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2
3 **OLD ORCHARD BEACH PLANNING BOARD**
4 **Public Hearing and Regular Meeting**
5 **May 10, 2018 7:00 PM**
6 **Town Council Chambers**
7

8 **CALL MEETING TO ORDER 7:00 PM**
9

10 **PLEDGE TO THE FLAG**
11

12 **ROLL CALL:**

13 **Present:** Chair Linda Mailhot, Vice Chair Win Winch, Gary Gannon, Robin Dube, Marc Guimont, David
14 Walker. **Absent:** Mark Koenigs.

15 **Staff Present:** Planner Jeffrey Hinderliter, Associate Planner Megan McLaughlin
16

17 **Public Hearings**

18 **ITEM 1**

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

23 **Location:** **Portion of Rural District: Parcels of land with road frontage along Portland Ave**
24 **between the Ross Rd/Portland Ave Intersection and the Old Orchard**
25 **Beach/Scarborough Town Boundary.**
26

27 **The Public Hearing opened at 7:01 PM**
28

29 Attorney Keith Richard representing Walter Murphy of 184 Portland Avenue introduced himself.
30 Attorney Richard stated that Portland Ave is part of the Rural District according to the Zoning Ordinance
31 and is a district intended to preserve open space, rural aesthetics and allows for only low intensity uses.
32 The MacDonald Excavation business brought trucks, equipment, noise, dirt, traffic and abruptly changed
33 the peaceful character of the neighborhood. Later came the Frack Tank full of septic waste.
34 Walter Murphy went to the town a few times asking if these businesses and uses were allowed in the
35 Rural District and whether they had proper licensing. The answer from the town for both answers were
36 no, and no one did anything about it.
37 The MacDonald's business is operating with no license, no permit and no approval.
38 The business is illegal and doesn't belong in the Rural District.
39 Attorney Richard stated that they are asking to enforce the ordinances that the town has and apply them
40 equally to everyone.
41 Spot zoning is illegal when it only benefits a single property owner or one particular area and it is
42 inconsistent with the Towns Comprehensive Plan.
43 The Amendment is clearly meant for a single property owner.
44 The Comprehensive Plan states that the Town should severely restrict development in Rural areas and
45 should preserve the open Rural character of Old Orchard Beach by encouraging agricultural and forestry
46 uses in this area. Land uses should be limited to agriculture and forestry uses, low intensity recreational
47 uses and scattered or clustered residential uses that are compatible with the agriculture and resource
48 values of the area.
49 Attorney Richard also noted that Planner Jeffrey Hinderliter noted in the February Planning Board
50 meeting that creating a light industry overlay over this area would violate the Comprehensive Plan.

1 These amendments are the exact same proposal under a different name.
2 Changing Contractor Storage Yard 2 to Yard 1 would be an easy fix because Storage Yard 2 would work.
3 He also stated that he doesn't feel that MacDonald's Excavation business that is currently operating could
4 even meet these proposed amendment standards.
5

6 Attorney Harry Center, representing Debbie MacDonald introduced himself.
7 The Planning Board is here to make a recommendation to the Town Council to whether they should adopt
8 an amendment to the Town Ordinance.
9 We don't believe that there is illegal spot zoning.
10 Permitted uses in the existing ordinance in the Rural Zone allow for automobile repairs, veterinary
11 hospitals, and limited motor freight businesses as a Conditional Use.
12 This amendment would give an additional tool to consider a Contractor Storage Yard 1 as another
13 Conditional Use.
14

15 Mark Lindquist from 8 Eden Lane introduced himself. Mr. Lindquist is a resident of Old Orchard Beach
16 and serves on both the Zoning Board of Appeals and the Design Review Committee.
17 Mr. Lindquist stated that in the future the town will be asked to examine property use and render a
18 decision which will impact the lives and livelihood of residences.
19 These decisions must be the result of careful thought as each decision will be setting a precedent.
20 We all want a community that embraces growth and is treated equally and fairly.
21

