

**Old Orchard Beach Planning Board Meeting Minutes
Thursday, October 14, 2010 at 7:00pm in Town Hall Council Chambers**

Meeting Called to Order at 7:04 pm	
Pledge to the Flag	
<i>Members Present:</i> Chairman Win Winch, Don Cote, Mark Koenigs, Eber Weinstein <i>Members Absent:</i> David Darling, Tianna Higgins <i>Staff Present:</i> Gary Lamb and Staci Grazioso Other attendees: Jackie Proulx (student), John Bird, Mark Norwood, Dana Brandbury, Bea Andrews, Roberta Andrews, Joe Guarino, Dusty Guarino and JT Lockman	
APPROVAL OF MINUTES: Minutes for September 2, 2010 and Public Hearing Minutes for September 23, 2010 cannot be approved because a quorum does not exist of members attending those meetings	MINUTES
ITEM 1: Public Hearing: <u>Conditional Use:</u> review for Accessory Dwelling Unit at 173/175 Portland Avenue. MBL 101-1-14 in RD District. Applicant and owner Mark Norwood	ITEM 1
Chairman Winch briefly spoke about the site walk and asked if there was anyone that would like to speak for or against. (No questions)	
Public Hearing closed at 7:05 pm	
ITEM 2: Final Review & Vote for Conditional Use for Accessory Dwelling Unit. MBL 101-1-14 in RD District	ITEM 2
Chairman Winch the PB held a site walk one week ago Mr. Lamb directs the board to their staff notes (Section 78-1272) and whether the applicant has met the standards Chairman Winch asking for any comments Mr. Weinstein I move that we approve an Accessory Dwelling Unit @ 173/175 Portland Avenue Chairman Winch it seems as though he has met all of the qualifications Mr. Cote 2 nd the motion <i>Motion Carries 4/0</i>	MOTION VOTE
ITEM 3: Continuation of September 23, 2010 Public Hearing on Shoreland Zoning Amendments:	
Reviewing Version 2 of the draft dated 10/7/2010 Chairman Winch picking up where we left off from the September 23 rd Public Hearing. Anyone wishing to speak for or against the information now is your time. He explained that when they finish up with the Public Hearing the PB will start their deliberations and will not be taking any more questions. Mr. Lamb stated there are some new people here tonight so he explained the PB process to date. The PB may hold another Public Hearing but they do not have to. Their recommendation will go to the Town Council and the Council will hold a Public Hearing. They will then decide what they would like for maps and text for the final product on Shoreland Zoning. Nothing will be final this evening Mr. Lockman explained the steps, once Town Council votes it is required by law to send it to DEP for their review. Typically they will find something in the document they want changed.	PUBLIC HEARING

Chairman Winch wanted to know if DEP sends it back, does it come back to the Planning Board or Town Council

Mr. Lockman typically the Town Council would bump it back to the Planning Board and then you'd go through the process again. It can take several months once DEP has the document

Mr. Lamb reintroduced JT Lockman. He is the Senior Planner with Southern Maine Regional Planning Commission. He was hired as a consultant to update the text of our Shoreland Zoning Ordinance. Tom Burns (who is not here this evening) is our GIS computer mapping consultant.

Mr. Lamb asked that everyone go to the podium to speak, keep the questions to Shoreland Zoning and not personalities or persons involved in the whole process

Mr. Koenigs asked - out of all the documents, changes, etc. which one has been posted on the Town website

Mr. Lamb none are on our website at this time, with approval from the Board I will put it on

Mr. Koenigs asking if Mr. Lockman is aware of the changes that the Town Attorney made

Mr. Lamb Mr. Lockman has seen the document that you have, I don't believe he has spoken with Chris nor do I feel there is a need for that. Mr. Lockman has done the job that he was hired to do. He did it with the methodology that he has used before with much of the language of the DEP Guidelines. Mr. Lamb explained the Town Attorney and Mr. Lockman have some different views on certain things, and the Board may choose either version. We'd probably get fewer editorial DEP comments from Mr. Lockman's version because he used a lot of the DEP guidelines verbatim

