

**Proposal:** 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.

**Action:** Public Hearing; Discussion; Vote on Recommendation

**Applicant:** Town of Old Orchard Beach

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

<u>ORDINANCE AMENDMENTS</u>	<u>Project Status</u>
<i>Introduction</i>	February
<i>Review Draft/Public Comment</i>	April
<i>Public Hearing</i>	May
<i>Recommendation to Council</i>	

\*NOTE: This item does not include amendments associated with the frack tank- this will be a separate item to be considered at a future meeting

At the April meeting, the PB made a few changes to the first draft of proposed Contractor Storage Yard 1 (CSY1) language and scheduled a public hearing to be held at the May meeting. Public hearing notice was mailed to all property owners with frontage on Portland Ave, between the Ross/Portland Ave intersection and OOB/Scarborough town line, and to owners of property that abut the properties with frontage along Portland Ave. Although the proposed amendments do not allow CSY1 on those properties that abut properties with frontage along Portland Ave, we felt additional notice was necessary.

At the May meeting the PB will have an opportunity to hear public comment. During the hearing, anyone speaking should identify their name and home address- this will help us know if they were included in the notification mentioned above. Also, the PB can choose to vote on a recommendation. Remember, the PB provides a recommendation on whether the Council should approve or deny zoning amendments- the Council has authority to adopt. If the PB chooses to vote on a recommendation, the recommendation should be either: 1. Approve/Deny amendment language as written or 2. Approve/Deny amendment language with changes to the language. The PB also has the option to postpone a May. This is a good option if the PB feels more time is needed to consider public comment, etc. or if language changes are proposed.

The following is from a Fact Sheet prepared to assist with understanding the proposed ordinance amendments:

- 1. If the Ordinance Amendments are adopted where will Contractor Storage Yard 1 be allowed?**
  - Lots with road frontage along Portland Ave., between the Ross Rd./Portland Ave. intersection and the OOB/Scarborough town line, that have an owner occupied residence and 1 acre or more in lot area
- 2. Which local ordinances will a Contractor Storage Yard 1 need to meet?**
  - Contractor Storage Yard 1 Conditional Use standards (these are the proposed ordinance amendments)
  - Conditional Uses Ordinance
  - Rural District performance standards
  - Parking, Driveway, Off-Street Loading performance standards
  - Sign performance standards
  - Landscaping and buffering performance standards
  - Erosion and Sedimentation Control performance standards
  - Noise Ordinance
- 3. What are some of the requirements a Contractor Storage Yard 1 (CSY1) must meet?**
  - An owner occupied residence must be maintained on the same lot as the CSY1
  - CSY1 lot must be a minimum of 1 acre

- CSY1 driveway entrances must be a minimum of 50' from adjacent property boundaries
- Outdoor storage and parking of vehicles and equipment must be set back 50' from front property line and 25' from side and rear property lines
- CSY1 parking and storage areas must be visually blocked from the street and abutting properties
- CSY1 will not result in significant hazards to pedestrian and vehicular traffic
- CSY1 will not cause water pollution or contamination of any water supply
- CSY1 will not create unhealthful conditions or nuisances because of odors, vibrations, smoke, dust, glare, noise, hours of operation
- CSY1 will not adversely affect value of adjacent property
- A site plan must be prepared showing storage areas, parking, structures, loading and unloading areas, buffering, and exterior lighting plan

#### **4. How does the proposed Contractor Storage Yard 1 “(C) Other Review Criteria” work?**

- The Other Review Criteria language is proposed because fitting a CSY1 proposal in one common criteria set will not provide adequate regulation. The type of CSY1 may vary as well as its potential impacts abutting properties. The Other Review Criteria will allow the PB to customize their review to fit the proposal in a manner that the other standards may not allow. For example, the Planning Board could require a more extensive buffer than what is typically required “so as to prevent adverse impacts to adjacent property.”

