

**TOWN OF OLD ORCHARD BEACH  
TOWN COUNCIL WORKSHOP  
Wednesday, July 11, 2018  
TOWN HALL CHAMBERS**

**A Town Council Workshop of the Old Orchard Beach Town Council was held on July 11, 2018. Chair Thornton opened the Workshop at 6:30 p.m.**

**The following were in attendance:**

**Chair Joseph Thornton  
Councilor Kenneth Blow  
Councilor Michael Tousignant  
Town Manager Larry Mead  
Assistant Town Manager V. Louise Reid  
Planner Jeffrey Hinderliter  
Code Enforcement Officer Richard Haskell  
Attorney Phil Saucier – Bernstein & Shur**

**Absent: Councilor Jay Kelley  
Vice Chair Shawn O'Neill**

**The purpose of the Workshop this evening is to provide the Tow Council with background information concerning the Planning Board's consideration of the Portland Ave land use matter, particularly the section of Portland Avenue that is west of the intersection with Ross Road. Consideration and discussion centered around:**

**Ordinance Amendments (Contractor Storage Yard 1): Amendment to Chapter 78 - Zoning, Article VI - Districts, Division 12 – Rural District, Section 78-963 – Conditional Uses; Amendment to Chapter 78, Article VII – Conditional Uses, Division 2 - Conditions, Section 18-1278 – Contractor Storage Yard 1.**

**A large audience of approximately 32 people was in attendance for this Workshop. The Town Manager explained that this was a presentation to the Council for their understanding of the issues involved and that in the future there would be a Public Hearing at which people would have the opportunity to speak and express their opinions or concerns. At this Workshop, however, no comments would be accepted but rather Council will be provided their update.**

**The Town Manager explained that over the years this section of Portland Avenue has had various types of business activity ongoing for many years. Currently there are several different businesses operating in this area including retail, excavation contracting, landscaping material sales and storage, and auto repair. Objections have been raised by resident, Walter Murphy, an abutting property owner, that certain business activities taking place at the MacDonald property at 169 Portland Avenue are not permitted uses in the Rural District Zone, specifically the contractor excavation business and septate storage. The Town was asked to take action to halt these business activities.**

The Town Manager noted that after consulting with the Town's Legal Counsel, staff determined to take a deliberate approach in addressing this issue. The reasons for this deliberate approach included the fact that the excavation business had been operating in this location for many years; this area has had a variety of business activity over the years; and in addition that there were other businesses operating in the same neighborhood that may involve activities not permitted under the Zoning Ordinance. This issue was in front of the Planning Board earlier this year when the Board considered whether to recommend to the Town Council changes to the Rural District Zone related to contracting operations. The Planning Board voted 3-2 not to recommend changes to the Town Council.

The Town Manager indicated that the Town Planner, Jeffrey Hinderliter, will present an overview of the findings related to existing business activity in this section of Portland Avenue. In addition, Town Attorney Phil Saucier who is with us this evening will address possible options for responding to the situation. At the conclusion of the Workshop the Town Council will go into Executive Session in order to consult with our Attorney concerning potential litigation related to the matter.

Below is the presentation that was provided by the Town Planner and also the suggested and possible options for responding to the situation.

**PRESENTATION BY:** Jeffrey Hinderliter, Town Planner  
**SUBJECT:** Portland Ave Workshop Planning Staff Comments  
**DATE:** 11 July 2018

### Overview

During the fall of 2017, Mr. Walt Murphy met with me to discuss his concerns about the business activities at the MacDonald's property on Portland Ave (169 – 173 Portland Ave, 3 lots). What began as a flower shop has been operating as an excavation, firewood processing and septic storage business. The operation of this business has impacted his quality of life. Mr. Murphy stated that for the past few years he's met with the code office and discussed his concerns. He was told violations exist; although, nothing was done.