Mr. Weinstein states he feels the Board should go with the Town Attorney's version as he has been the Town Attorney for years and is familiar with Shoreland Zoning. He feels that it would prevent a lot of problems in the future. Legality is very important

Chairman Winch in reading his notes, Chris states he is not changing the foundation of the ordinance, he is changing definitions, procedures

Mr. Koenigs agreeing with Chairman Winch that Chris had changed procedures and moved things around. Chris didn't want to change the methodology that we already have because it has been in place for many years. Mr. Koenigs feels the changes Chris made will be useful for legal reasons

Mr. Lamb stated that what Mr. Lockman did is not wrong, it is just different than what Mr. Vaniotis did

Mr. Lockman explained the difference between the two approaches of the document. When he has done this for other towns, at the end of the process if the DEP finds anything that doesn't meet their guidelines, they let the community know and they will start negotiating back and forth. Mr. Lockman explained that he didn't have a problem with Mr. Vaniotis version of the document; he feels that he will end up negotiating some of it with DEP. DEP does have the final say.

Chairman Winch Mr. Lockman, how many other towns have you written guidelines for?

Mr. Lockman 15

Chairman Winch any similar situation where legal counsel went in to modify it or is this the first time this has happened?

Mr. Lockman Buxton was the only other town that did this and they are a town meeting town. Their counsel made some changes and the town meeting voted the changes down. The other 13 towns completed the process.

Mr. Lockman when I was hired to do this, it was to get you compliant with DEP as soon as possible

Mr. Koenigs the other towns that you have done this for, did they already have a Shoreland Zoning Ordinance in their community?

Mr. Lockman some have it as a stand alone ordinance, some have it integrated with their zoning. All communities have to have Shoreland Zoning. The town has no choice.

Mr. Bird asking the Board which ordinance are we dealing with, Mr. Lockman's, the public notice one, etc. it's hard to follow if you don't know which one your using

Chairman Winch clarified which document they are working with. Chairman Winch stated that he thought he saw Mr. Bird pick it up at this meeting. He explained that at the last Public Hearing people had a lot of questions regarding the changes that were made by Mr. Vaniotis. Mr. Lamb went back and met with Mr. Vaniotis to clarify this a little better. We have the same version with codes in it that explains what the changes were for.

Mr. Bird reads the letter from Chris Vaniotis pointing out items that he believes Mr. Vaniotis contradicts himself regarding Shoreland Zoning and regular zoning. He was stating that if a map is wrong then a person should be able to take the ordinance and find where the boundaries are.

Chairman Winch the map is an official document that has been signed by the Chair of the Town Council and is embossed with the Town seal. It is the official map that you are referring to.

Mr. Bird refers to page 48, section 78-1179 of the Proposed Changes to Zoning. He states in our current ordinance if there is any difference of meaning of the text or any map/illustration the text controls. His point being that this statement is very clear. He goes back to page 1 of the document and is wondering why Mr. Vaniotis felt the need to take out the definition of (Aggrieved Party). In his opinion he feels that this is a useful definition to have in the zoning ordinance. He feels that everything that is marked P is Mr. Vaniotis's opinion. Mr. Bird stated that he doesn't think that all of the items that are marked P are necessary changes

Mr. Bird referred to the MD sections (move definitions) stating Mr. Vaniotis moved the definitions to the back and Mr. Lockman had interwoven them through out the document. He feels that it was unreasonable to move the definitions to the back.