22 John Campbell from 182 Portland Avenue introduced himself.
23 He lives directly across from MacDonald's and he stated that he is not bothered by the noise or dust from
24 the business.
25

26 Connie Lines from 7 Murphy Avenue introduced herself and she has lived in Old Orchard Beach since
27 1969. She is here to support Debbie MacDonald whom she says is a wonderful person and has a reputable
28 business.
29

30 Attorney Gene Libby representing Walter Murphy introduced himself.
31 He commented that there has been changing enforcement in the town because of changes in the Code
32 Enforcement Office. The reason Walter Murphy is here tonight is because the Town ignored his request
33 to enforce its ordinance.
34 The problem is that a Commercial business activity grew unregulated by the town in the Rural District
35 across from Mr. Murphy's home. No one is questioning that the MacDonald's are a well-known
36 politically connected family.
37 We are questioning on behalf of Mr. Murphy and that he lives in a zone where he has an expectation that
38 the quiet and solitude that he has enjoyed on his property should not be invaded because the person who
39 lives across the street happens to be the MacDonald's.
40

41 The Town Manager wrote Mr. Murphy a letter that the CEO had not been able to make a determination of
42 whether or not the operations of 17 pieces of equipment in a zone that allows 2 was in violation of the
43 ordinance.
44

45 Ray Briere from 46 Ross Road introduced himself.
46 Mr. Briere sees a lot of Residential growth developing and his concern is the traffic and a safe
47 neighborhood.
48
49
50
51

1 Jerome Begert from 4 Gables Way introduced himself.
2 Mr. Begert stated that he knows that the Planning Board will make a well informed decision. He stated
3 that the MacDonald's have been referred to as being "very connected" and he believes that is such an
4 extreme exaggeration.
5
6 Robin Dayton from 59 Fern Avenue introduced herself.
7 Ms. Dayton received information from the Planner in regards to how many lots, total acres and sq. miles
8 the area includes:
9 • Total of 380.15 acres
10 • Total of 29 lots
11 • Total of sq. miles .59 sq. miles.
12
13 2 of the lots are Public Property.
14 • One lot is slated for a public park.
15 • One lot is a dog kennel for the police station.
16
17 Ms. Dayton is concerned that public land is being included and she believes that this is unethical unless
18 the public land can be removed.
19 She doesn't think changes should be made at all until the public updates go through the Comprehensive
20 process which is over 20 years old.
21
22 Karen Lapierre from 180 Portland Avenue sees both sides of this proposal. This is about the land and
23 trying to change the Zoning Ordinance. She would hate to see a new business area developed as a result
24 of this change. She doesn't want change.
25
26 John Payne from 169 Portland Avenue introduced himself.
27 Mr. Payne is not in favor of commercialization. He is concerned with the noise, traffic and repairing the
28 roads.
29
30 Brian Murphy from 165 Portland Avenue introduced himself.
31 Mr. Murphy has an auto repair and stone business. He tries to keep his business quiet and peaceful and he
32 has received no complaints about his business.
33
34 Lori Cole who lives at the Crosswinds Motel introduced herself.
35 She stated that she has worked for Debbie MacDonald for 2 years. Ms. Cole believes that Walter Murphy
36 has a personal vendetta with Debbie MacDonald.
37
38 Debbie MacDonald from 169 Portland Avenue introduced herself.
39 She has lived at this location her entire life and she tries to be a good neighbor. She explained that 6 years
40 ago she had a dispute with Mr. Murphy and she has been bullied by Walter Murphy ever since.
41 There has been a lot of development on Portland Avenue and not all of the problem is only her business.
42
43 Walter Murphy from 184 Portland Avenue introduced himself.
44 He stated that Debbie MacDonald has no license to operate her business. She does however have a license
45 for her flower shop.
46 He states that he is bothered by the noise from her businesses trucks, chainsaws, wood splitters running,
47 pumping of tanks, damage to the roads, hauling in building materials, logging trucks, odors, waste truck,
48 grit truck and her tenants are loud. Mr. Murphy explains that he has lost 2 rents because of this.
49 He states that Town Officials won't do anything about it and he believes a shutdown of MacDonald's
50 business would be appropriate.