#### **5. Who would be responsible for local review of a Contractor Storage Yard 1 proposal?**

- A CSY1 proposal will require a Conditional Use Permit which is reviewed by the Planning Board. This permitting process includes site walks and public hearings which provides an opportunity for abutting property owners to review and comment
- Permit review by Code Enforcement if any structures, plumbing or electrical work is proposed
- Business License review by Town Council

We've heard and received a number of comments associated with this proposal regarding spot zoning, ordinance consistency with the comprehensive plan, changing the district/area to commercial, and impacts to property values. A few comments on each:

First, regarding spot zoning, it has been stated the present proposals and existing uses would require an illegal spot zone. A case cited to support this opinion is *Vella v. Town of Camden*. Regarding the claim associated with spot zoning in this case, “the plaintiffs contend, as they did before the trial court, that certain amendments to the Town's zoning ordinance are invalid because (1) they are inconsistent with the Town's comprehensive plan and constitute illegal spot zoning.” The case was decided in favor of the Town of Camden- “The record does not support the assertion of the plaintiffs that the legislative body of the Town did not consider whether the amendments enacted by it were consistent with and in basic harmony with the Town's comprehensive plan.” It's important to note that spot zoning is a neutral term encompassing both legal and illegal land use controls. The fact that a zoning amendment benefits only a particular property or is adopted at the request of a particular property owner for that owner's benefit is not determinative of whether it is an illegal spot zoning. Note the statement “spot zoning is a neutral term.” This is important because it's not derogatory or favorable- it's simply neutral. Also, the proposed ordinance amendments do not pertain to a single parcel of land or single individual.

Second, regarding the comp plan (which also relates to the question of spot zoning), it has been stated such uses and necessary amendments to allow those uses would be plainly inconsistent with the vision set forth for the Rural District in the Town's comprehensive plan. I agree that the Rural District's intent includes preserving the open, rural Character of Old Orchard Beach. Although, the PB should know the Rural District also states “certain commercial activities, and mineral extraction may be developed if it's in a manner sensitive to the objectives of these areas.” These objectives include:

- Preservation of aesthetic rural character
- Noise regulations for commercial and industrial uses

- New construction to follow “good neighbor” performance and design standards. “Good Neighbor” standards include: protection of adjacent residential neighborhoods, regulation of scale, type of use, impact on visual & natural environment, landscaping, fencing, buffering, screening of parking and dumpsters, access to site, hours of operation, waste disposal, nuisances of noise and outdoor lighting.

Again, I agree the intent of the Rural District includes preservation of rural character; although, it does appear the comp plan allows certain commercial activities as long as they are developed in a manner sensitive to the objectives of these area which includes preservation of the aesthetic rural character and new construction that follows “good neighbor” standards. The proposed ordinance amendments include “good neighbor” standards. Also, existing ordinances that would apply to a proposed CSY1 include “good neighbor” standards.

Third, regarding the proposed amendments are changing the district classification to commercial, it could be argued this has already been done. Current ordinances allow the following uses in the same area (since at least 2001): limited commercial freight businesses, auto service and repair facilities, mineral extraction operations, animal husbandry for commercial purposes, private schools, public and private utility facilities, veterinary hospitals, and contractor storage yard 2. All of these uses could be classified as commercial uses. If the district was strictly limited to residential uses, I would agree this area is changing to a commercial zone. But, commercial uses are already permissible. Also, the zoning district is still the Rural District. What is changing is allowing a new land use to be permitted as a Conditional Use in a portion of the Rural District. The Rural District will remain the Rural District.

Fourth, impacts to property values. This is a common question when proposing zoning changes and a tough one to provide a reliable answer. The reason is a definitive answer can only be found after the change takes place and sales data is collected for that specific area. A common way to make this determination is to compare the property value before the zoning change to the property value, based on a sale, after the change. And the sample needs to be larger than one property. Studies can be found that show positive and negative impacts but it’s hard to apply these to this case considering things such as commercial uses are already permissible in this area. The zoning change itself should not impact current land and building values or taxes- it is tied more to the use after it comes into existence.