Mr. Lamb explained Mike Morse of DEP said he didn't care whether our beach was in RP or not. DEP's real concern about the beach is structures on it. He believes Chris is stating what is an intensive use by using a new Public Park subdistrict. This Board and the Town Council can make the call on what they consider intensive use, i.e. balloon festival and fireworks. Mr. Lamb stated that

he would consider that intensive use with thousands of people on the beach. That is for this Board and the Council to decide

Mr. Bird and DEP

Mr. Lamb yes

Mr. Bird feels that it is a far reach to have a whole new zone with differing criteria from Resource Protection. It's a resource that this town in particular really needs to protect. Mr. Bird made the statement that the Board should go with Mr. Lockmans changes

Mr. Guarino asked the Planning Board if they were aware the buffer is now increasing from 100' to 250'. He explained if you encroach on a persons land by 250' and it is a buildable property, this could make it unbuildable. In his opinion "it's called stealing not conservation". Mr. Guarino is asking why the buffer zone has to increase.

Mr. Lamb pointed out different sections on the map that Mr. Guarino was referring to. The Maine Fish and Wildlife Department has designated a new section Inland and Waterfowl Bird Habitat on Mill Brook. This has to be in Resource Protection and by law has to be designated on the map.

Mr. Guarino so they are asking you to increase the buffer zone to 250'

Mr. Lamb for that habitat, yes

Mr. Guarino wanted to know if that was a 250' buffer zone for everywhere

Mr. Lamb no, just for that habitat. Remember the buffer for Resource Protection is at 250' today and is not increasing. There are areas in town that will be in Resource Protection that haven't been before and your talking about one of those right now

Mr. Guarino explains that he is talking about what he has read in the current set backs

Mr. Lamb stated the setbacks and Shoreland Zoning buffer both start to be measured at the edge of the habitat.

Mr. Lockman had a discussion with everyone regarding the DEP's deadline and that we have already gone past it

Mr. Guarino stated DEP can't impose more strict ordinances than what Old Orchard Beach already has

Mr. Lamb stated OOB can make ordinances more strict if OOB wants to and he explained why. DEP does allow fully developed lots to be in Residential Activity. If DEP came in and gave us their version of Resource Protection, essentially all homes in Ocean Park would be in Resource Protection and there would be no choice about it. Referring to the map, Mr. Lamb explained it would be the same way up and around Walnut Street near Davenport Condos. This is a fully developed area so we took such parcels out of Resource Protection and put them in Residential Activity

Mr. Guarino discusses Mill Brook where it crosses the Ross Road. There is already a 250' buffer zone right now and is that going to expand farther up the stream?

Mr. Lamb explained to Mr. Guarino that is correct, unfortunately for some of those folks it is true that new RP designations on their property will be more restrictive.

Chairman Winch was asking when this would be taking effect

Mr. Lamb it will take effect after DEP approves the changes that the Council agrees to

Chairman Winch was explaining that the Board will not be voting on these changes tonight, there is still a lot of educating to do and he is wondering if he should bring the Council into the reviewing process now

Mrs. Guarino stated she feels it was a little late involving the public at a public hearing and wishes that the public would have been involved with the process sooner. She is discussing with the PB her concerns with increasing the buffer zone and how it will take away value of her property. She understands that we need to meet the DEP requirements, but do not have to exceed them. She is asking the PB to be as clear as they can regarding zoning so down the road people can't interpret it differently than what was intended. Mrs. Guarino thought it would be a good idea if someone from the PB would go see homeowners to discuss possible changes.

Mr. Cote pointed out that it is impossible for any of the PB members to go see all of the residents that could or will be affected by changes.

Mr. Lamb directing the Board to page 18. He is stating that the Guarinos are making a good point and feels that it is something that the Board should consider referring to definition of High Water Mark. Referring all to go to the last sentence in that definition of pointing out that it is not underlined, which means it is in the ordinance today. Mr. Lamb proceeds to read the definition regarding wetland.

Mr. Guarino is asking for clarification on what defines a wetland

Mr. Lamb reads the definition and stated hundreds of properties in town have wetlands on their property that are not mapped. He stated this occurs throughout the state. Mr. Lamb wanted to point out to the Board and to the public that the map would rule and not the text.