1
2 George Kostick from 185 Portland Avenue introduced himself.
3 Mr. Kostick is not in favor of the changes.
4

5 **The Public Hearing closed at 8:02 PM.**
6

7 **ITEM 2**

8 **Proposal: Ordinance Amendments (Medical Marijuana Storefronts): Amendment to Chapter**
9 **18 - Businesses, Article XI - Medical Marijuana Registered Dispensary or Medical**
10 **Marijuana Production Facility Amendments, title; Amendment to Chapter 18 -**
11 **Businesses, Article XI - Medical Marijuana Registered Dispensary or Medical**
12 **Marijuana Production Facility, Division 1 - Generally, Section 18-601 – Definitions;**
13 **Amendment to Chapter 18 - Businesses, Article XI - Medical Marijuana Registered**
14 **Dispensary or Medical Marijuana Production Facility, Division 1 - Generally,**
15 **Section 18-604 – Prohibition on Medical Marijuana Storefronts; Amendment to**
16 **Chapter 78 - Zoning, Article I – In General, Section 78-1 – Definitions; Amendment**
17 **to Chapter 78 - Zoning, Article VII – Conditional Uses, Division 2 - Conditions,**
18 **Section 78-1277 – Medical Marijuana.**

19 **Location: Town Wide**
20

21 **The Public Hearing opened at 8:03 PM**
22

23 Patricia Griffin from 6 Seabreeze Avenue introduced herself.
24 Ms. Griffin read some statistics showing an increase in crime and traffic accidents due to cannabis.
25 She would like to know if the Planning Board thought about an increase in police presence and who is
26 going to pay for it if needed. She asked if this will be increased through taxes. Ms. Griffin wants to make
27 sure that we are prepared as a community.
28

29 Tom Mourmouras from 30 Saco Avenue introduced himself.

30 Mr. Mourmouras read an excerpt from the Maine Municipal Associations Manual for Local Planning
31 Boards.

32 Tom Mourmouras and his father Peter Mourmouras submitted Ordinance Amendments to the Planning
33 Board in October 2017. The application was pushed back by the town numerous times until an emergency
34 moratorium was placed on Medical Marijuana Storefronts to regulate the use in town.

35 He was unaware of the fact that you could put an emergency moratorium on something that was already
36 defined and allowed in the municipality.

37 By the towns definition, Registered Dispensaries are entities registered pursuant to State Law that are
38 allowed to dispense, sell or supply medical marijuana to its registered patients out of a commercial
39 building. This land use is allowed in Zones GB-1 and GB-2. In 6 meetings on this issue he has yet to hear
40 this board use the words Land Use and Zoning while discussing the issue.
41

42 Two key questions need to be answered before a decision can be made by this board:

- 43 • The difference between medical marijuana registered dispensary land use and medical marijuana
44 store front land use and how would you allow one of these uses and not the other.
- 45 • Why are GB-1 and GB-2 more appropriate for these zones than DD-2? DD-2 already has a
46 business that dispenses medical prescriptions and qualifying patients while GB-1 and GB-2
47 traverse through the school zones.
48

49 Tom Mourmouras asked the Planning Board to look at this issue as if it was any other land use.
50
51

1 Peter Mourmouras who owns a business on 30 Saco Avenue introduced himself.
2 Mr. Mourmouras would like the Planning Board to act on land uses. He would also like for Chair Linda
3 Mailhot to recuse herself from future discussion on this proposal and vote that she is incapable of making
4 an impartial decision on this issue and has a clear bias on any marijuana use coming to Old Orchard
5 Beach.

6 He read a part of the excerpt from Ms. Mailhot’s public testimony at the Town Council meeting on the
7 Prohibition of Retail Marijuana on December 19, 2017.

8 “I feel that it would not be in the best interest of the Town Of Old Orchard Beach to allow Marijuana
9 Establishments for several reasons” “It would bring a bad element to town.”