**RECOMMENDATIONS:**

Regarding the next steps, the PB has a few options:

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

If the PB feels prepared to provide a recommendation, we recommend the PB make one of the following motions:

Language as written: Motion to recommend the Council approve/deny the Contractor Storage Yard 1 Ordinance Amendments, 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, to allow Contractor Storage Yard 1 as a Conditional Use for Parcels of land with road frontage along Portland Ave between the Ross Rd/Portland Ave Intersection and the Old Orchard Beach/Scarborough Town Boundary.

OR...

Changes to language: Motion to recommend the Council approve/deny the Contractor Storage Yard 1 Ordinance Amendments, (INSERT NEW LANGUAGE)...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, to allow Contractor Storage Yard 1 as a Conditional Use for Parcels of land with road frontage along Portland Ave between the Ross Rd/Portland Ave Intersection and the Old Orchard Beach/Scarborough Town Boundary.

## **BACKGROUND**

The following is staff comments from previous meetings. It includes comments associated with ordinance amendments and the septic storage business. Please remember these now are two separate proposals.

### **BACKGROUND (APRIL):**

Contractor Storage Yard 1 (CSY1) zoning change. Your April packet includes ordinance amendments that will allow a CSY1 as a Conditional Use within a specific area along Portland Ave and new standards that are specific to establishment of a CSY1. Although brief, the standards do have a fair amount of thought behind them. Conditional Use's do not have many standards when it comes to specific plan details, so, I added scaled site plan requirements that I hope will provide the most important details in regards to the sites function, potential impacts, etc. of a CSY1. The "Minimum Development Standards" create a baseline that all CSY1 must meet- the intent is to consider the sites function, potential impacts to abutters and address the "good neighbor" criteria called for in the comp plan. One of the more interesting sets of standards is the "Other Review Criteria" which is my attempt to provide standards that allow the PB to apply conditions that are more site and development specific. I don't like to use subjective ordinance language but it seemed appropriate here because it falls under Condition Use. We'll be interested in your comments on the language.

Public Private Utility Facility (Frack Tank). This is no longer part of the zoning amendment consideration. The applicant intends to submit a Condition Use permit to establish the frack tank as a public/private utility facility. I expect the CU permit will be submitted for the May meeting and we'll provide more comment at that time. One of the primary arguments continues to be is does it meet the public/private utility facility definition. An abutter who objects to this proposal through his attorney (Mr. Libby) has argued that it does not meet the definition (you received this in your March packet and have a new letter in your April packet attached to the CSY1 ordinance change). I asked Ms. MacDonald's attorney to provide an argument why they feel it does meet the definition. Again, we expect the PB will see this as a Conditional Use application at the May meeting.

### **RECOMMENDATIONS (APRIL):**

Staff recommends the PB discuss the Contractor Storage Yard 1 amendments, make any language suggestions or changes, and schedule a public hearing to be held on 10 May.

### **BACKGROUND (MARCH):**

At the February meeting, the PB decided to pursue consideration of zoning ordinance amendments in attempt to address concerns associated with businesses operated by Debbie MacDonald. These businesses include excavation contractor and a type of sewage disposal/storage unit (frack tank) business. Sparing all from the details of our work, we'll get right to the point with where we are for March.

#### **Sewage Disposal/Storage Unit**

Regarding the sewage disposal/storage unit (identified as a frack tank), our intern found something interesting. "Public and private utility facilities" are allowed as a Conditional Use in the RD. Public/private utility facilities are defined as:

"Facilities for the transmission or distribution of water, gas, sewer, electricity or wire communications, excluding wireless telecommunications facilities."

This leads us to the questions: Can the business use be described as a facility for the transmission or distribution of sewer? Is a frack tank and use associated with it a public/private sewer facility? Is the frack tank and use associated with it a facility used for the transmission or distribution of sewer? We broke down the ordinance definition of Public/private utility facilities into key words (transmission, facility, private sewer, distribution) and searched definitions for each in our ordinances, legal and English dictionaries. Based on our findings it appears the frack tank and its use could be defined as a Public/private utility facility. If this does not work we're still working on a way to see if we can make a zoning amendment work for this. It's a bit more complicated trying to fit this use in the RD without a more comprehensive zoning language change.