After listening to Mr. Murphy, recalling past conversations with former Code Officer Dan Feeney, and researching permitting and license files, it became clear this matter has been ongoing for some time and would continue unless something was done. It was at this time I began considering what approach the town should take by looking at the situation, concerns, and options (solutions).

### Situation

During 1999, Debbie MacDonald received conditional use approval to build and use a structure for a wholesale and retail business at 169 Portland Ave. This was for the operation of the flower and crafts shop. Ms. MacDonald continues to secure business license approval for this use since 1999. Permitting and licensing files show no other business operations approved by the town.

The town's earliest aerial photos (2001) show what appears to be some kind of business activity on the 171 and 173 properties. The next set of aerials dated 2006 show this activity expanding to 169 Portland Ave. The activity increases on all 3 properties as observed in the 2012, 2015 and 2017 aerials. Exactly what this activity is I can't tell but it is quite clear it involves more than what is required to operate a flower and craft shop and

has gone on for some time. Today, there continues to be one permitted and licensed use associated with these properties- a wholesale and retail flower and craft shop located at 169 Portland Ave.

Code Officer Rick Haskell and I inspected the 3 MacDonald properties on 6 July, 10:00 – 11:00 AM. The purpose of this inspection was to get an updated view of business activities and on-site conditions. The following was observed:

- The septic storage tank is no longer on-site. Ms. MacDonald agreed to remove at the town's request.
- Wood packing and excavating business is spread over the 3 properties.
- The wood packaging business consists of pre-split wood delivered to the property, bundled on-site, and then delivered to campgrounds. No signs of log cutting and splitting on-site- it's all delivered pre-split. The bundle machine was turned on and created little noise.
- Regarding the excavating business, the most obvious contractor related items present was material, misc. equipment, and a grit cleaning truck. We know there are dump trucks and loaders.
- The excavation business includes a catch basin grit cleaning truck. There were several yards of catch basin grit de-watering. Silt fence was adjacent to the grit. Ms. MacDonald stated the grit is brought to her property, de-watered, and then delivered to a facility in Scarborough. She indicated DEP has inspected the site.
- Materials on-site were associated with the excavating and wood splitting business as well as personal yard clean-up. These materials include concrete, crushed stone, mulch, clean fill, catch basin grit, split wood, misc. yard debris.
- No on-site retail sales except for those allowed (flower and craft shop).
- On-site fuel storage consists of two 250 gallon tanks.
- Various structures/buildings exist on all 3 properties- most are relatively old.
- Approx. 7 unregistered and uninspected vehicles exist on the 173 Portland Ave property.
- Misc. OOB365 vehicles and items on 169 front lawn.
- No noise, odors, vibrations was heard, observed or felt during our visit.

Overall, the site was rather quiet and orderly. I do realize the time of our inspection may not have been at the busy time of this business's operations. There is no question that unlicensed business activity is taking place and there must be some corrective actions- this is no real surprise because this is what we're trying to address. What was surprising was the activity occurring on the properties abutting the MacDonald's lots. 175 Portland Ave (Mr. Brian Robillard) and 165 Portland Ave (Mr. Bryan Murphy) were quite active with vehicle traffic and noise.

### Concerns

There are a number of problems I found during consideration of this matter.

First, aerial photographs show some kind of business activity, beyond the flower shop, has been conducted on the MacDonald's properties for many years- at least since 2006. This business activity was not hidden. Aerial photos show some of this activity could be observed from Portland Ave.

Second is the existence of similar business activity adjacent to the MacDonald property and other properties in the Rural District. As part of my research I reviewed aerial photos and found a number of properties in the Rural District had business activities including a cluster by the MacDonald's property. This particular cluster showed more intensive business operations on the MacDonald's, Robillard and Bryan Murphy properties. To show this, attached to this memo are aerial photos from 2012 and 2017. One aerial set shows all properties. The other 3 sets show 2012 and 2017 views of the MacDonald's, Robillard and Bryan Murphy properties. As you'll see, the business activity and use is expanding. And these are not home occupations.

Third is the lack of permitting and licensing for business activities in this area.