Ms. Andrews lives on Portland Ave as well as her mother. Her objection to the PB is if you put more restriction on their property the value will go down if they ever want to sell. She feels as though the town takes away from them and gives nothing in return

Mr. Andrews asked for clarification on buffer zones

Mr. Lamb responded with the information and asked him to make an appointment to come in and see him to discuss it further

Ms. Dayton starts with the State Guidelines reading the definition of the Purpose of the Act. **“to conserve natural beauty and open space and to anticipate and respond the impacts of development in Shoreland areas”** Asking everyone to keep that paragraph in their minds when reviewing this document.

Continuing on through the document pg. 58 thru 62 table needs a lot more work. Her biggest concern is the document does not protect our beach. This document commercializes the beach and proceeds through the document pointing out why. Discussion on “creation of new trails” She would like the entire PP removed.

Moving on to #6 – no permit required

Mr. Lamb states Ms. Dayton makes a good point regarding text, however, you have to read **“no permits required under this division”** and understand that

other ordinances or State laws may require permits. Building a structure such as a boardwalk would still need a building permit whether any Shoreland Zone restrictions exist or not.

Ms. Dayton prefers that the Code Enforcement Office be increased and change the “yes” to what the state says. Continues on with the document referring to #20 – doesn’t feel it is clear

Mr. Weinstein governmental use can mean fireworks, driving police carts

Ms. Dayton wants a footnote put in for #21 to make it clear

#23 Structures – unclear what this means

Chairman Winch referring to life guard towers #24 Piers, Docks, Wharfs such structures trigger an automatic PB review under Site Plan Review

Ms. Dayton regarding #30 Public & private recreational areas on page 62 involving minimal structures – the word private on a public beach she is not getting. It states Town Council has control. She feels that there should be a back stop and stated that Town Council is political; we would hope that the PB isn’t. She wants the PB to stay involved

Mr. Koenigs following up on a comment on #30 – why are we mixing public/private and calling it a public park. Just the public aspect applies to the PP

Chairman Winch yes, that is what the footnote #13 means

Mr. Lockman stated that he thinks the reason the attorney put in public park, is he felt that this would clarify the beach. Mr. Lockman listed the other towns that they worked with and they call them RP as well as using the RP column of uses. The Public Park Zone is custom to OOB. Mr. Lockman stated that Michael Morse will be the one deciding whether or not OOB meets the DEP guidelines

Mr. Weinstein asked if the DEP ever had a ruling on public beaches for any other towns?

Mr. Lockman yes, and he names the towns that DEP has approved with beaches zoned RP.

Mr. Tousignant expressing to the PB that people are very concerned with the Shoreland Zone changes. He stated that his phone has not stopped ringing and that is what prompted him to attend a meeting.

Mr. Tousignant asking the PB if this document has been made available for the public?

Mr. Lamb yes, however, it is not on our website as of now and that is something I needed to discuss with the PB

Mr. Tousignant another concern is the spending on legal costs. The Council is being blamed for all the spending and they spend very little.

Regarding the document, I’m hearing mixed feelings. Some people think that we should go with Mr. Lockman’s version and some think we should go with the Town Attorney’s version. Do you think this should come to a halt and let the two of them debate it as to what the attorney meant on what he has crossed out? He feels the Council is going to do that if PB doesn’t. Council puts a lot of weight into what the Town Attorney says, as they always have.

Mr. Cote wanted to clarify a statement that he made. If you sit down and have a conversation with Mr. Bird to see what the Conservation Committee wants, the CC far exceeds what DEP requires. According to Mr. Bird the CC wanted the

Shoreland Zone buffers to be 250', not the 75' minimum that DEP requires. Mr. Bird had every single brook lined out and how much further they wanted it to be. My motion was to stick with what Mr. Lockman did and worry about what the CC wants later. At that time we did not have a revision from the Town Attorney
Mr. Tousignant why did you ask the Town Attorney for the interpretation that you have now

Mr. Cote I didn't

Mr. Tousignant somebody spent money on it, that is my point and why I am saying you should take the time to sit down with Chris. He feels that Chris should attend a meeting to explain to everyone why he made the changes that he did

Chairman Winch I think it is logical when you have ordinances drafted that you run it by legal because they are the ones that need to enforce it

Mr. Koenigs as a Board Member I am confused on what I am hearing from Councilor Tousignant. You want us to bring the attorney to a meeting that will be another expense. We have a letter and his written opinions. As I asked at the beginning of the meeting, is this document going to be made public record so everyone else can read it because there is nothing hidden here.