To proceed, we need the PB's opinion on whether the use associated with the frack tank can or can't move forward as a Public/private utility facility. We see it as:

- It can: This means the PB is of the opinion that this business can fall under the definition Public/private utility facility and MacDonald's can apply for a Conditional Use permit without the need for zoning amendments. If this is the case the MacDonald's can begin work on their Conditional Use submission. Note that this will be more of an advisor opinion from the PB, not a formal determination. The MacDonald's, through their Conditional Use submission, will still need to prove it fits the definition and meets applicable ordinance standards before it's approved.
- It can't: This means the PB opinion is this business cannot be defined as a Public/private utility facility. Because this is just an opinion the MacDonald's could still apply for a Conditional Use permit and argue they feel the business can be defined as a public/private utility facility; although, it will most likely require cannot zoning amendments. To create zoning amendments, staff will ask the PB many of the same questions we have for the excavation business discussion (see below).

Another option is it can move forward as a Public/private utility facility but we need to create additional ordinance standards that provide more specific regulation. This may be a bit tricky because we would change the standards associated with an already allowed use potentially during the permitting process. The perception: "The use is permitted but we don't like how it's allowed so we're going to change the rules." This does happen, though, typically through use of a moratorium.

### Excavation Business

While preparing to work on ordinance amendments, we found the need for further direction from the PB and as well as more time to create the standards. Creating standards has proven to be a bit more difficult due to the predominate use in the RD is residential and the fact we want to avoid spot zoning. Although one person may operate a contractor business in a manner that respects neighbors, another may not so we should plan for standards that find a balance between appropriate regulations that protect residential properties from detrimental impacts while allowing the business to exist without excessive controls.

Before we create formal ordinance standards, we'd like to get the PB's thoughts on the comments and questions below. Note- the town already has standards that regulate many of these items. Think of standards that may be specific to an excavating contractor business in the RD (e.g., Contractor Storage Yard 2 has specific Conditional Use standards that only apply to this use). Remember, think of all potential businesses that could operate, not just MacDonald's.

- Will the current definition of Contractor Storage Yard 1 definition work?  
*Contractor storage yard 1* means the principal place of business for a building or landscape contractor operating a fleet of three or more construction/commercial vehicles and customarily consisting of offices, display areas, storage yards for building supplies, earth material, construction vehicle storage, and fueling storage facilities not exceeding 10,000 gallons in capacity and used exclusively for the fueling of the vehicles stored on site.
- Should the use be allowed in the RD?
- If it should, where will it be allowed? Should it be allowed in the entire RD? A portion of the RD (e.g., lots abutting Portland Ave from the Ross Rd intersection to Scarborough town line) Note the map from staff submitted this month shows a cluster of non-residential activity along Portland Ave.
- Should it be a Conditional Use? As a permitted use that requires Site Plan Review?
- What should the performance standards address? Especially consider protections for abutting residential property.
- Traffic- amount, vehicle type, time of day, travel routes?
- Access on/off site, to main roads?
- Stormwater- rainfall & runoff, system design, system management?
- Noise- sources, typical dB of sources, time of day, buffering/noise control?
- Air Quality- sources (stationary, mobile, fugitive), problems & effects, control of adverse effects?
- Lighting/illumination- footcandle at property lines, type, cutoffs, location, fixtures?
- On-site material storage- location, buffering, type of material stored?
- Hours of business operation? All activities- trucks starting up in the yard during the morning, activities on-site.
- Buffers- business from roads, business from abutting property, storage yards, parking areas, type of buffers (vegetation, fencing)?
- Hazardous materials- type, storage, protections/containment?

- On-site fueling, fuel storage?
- Vehicle and equipment storage and parking- location, buffering?
- Signs- location, size, illumination?

**RECOMMENDATIONS (MARCH):**

First, staff recommends the PB offer an opinion regarding the septic disposal/storage unit (frack tank) business- is it a Public/private utility facility? Does the PB think the business use can be described as a facility for the transmission or distribution of sewer?