10 Mr. Mourmouras stated that she clearly cannot separate between adult use marijuana and medical
11 marijuana as seen with her initial recommendation to include medical marijuana storefronts in the
12 prohibition.

13
14 Kelly Mourmouras introduced herself to the Board Members.

15 Her and her husband live at 57 Hills Beach Road and also own the property at 30 Saco Avenue in Old
16 Orchard Beach.

17 She has been a licensed physical therapist for over 30 years. Many of her patients have benefitted from
18 medical marijuana for various illnesses. This is for Medical Marijuana not Retail Adult use.

19 The University of New England is beginning to do research on the positive effects and many benefits
20 from Medical Marijuana Dispensaries in the State. Due to the limited amount of dispensaries, the State
21 and the Department of Health and Human Services have allowed certification of licensed caregivers.

22 Because there is not a spot for a medical caregiver’s storefront or office, they are forced to meet in
23 parking lots or residences which is not a safe and secure place. The Department of Health and Human
24 Services have rules and specific regulations on what Medical Marijuana Dispensaries and Caregivers
25 must abide by or they lose their license. The Town of Old Orchard Beach has already approved a location
26 for the Medical Marijuana Dispensary. She is asking the Planning Board to use their resources to make
27 an informed decision.

28
29 Robin Dayton from 59 Fern Avenue introduced herself.

30 A lot has changed in the past 20 years. The Mourmouras’s are basically asking for the change in land use
31 for a Medical Dispensary to be about 100’ away from where it already is allowed. It is her understanding
32 that the location on the application it is about 100’ from where GB-2 already allows it. Right across the
33 street is Rite Aid and that it a dispensary. She questioned why the town would agree to have a Medical
34 Dispensary right in front of the school, which is a possibility.

35
36 Planner Hinderliter stated that the GB-1 District is the only district that allows a dispensary, not the GB-2
37 District.

38
39 **Closed the Public Hearing at 8:20 PM.**

40
41 **ITEM 3**

42 **Proposal: Subdivision/Site Plan Amendment: Amend Atlantic Park Condominium to allow**
43 **construction of 21 new units, sidewalks, parking, access ways, landscaping, and**
44 **other misc. improvements.**

45 **Location: 11 Smithwheel Rd., MBL: 210-1-7**

46
47 **Opened the Public Hearing at 8:21 PM.**

48
49 Bob Skalski from 11 Smithwheel Road Unit #47 and President of the Atlantic Park Condo Association
50 introduced himself.

1 In general he is in favor of this proposed development however from past experience, a lot of the
2 infrastructure is not up to code now or in the past.
3 His biggest concern is the additional parking. He would like to see a great deal of oversight on this project
4 to make sure things are done properly on this project.
5

6 Nichole Fleury from 11 Smithwheel Road Unit #46 and also the Treasurer on the Board of Atlantic Park
7 Condo Association. She sent Planning Staff a list of her concerns to ensure that things are brought up to
8 code. The turning radius of vehicles and parking concerns, pavement concerns and safety of the wet pond
9 irrigation. However her biggest concern is with the traffic this will create and the safety of everyone
10 around.

11
12 **Closed the Public Hearing at 8:27 PM.**

13
14 **Approval of Minutes:** 03/21/18; 04/05/18; 04/12/18

15
16 03/21/18 Minutes:

17 Page 4 Line 23. Add Conditional Approval.

18 Page 7 Line 43. Loophole spelling error.

19 Page 8 Line 8. Change Band to Ban.

20 Page 5 Line 39. Strike out "is".
21

22 04/05/18 Minutes:

23 Page 3 Line 46. Re-word sentence adding add a condition that addresses the existing 750' of roadway.
24

25 04/12/18 Minutes:

26 Page 7 Line 4. Change project to roadway.
27

28 **MOTION:**

29 Win Winch made a motion to approve all three sets of meeting minutes with corrections, seconded by
30 Robin Dube.
31

32 **Planner Jeffrey Hinderliter called for the vote:**
33

34 **VOTE:**

35 David Walker – Yes

36 Robin Dube – Yes

37 Vice Chair Win Winch – Yes

38 Marc Guimont – Yes

39 Gary Gannon – Yes

40 Chair Linda Mailhot – Yes
41

42 **CARRIES: (5-0)**
43

44 **Regular Business**

45 **ITEM 4**

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

50 **Action: Discussion; Vote on Recommendation**

51 **Applicant: Town of Old Orchard Beach**

1 Planner Hinderliter stated that he has forwarded all public comments that he received to the Planning
2 Board members for those who could not make it tonight.

3
4 Planner Hinderliter mentioned that it is never easy to approach these issues and to try to find the common
5 ground where everyone is 100% satisfied. These issues do not go away and more problems are created.
6 He explained that the Planning Board is responsible to hold a public hearing and to provide a
7 recommendation to Council, however they do not decide on the ordinance. We have a Comprehensive
8 Plan that was adopted by the townspeople and the document that was adopted says that certain
9 Commercial uses are allowed in the Rural District.

10 The two town owned properties could also be an exclusion, an exemption from this ordinance.

11
12 What is important to understand is that the Comprehensive Plan allows certain Commercial activities in
13 the Rural District as long as those Commercial activities are sensitive to the objectives of these areas. This
14 is called “Good Neighbor Standards” which deal with noise, odors etc. and the proposed ordinance
15 includes all of that language within the proposed ordinance.

16 It could be argued that some of these uses could be more intense in a Commercial Storage Yard 1 and
17 would not be as regulated as the Commercial Storage Yard 1 is as proposed.

18
19 Another issue that has come up about property values. Planner Hinderliter checked with the Assessing
20 Office and the zoning change does not change the property values. What potentially cause the impact
21 would be if a use was established next to these properties.

22
23 Planner Hinderliter mentioned that the Planning Board has a few options:

- 24 1. Vote on a recommendation with the language as it is currently proposed
- 25 2. Vote on a recommendation that includes changes to the language. Note- changes may require
26 another public hearing
- 27 3. Postpone vote

28
29 Chair Linda Mailhot mentioned that she lives on the Ross Road and if this does go through she would be
30 affected by this change as well. She wanted to make it clear that she is voting on this knowing she could
31 be affected.

32
33 Win Winch feels that if Code Enforcement had done its job this issue would not be before us. He also
34 throws a lot of caution to the Comprehensive Plan issue.

35 Win Winch stated that he cannot support this.

36
37 David Walker’s concern is our ability to manage and control performance standards under any given
38 conditional exception and most of all a conditional exception of a Storage Yard 1. One of the standards
39 that he feels most appropriate is the one where it will not create a nuisance to neighboring properties
40 because of noise, odors, fumes, glare, hours of operation, vibration, fire hazard or unreasonably restrict
41 access of light. We have letters from neighbors expressing those sentiments.

42
43 **MOTION:**

44 Mark Guimont made a motion that a Contractor Storage Yard 1 not be allowed in the Rural District,
45 seconded by Win Winch.

46
47 **Planner Jeffrey Hinderliter called for the vote:**

48
49 **VOTE:**

50 David Walker – Yes

51 Robin Dube – No

1 Vice Chair Win Winch – Yes
2 Marc Guimont – Yes
3 Chair Linda Mailhot – No

4
5 **PASSES: (3-2)**
6

7 **ITEM 5**

8 **Proposal: Ordinance Amendments (Medical Marijuana Storefronts): Amendment to Chapter**
9 **18 - Businesses, Article XI - Medical Marijuana Registered Dispensary or Medical**
10 **Marijuana Production Facility Amendments, title; Amendment to Chapter 18 -**
11 **Businesses, Article XI - Medical Marijuana Registered Dispensary or Medical**
12 **Marijuana Production Facility, Division 1 - Generally, Section 18-601 – Definitions;**
13 **Amendment to Chapter 18 - Businesses, Article XI - Medical Marijuana Registered**
14 **Dispensary or Medical Marijuana Production Facility, Division 1 - Generally,**
15 **Section 18-604 – Prohibition on Medical Marijuana Storefronts; Amendment to**
16 **Chapter 78 - Zoning, Article I – In General, Section 78-1 – Definitions; Amendment**
17 **to Chapter 78 - Zoning, Article VII – Conditional Uses, Division 2 - Conditions,**
18 **Section 78-1277 – Medical Marijuana.**

