inspections were completed in February, March, and May (reports attached). The Town also completed several inspections.

The DEP got involved at the end of July, early August due to the issues onsite, primarily associated with the stream. Audie Arbo at the DEP spoke with Marc Bureau (Owner/Developer) after she discovered that no current permits existed for the work being done on Red Oak Drive. The only permit found was a Permit by Rule for an outfall pipe on Red Oak Drive in 2006. The main issue was that a stream crossing was put in without a Section 10 Permit by Rule (PBR). Work was also done within 25 feet of the stream, which now required an after-the-fact Natural Resources Protection Act Individual permit for activity adjacent to a protected natural resource. In addition, the rip rap in the bed of the stream channel needed to be removed by hand to allow for the natural stream bed to be exposed. Audie also recommended having the engineer hired for the next phase of the project look into whether the road would trigger the need for a Stormwater permit.

In September, Audie met with Marc Bureau's agent and engineer on-site and together they were working on a restoration plan to move the stormwater feature outside of 25 feet from the stream and put in an after the fact permit application for the stream crossing.

#### ***January Update from Audie:***

On January 3, 2017 Audie Arbo at DEP has not received a plan and the enforcement case is still open regarding the project. She has put in another phone call to the agent to ask where the plan and timeline for corrective

action is and got an email from the agent stating she will have an after-the-fact Permit By Rule for the crossing and a restoration plan for moving the structures away from the stream very soon.

*Comments were received from Stephanie on December 23<sup>rd</sup>, see attached memo.*

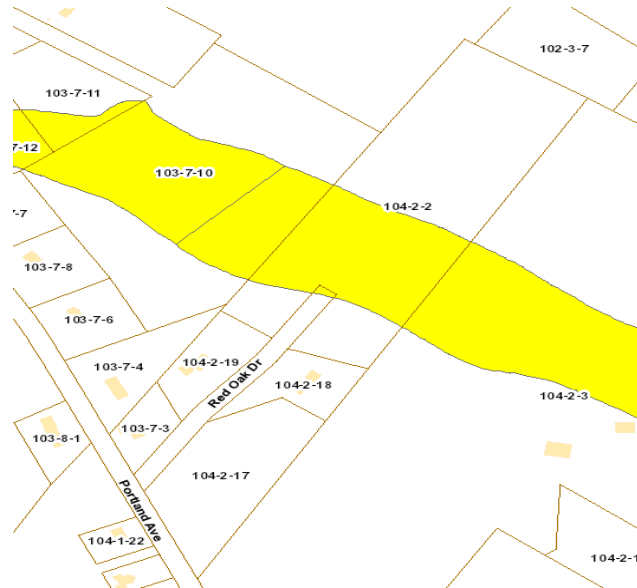
**Additional Town Comments:**

The house adjacent to Lot 9 on the other side of the stream was just completed this past summer. On the approved plans from 2005 it shows this lot as part of Phase II (*see attached plans*). In addition, the parcel number (104-2-2) on the Town's GIS shows that house as part of the same MBL as these 9 additional units. It is unclear on the sketch plan whether this lot is considered part of Phase II as shown on the 2005 approval.



It's unclear whether or not Lot 1 is a buildable lot. A detention pond was constructed this past summer in that area and it's unclear where the building envelope for this new lot is in relation to the pond. It's recommended that this pond be shown on the plan. The building envelope shown to the left of the stream is in the same area as the pond which was located within 25 feet of the stream (*see attached photos*).

FEMA implications – 3 or more of the proposed lots are in the designated FEMA flood zone "A." This is also addressed in the Wright Pierce memo from Stephanie.



One of the building envelopes for Lot 9 is tucked in the corner of the lot, how could an access drive be put in to get to this building without impacting the stream?

As a heads up this project is over an acre and in the MS4 regulated area so the Town will be looking for the applicant to enter into a Maintenance Agreement and provide a Post-Construction Stormwater Management Plan for the development. They shall also provide the Town with a list of all BMPs proposed on site and designate any of them that could discharge to the Town's MS4 (i.e. Portland Ave).

### **JANUARY 2017 DEPARTMENT HEAD COMMENTS**

PD Chief Dana Kelley (re: Ross Rd. Subd):

Jeffrey, as we discussed Wednesday at our development meeting, I have concerns with adding another 20 homes and possibly an additional 10 or 12 future homes, to what is in my opinion, an already overloaded intersection at Ross and Cascade Rds. It seems that, individually, these projects in and around that intersection, do not, by themselves, warrant a traffic study. However, collectively, it seems like to me that they should. I understand that we currently do not require impact fees for any future road or intersection improvements. I don't see how we can keep adding housing to this area, and not, at some point, have to consider the overall impact these projects will surely have on the intersection of Cascade and Ross rd. It is poorly designed, has poor sight distances, and is a high crash area. Unfortunately, it doesn't meet the warrant required by MDOT for a signal. Anyone who has had to experience that intersection, especially during the summer, knows how difficult and dangerous it can be. We keep adding more and more housing, but do not address the long term traffic impacts. It seems to me, that developers should be paying for future costs associated with the impact on infrastructure and traffic related problems, created by developments they build. The intersection of Ross Road and Cascade Rd, should be addressed now, and I don't think it is fair to put the burden of any immediate or future improvements (signals, road improvements, street lights and sidewalks) on the backs of tax payers. Other than for these reasons, I do not have any objections to these kinds of projects moving forward. They certainly contribute to the revenue stream through property taxes, but, I can't help but wonder if the overall impact on our schools, costs for plowing and maintaining new roadways, police and fire services, and potential infrastructure improvements, outweighs any benefit derived from additional tax revenues. It may be that we

have to change our ordinances to require impact fees on these types of projects, perhaps even a moratorium on future development until these issues can be addressed.

FD Chief Ed Dube (re: Red Oak and Ross Rd):

In regards to Red Oak Subdivision Phase-2 and Ross Road Subdivision they must both meet the following.

NFPA: 18.3 Fire Hydrants

NFPA: 18.2.3 Fire Department Access Road

NFPA: 18.2.3.4.4 Dead Ends

NFPA: 18.2.3.4.3 Turning Radius -The Turning Radius must meet the dimensions of the department Aerial Truck.

PW Director Joe Cooper (re: Paul's II, Red Oak, Ross Rd):

- Pauls II – I would like to see more measurements on the drawing for those parking spaces. Also does he need handicap spaces?

- Red Oak Subdivision. – I don't see anything for storm water.

o I would like to see the dimensions of the cul de sac for plowing.

o Would cul de sac be large enough to fit fire apparatus

- Ross Road – Storm Water concerns as well as plowing and snow storage.