Second, staff needs further guidance from the PB before we create standards associated with the excavation business. Most importantly, should it be allowed in the RD; if yes, how should the use be defined (is Contractor storage yard 1 ok?); where should it be allowed; how should it be reviewed (e.g., Conditional Use); what standards should specifically apply to the use

**BACKGROUND (FEBRUARY):**

Debbie Macdonald and her family’s property (169 -173 Portland Ave, 3 properties) received complaints (included in your packets, as well as the town’s initial response from Manager Larry Mead) regarding the operation of excavating, wood and other material processing, and a type of sewage disposal/storage unit business. The complaints allege operation of these businesses is violating OOB ordinances. As part of our attempts to address this we are looking at a few options, one is amending zoning ordinance language to allow these uses to legally exist. Our thought’s...

Regarding the excavation business and possibly the wood/materials processing, Contractor Storage Yard 1 will be a new use allowed in the Rural District (RD). Establishment of this use will require PB approval as a conditional use or site plan review proposal. Use defined as:

Contractor storage yard 1 means the principal place of business for a building or landscape contractor operating a fleet of three or more construction/commercial vehicles and customarily consisting of offices, display areas, storage yards for building supplies, earth material, construction vehicle storage, and fueling storage facilities not exceeding 10,000 gallons in capacity and used exclusively for the fueling of the vehicles stored on site.

The above definition is already included in the town’s zoning ordinance. It may need to be changed so that it includes a retail sales component, need more clarification, etc.

Performance standards. In addition to current performance standards applicable to nonresidential uses (e.g., buffers, parking), there may be specific standards that only apply to Contractor Storage Yard 1 such as hours of operation, minimum lot size, etc.

Regarding the sewage disposal/storage unit, we’re still working on a way to see if we can make a zoning amendment work for this. It’s a bit more complicated trying to find a way to fit this use in the RD without a more comprehensive zoning district change. Reasons include the potential impacts and that uses such as these may be more appropriate in an industrial district. Although, if you think about it, will a use such as this present any more impact when compared to an agriculture use (which is permissible in the RD). In your packet is a letter from Debbie MacDonald identifying the service provided.

The question of “Spot Zoning” is something to consider as part of our review. Spot zoning has been defined as the process of singling out a property for a use classification totally different from the surrounding area for the benefit of the property owner to the detriment of other owners. To determine whether a proposed amendment creates a spot zone, the following should be considered:

- Size of area associated with the amendment. Is it just a small parcel, neighborhood, entire zoning district?
- Use classification and development of adjacent property
- Relation of amendment to existing zoning patterns and objectives
- History of the amendment
- Benefits or detriments to the owner, adjacent owners, neighborhood, town
- Is the proposed change pursuant to and consistent with the comp plan

When deciding if a proposed amendment constitutes spot zoning the PB should apply the comments above to the facts of the specific proposal.

To sum up, the excavation and wood/material processing business would be allowed as a Contractor Storage Yard 1 use and require PB conditional use or site plan review approval to establish the use. Existing and possibly new performance standards will apply. The definition may need to be amended to include other uses, provide clarity, etc. The sewage disposal/storage unit is a bit trickier and needs more thought. I intend to visit Blow Brothers to get a better understanding of how this use operates.

Moving forward to our next meetings, we'll be working on:

- Consideration and incorporating PB thoughts (see below)
- Research RD District and existing uses
- Research the comp plan. Maine law (30A § 4352) requires that a zoning ordinance be pursuant to and consistent with a comp plan adopted by the municipality's legislative body. Provisions in a zoning ordinance should be supported by info in our comp plan demonstrating why the uses should be allowed in a particular area.
- Spot Zoning
- Other zoning options
- Develop standards and present at the next meeting

At this point, we're looking for guidance on this before a formal proposal is submitted. We need your thoughts on:

- The approach to the excavation business.
- How should we handle the sewage disposal/storage use
- Should the Contractor Storage Yard 1 definition be amended?
- What standards should apply? Should we create new standards specific to these businesses?
- Spot Zoning?
- Claims made in violation letters and how this may impact PB's review.