19 **Action: Discussion; Vote on Recommendation**

20 **Applicant: Town of Old Orchard Beach**
21

22 Planner Hinderliter has worked with the Mourmouras' and have enjoyed their experience and knowledge.
23 They have been a help to him understanding about Medical Marijuana and Adult Use Retail Recreational
24 as well.

25 The Planning Board is responding to a Moratorium from the Town Council and the Council asks the
26 Planning Board for an ordinance language. Planning Board only provides a recommendation to the
27 Council because only the Council has jurisdiction.
28

29 The Planning Board has jurisdiction over ordinance amendment recommendations associated with Ch. 78,
30 Zoning. The Planning Board does not have jurisdiction over amendments to Ch. 18, Businesses.
31 Planning Board's consideration includes both Ch.78 and 18 so the Board is aware that both ordinances
32 should be adopted together in order to ensure proper administration. Although, when voting on a
33 recommendation it should be limited to the Ch. 78 amendments.
34

35 Planner Hinderliter mentioned that the Planning Board has a few options:

- 36 1. Approve the language as is
- 37 2. Deny the language as is
- 38 3. Approve the language with changes
- 39 4. Deny the language with changes
- 40 5. They can also deny the language that is proposed and ask the council if they can send it back to the
41 Planning Board to be more inclusive with their recommendations to the council.
- 42 6. Can postpone the vote and continue to work on the language.
43

44 Planner Hinderliter read an article from the Town Attorney for Brunswick who is going through the same
45 Medical Marijuana issues that we are facing.

46 Basically stating that there is currently a Medical Marijuana bill in limbo that would allow caregivers to
47 have an unlimited number of patients instead of 5.
48

49 It seems like legislation is still working on Medical Marijuana Storefront language.

50 Chair Mailhot stated that she is in favor of putting forth the proposed language as a recommendation to
51 the Council.

1 Win Winch would like to table this item until we get further information and be a little better educated.

2
3 Marc Guimont would like to see this go forward however he would like to see more guidance from the
4 State.

5
6 Chair Mailhot added that anything that the Planning Board does as a recommendation to the Council
7 they can do with it what they want. It also doesn't mean that in the future it cannot be changed once the
8 State comes out with a clear, articulate and functional way for communities to deal with this. This does
9 not change people's access to Medical Marijuana within the Town of Old Orchard Beach.

10
11 **MOTION:**

12 David Walker made motion to recommend to the Council to approve amendments to Chapter 78 - Zoning,
13 Article I – In General, Section 78-1 – Definitions; Amendment to Chapter 78 - Zoning, Article VII –
14 Conditional Uses, Division 2 - Conditions, Section 78-1277 – Medical Marijuana, seconded by Marc
15 Guimont.

16
17 **Planner Jeffrey Hinderliter called for the vote:**

18
19 **VOTE:**

20 David Walker – Yes

21 Robin Dube – No

22 Vice Chair Win Winch – Yes

23 Marc Guimont – Yes

24 Chair Linda Mailhot – Yes

25
26 **PASSES: (4-1)**

27
28 **ITEM 6**

29 **Proposal: Site Plan Review: Demo existing building and construct new 7,225 sq. ft. retail**
30 **building including associated parking, sidewalks and other site improvements**

31 **Action: Discussion; Reschedule Site Walk and Public Hearing**

32 **Applicant: Zaremba Group**

33 **Location: 19 Heath St., MBL: 309-9-33**

34
35 Megan McLaughlin gave a brief update on the project.