Chairman Winch Mr. Lamb was looking for our authorization, we will be voting on this

Mr. Koenigs there are going to be legal issues that can be fought in court. It sounds like the lawyers changes won't be approved by DEP because they don't meet their guidelines. If you are talking about costs/lawyers you're going to be spending more.

Chairman Winch asked the question to Mr. Lamb, if you took this into Mike Morse would he give you his opinion?

Mr. Lamb I doubt he could even look at this draft as he is strapped for time

Chairman Winch asking him to look at it in general, stating Council has some questions, there are some duplication, definition, etc

Mr. Lamb I had already asked him about an earlier version and he was extremely reluctant because of his work load. Mr. Lockman may have more insight

Mr. Koenigs my point is the document is public record. As a Council Member you can take the lawyers opinion, PB, Town Council and CC's opinion and form the town's opinion and present to the DEP. All we are doing is giving you a recommendation. He feels that all the Council should be in the process all along so when they get it, they can make a decision without rehashing it

Mr. Koenigs wanted to know how many times the 1st and this meeting will be aired. He feels this would be very informative for the public

Mr. Lamb explained that a mailing went out and who it went to regarding Shoreland Zoning changes

Mr. Bird is correcting a few things that were mentioned, the recommendation is from the entire CC and not just John Bird's recommendations. Point of view is what is best for the environment

Mr. Cote this is just so complex, it's just an opinion of the PB. You will have people that like it and people that won't

Public Hearing Adjourned 9:23 pm	
Planning Board Members continued discussion 9:24 pm	
<p>Chairman Winch suggested the revised packet go on the website</p> <p>Mr. Koenigs wanted to know if the public hearing had been closed for good</p> <p>Chairman Winch we can conduct another public hearing if the PB wants to</p> <p>Discussion with everyone whether or not Chris is invited to a meeting.</p> <p>Mr. Weinstein suggested that if anyone on PB has a specific question for Chris, send the question(s) to Mr. Lamb and he can and send them to Chris</p> <p>Chairman Winch was explaining to everyone that the changes Chris made on the document came from the first Public Hearing</p> <p>Mr. Tousignant stated it would be a good idea to have Chris attend a meeting even if it will cost \$500/\$600. He felt it was better then going back and forth with questions being sent to him. Wants to have Chris explain why he struck out what he did on the original document.</p> <p>Discussion with everyone again on where the changes came from in the current document and also what will be posted on the website</p> <p>Mr. Koenigs maybe we should have Chris come in and explain this</p> <p>Mr. Weinstein he does explain this in his letter dated 10/7/10. Mr. Weinstein proceeds to read what is said in the letter regarding the beach. Mr. Weinstein also refers that people should be referring to Chris's key that he has given to us</p> <p>Mr. Tousignant reads part of Chris letter #3, pg. 2</p> <p>Chairman Winch explaining that the body of the text was done by Mr. Lockman, Chris made some suggestions. When you have a document like this you run it by legal, they are the ones that defend you. Chairman Winch explained that he wanted to review the document page by page</p> <p>Chairman Winch asked the PB if they wanted to have Chris at the next workshop</p> <p>Mr. Lamb suggested to have a joint meeting with Council after the election</p> <p>Chairman Winch Goals for next meeting are to start with page 1 and go through the document page by page</p> <p>Chairman Winch the workshop is on November 4th at 7:00 pm and the regular meeting will be set for November 18th at 7:00 pm</p>	
Meeting Adjourned at 10:03 pm	ADJOURN
Chair, Win Winch	

I, Staci Grazioso, Secretary to the Planning Board of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of eight (8) pages is a true copy of the original minutes of the Planning Board Meeting of October 14, 2010.