- **MacDonald's (169-173 Portland Ave).** Currently, the only permitted and licensed business activity and use is the wholesale and retail flower and craft shop located at 169 Portland Ave. There are no permits or licensing for the excavating and wood packaging businesses.
- **Robillard (175 Portland Ave).** Currently the property is licensed for rentals of two residential dwellings. There are no permits or licenses that allow what appears to be a landscape contractor business to operate.
- **Bryan Murphy (165 Portland Ave and a portion of an adjacent property).** Mr. Murphy operates an auto mechanic shop and landscaping business on his property. Regarding the auto repair service, it is currently permitted as an automobile service station (approved 1992 and amended approval 1994). Currently not licensed to operate auto service station- business license renewal on hold pending review of site. There are several concerns including operation of illegal junkyard/auto graveyard and noncompliance with 1992 and 1994 permit approvals. Regarding the landscaping business, there are no permits allowing the use to be established. License issued for retail use beginning in 2014 is currently on hold pending review of use and site. Several concerns include establishing the use without proper permit approval and incorrect use on license. Bryan Murphy was contacted on 5 July to schedule an inspection on his property to which he said he did not want us on because he knows his property is a mess.

Fourth, I assume many of these people use the business for their livelihood. I had to consider my actions could severely impact the continued existence of these businesses while respecting concerns of those who live in the area. This is tricky and is one of the primary reasons I created the proposed Contractor Storage Yard 1 ordinance amendments as one option.

Attorney Phil Saucier at this time suggested and discussed possible options.

### Options

Originally the town focused on addressing the MacDonald's matter alone. As I found during my review, other properties have issues similar to the MacDonald's which lead me to pursue the ordinance amendment option. Below is a list of these options. These options could be used to address the MacDonald's, Robillard and Bryan Murphy properties.

1. **Ordinance amendments.** The town is proposing amendments to the ordinance which would allow contractor-related businesses to exist within a portion of the Rural District. These amendments establish the Contractor Storage Yard 1 (CSY1) as a conditional use and will allow this use in a certain area along Portland Ave as long as they met the newly created CSY1 conditional use standards and other applicable requirements. The Planning Board recently voted 3-2 that the Council not approve these amendments. The amendments are now up for Council consideration.
2. **Consent agreement.** As a resolution, this could allow the town and responsible property owner to enter into an agreement to avoid formal enforcement and court action. Also, this option could limit the exposure a zoning change may introduce to other properties. It's possible the town could apply conditions to an agreement that would limit the noise, odor, vibration, amount of equipment, hours of operation, etc. Because a consent agreement is essentially a contract between the property owner and the Town, the Council will most likely need to sign it.
3. **Non-action letter.** A non-action letter basically states that the town is aware a violation exists on a property but the town has no intention of prosecuting at this time.
4. **Formal enforcement.** Identify violations and begin formal enforcement actions. The first attempt would be voluntary compliance. If this is not achieved (and I expect it will not in some cases) court action begins.
5. **Do nothing.** As I understand the town has discretion as to whether it chooses to enforce its ordinances; therefore, the town could choose to do nothing.

It should be noted that during the presentation Councilor Michael Tousignant asked property owner, Bryan Murphy (165 Portland Avenue,) if he was planning to buy a portion of land owned by the Bailey family and asked if he had a contract to which he responded that he did.

At the conclusion of this presentation, the Town Manager again noted that there would be an opportunity in the future for those present to make comments during a Public Hearing.

Below are the maps depicting properties involved in the discussion this evening.



















**Discussion this evening was limited to staff and legal presentation only. The next step would be a decision to hold or not hold a Public Hearing at another date.**

**The Town Council Workshop adjourned at 8:45 p.m.**

**Respectfully Submitted,**

**V. Louise Reid  
Town Council Secretary**

**I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of fourteen (14) pages is a copy of the original Minutes of the Town Council Workshop of July 11, 2018.**

**V. Louise Reid**