36 Held a sitewalk and public hearing in April 2018 and received a request to table this proposal.

37 There were a few outstanding concerns at that meeting.

38 Coordinating improvements to Heath Street, Saco Ave and Fort Hill intersection. Staff now has a plan for
39 that intersection. The only item that they are waiting for is an updated performance worksheet for the
40 construction so that they can establish an escrow account.

41 Staff recommends 2 potential conditions to be added to the plan that they address cross walk locations
42 and coordinating with staff during construction. Staff is also waiting on a no action letter from the DEP
43 (also addresses the petroleum that was found on the site). Staff had talked about obtaining a Maintenance
44 Agreement or an easement from them for construction and maintenance purposes and for public access to
45 the sidewalk and we are still waiting for some thoughts on that. Staff received one comment from an
46 abutter whose concerns were about removing the chain link fence that is on the property.

47 There is also a time line on the project so staff is recommending a motion to extend the decision.

48
49 **MOTION:**

50 Win Winch made a motion to grant a 30 day extension for this proposal, seconded by Marc Guimont.

51

1 **Planner Jeffrey Hinderliter called for the vote:**

2
3 **VOTE:**

4 David Walker – Yes
5 Robin Dube – Yes
6 Vice Chair Win Winch – Yes
7 Marc Guimont – Yes
8 Chair Linda Mailhot – Yes
9 Gary Gannon – Yes

10
11 **CARRIES: (5-0)**

12
13 A site walk was scheduled to be held on June 7, 2018 at 5:30 PM.

14
15 **MOTION:**

16 Win Winch made a motion to schedule a Public Hearing on June 14, 2018 at 7:00 PM. seconded by Marc
17 Guimont.

18
19 **Planner Jeffrey Hinderliter called for the vote:**

20
21 **VOTE:**

22 David Walker – Yes
23 Robin Dube – Yes
24 Vice Chair Win Winch – Yes
25 Marc Guimont – Yes
26 Chair Linda Mailhot – Yes
27 Gary Gannon – Yes

28
29 **CARRIES: (5-0)**

30
31 **ITEM 7**

32 **Proposal: Major Subdivision: 10 lot residential subdivision (Red Oak Phase III)**
33 **Action: Determination of Completeness, Schedule Public Hearing, Schedule Final Plan**
34 **Review**
35 **Owner: Mark & Claire Bureau**
36 **Location: End of Red Oak Dr.**

37
38 Megan McLaughlin stated that the Planning Board decided to hold off on determining the application
39 complete while they waited for information on a deed associated with lot 7. The Applicant submitted a
40 letter from an Attorney.

41 This situation seems similar to one that occurred with another project the Planning Board recently
42 approved. That situation was a little different because there was a dispute between two parties
43 over a deed. However, when we consulted our Town Attorney, his response was that an applicant
44 must have sufficient ‘right, title or interest’ on the property that will give the person a ‘legally
45 cognizable expectation’ of having the power to use the property in the ways that would be
46 authorized by any approval. The Planning Board has no authority, however, to resolve title
47 disputes or to interpret or enforce a private deed covenant as part of its decision on an
48 application.” The Town Attorney recommended a condition be added to the plan and a part of
49 that condition stood out to Staff as one that could potentially apply to this situation as well:
50 “*Should it be determined by a final, non-appealable court judgment that the applicant does not*
51 *have the legal right to use the land as proposed in the application, this approval shall no longer*

1 *have any force or effect.” We could alter the language about a “final, non-appealable court*
2 *judgement.”*

3
4 Staff recommends that the Planning Board uses this meeting to discuss whether or not that letter from the
5 Attorney seems acceptable to show Right Title and Interest to develop the lot, if not there is a couple of
6 other options.

7
8 Jason Vafiadis from Atlantic Resource Consultants introduced himself. He would like to have a vote that
9 the application is complete.

10 He also mentioned that he has a contingency plan should the legal opinion of the Town Attorney comes
11 back negative.

12
13 **MOTION:**

14 Win Winch made a motion to determine the application complete, seconded by Robin Dube.

15
16 **Planner Jeffrey Hinderliter called for the vote:**

17
18 **VOTE:**

19 David Walker – Yes

20 Robin Dube – Yes

21 Vice Chair Win Winch – Yes

22 Marc Guimont – Yes

23 Chair Linda Mailhot – Abstain

24
25 **CARRIES: (4-0-1)**

26
27 **MOTION:**

28 Robin Dube made a motion to schedule a Public Hearing on June 14, 2018 at 7:00 PM. and schedule
29 Preliminary Plan vote for Red Oak, seconded by David Walker.

30
31 **Planner Jeffrey Hinderliter called for the vote:**

32
33 **VOTE:**

34 David Walker – Yes

35 Robin Dube – Yes

36 Vice Chair Win Winch – Yes

37 Marc Guimont – Yes

38 Chair Linda Mailhot – Abstain

39
40 **CARRIES: (4-0-1)**

41
42 **ITEM 8**

43 **Proposal:** Subdivision/Site Plan Amendment: Amend Atlantic Park Condominium to allow
44 construction of 21 new units, sidewalks, parking, access ways, landscaping, and
45 other misc. improvements.

46 **Action:** Discussion; Consideration of Public Comment

47 **Owner:** KAP Atlantic, LLC

48 **Location:** 11 Smithwheel Rd., MBL: 210-1-7

49
50 We have not received new material from the applicant so the Planning Boards actions should be limited to
51 holding the public hearing and requesting the applicant address abutter comments.

1
2 There are a couple of things Planner Hinderliter talked about with this proposal.

- 3 • This has been a little bit of a cluster over time and it is nice to see the applicants try to finish this.
- 4 • To respect the people that live in this complex and what they are requesting.

5 If we can get these concerns addressed, this will be a positive move.

6 There is no formal decision tonight.

7
8 Win Winch stated that presently there are 34 units occupied and wanted to know if the Condo Association
9 is responsible for some of the repairs.

10
11 A Condo Association member stated that last spring one of the storm drain was caving in and the Condo
12 Association had to put out over \$1500.00 to fix it. Decks were never flashed properly.

13
14 Atlantic Park will be one Association.

15
16 Bill Thompson from BH2M introduced himself.

17 We are amending the original approval from 1989 which was 92 units. This build out would be 55 units.
18 There are a lot of utilities in place that are not used yet which will all be inspected and certified that they
19 are in working order. The utilities were approved in 1989 and there are 34 condos occupied.

20 Address the 2010 decision document and they did address it however it was never submitted because the
21 applicant stopped work. Mr. Thompson will be resubmitting that with a few changes.

22 They will incorporate a 4' chain link fence around the pond for safety.

23 The existing fence around the 21 units would behoove the applicant to make it look nice.

24 Has proposed 131 spaces (only need 110) and there is room for a couple more.

25 Following through with the design on Reserve Avenue with a paved connection.

26 Roads will be 24' wide. Will be looking at the interface between what is built and what is going to be
27 built as far as pavement.

28 Mr. Thompson stated that this will be using up all of the property and there will be nothing left to build
29 on.

30
31 Chair Mailhot would caution opening up Reserve Avenue to a right hand turn. She can invasion people
32 cutting through the subdivision to make a right hand turn off of Reserve Avenue and being a funnel off of
33 Smithwheel Road. Marc Guimont agreed.

34
35 **Other Business**

- 36 1. Findings of Fact Signatures: 8 Lot Subdivision Amendment (Dunegrass); Church Street Station
37 Re-Approval, Church Street Station Subdivision Amendment

38
39 **Good and Welfare**

40
41 **ADJOURNMENT at 9:58 PM.**

42
43 *I, Valdine Camire, Administrative Assistant to the Planning Board of the Town of Old Orchard*
44 *Beach, do hereby certify that the foregoing document consisting of Twelve (12) is a true copy of*
45 *the original minutes of the Planning Board Meeting of May 10, 2018.*

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