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3 **OLD ORCHARD BEACH PLANNING BOARD**  
4 **January 2, 2020 6:00 PM (Workshop, Council Chambers)**  
5 **MEETING MINUTES**  
6  
7

8 **Note: The purpose of the Workshop is for the Planning Board to receive packets and an agenda**  
9 **item update from Staff.**

10  
11 **CALL WORKSHOP TO ORDER 6:00 PM**  
12

13 **PRESENT:**

14 Chair Linda Mailhot  
15 Vice Chair Win Winch  
16 Mary Ann Hubert  
17 Mark Koenigs  
18 Chris Hitchcock  
19

20 **ABSENT:**

21 David Walker  
22 Robin Dube  
23

24 **Regular Business\***

25 **ITEM 1**

26 **Proposal: Zoning Map Amendment: Change portion of the Industrial Zoning District to the**  
27 **Rural Zoning District for the property located at Ross Rd (MBL: 105-2-7).**

28 **Action: Discussion; Recommendation**

29 **Owner: James & Susan D Ford Trustees/Mezoian Development, LLC**

30 **Location: Ross Rd (105-2-7); Current Zoning: RD and ID**  
31

32 The owner of the property had a recommended condition.

33 The one problem is a statement in the property owner's letter of authorization- "Any zoning change  
34 should be conditioned on Mezoian Development LLC purchasing the land and should not go into effect  
35 until title is transferred." We questioned how this statement would impact the proposal- can the PB and  
36 Council attach a condition like this to a general zoning change (not a contract zone)? If this condition  
37 was not applied would the property owner still authorize the applicant to pursue the zoning change? Staff  
38 and the PB determined this should be cleared up before the PB provides a recommendation.  
39

40 The property owner's attorney offered his opinion (submitted at the December meeting and this meeting)  
41 which, in part, states: "The Town has the power to determine when a zone change becomes effective. It  
42 can grant approval of a zone change to be effective as of a certain date. That date could be phrased as  
43 being the date the property is sold to Mezoian Development" (Attorney Richard Hull, letter dated  
44 12.6.19).  
45

46 Old Orchard Beach Town Attorney, Phil Saucier's opinion:  
47

48 "You are right that the proposed condition to the requested zoning amendment is the type of condition  
49 that can be contemplated through conditional or contract zoning, and not a zoning amendment with

1 general applicability. Such zoning amendments should not be conditioned on the identity of an  
2 individual parcel of land.

3  
4 One way I have seen the type of condition work is that the two requests move forward on a parallel track -  
5 the Planning Board could review the application under the proposed zoning amendment but hold off from  
6 approving the project until the zoning amendment is passed by the Council. The applicant could get a  
7 sense of how the zoning amendment application would be received from the Council at a first reading or  
8 initial workshop on the concept.

9  
10 I would be happy to discuss this further with you – there are likely ways that the developer and Town can  
11 accomplish the same goal but without the proposed condition.

12  
13 Options:

- 14 1. Recommend the Council approve without the attaching the condition to the PB’s recommendation
- 15 2. Recommend the Council approve and apply the condition to the PB’s recommendation
- 16 3. Recommend the Council not approve until the condition request is removed from the owners  
17 letter of authorization
- 18 4. Recommend the Council not approve
- 19 5. Table without prejudice until the condition matter is resolved
- 20 6. Table without prejudice while the applicant prepares the subdivision application so the  
21 subdivision and zoning amendment can run on parallel tracks.

22  
23 A final note- the applicant has the right to continue with this proposal with the requested condition.  
24 They will continue with the Public Hearing next week. In addition, it is also scheduled for a  
25 recommendation”.

26  
27 **ITEM 2**

28 **Proposal: Conditional Use: Private Utility Facility (ground mounted solar array)**  
29 **Action: Determination of Completeness; Schedule Site Walk and Public Hearing**  
30 **Owner: Paradise Acquisition LLC**  
31 **Location: 60 Portland Ave (205-1-32); Zoning: R1 and GB1**

32  
33 This proposal is for the development of a ground mounted solar array facility on an undeveloped property  
34 adjacent to Paradise Park Campground.

35 The PB was introduced to this proposal at the November 2019 meeting. At that time the proposal was  
36 brought to the PB for one primary reason- to ask the PB’s thoughts on whether the ground mounted solar  
37 area can be defined as a “public/private utility facility.” At the conclusion of discussion, the PB asked  
38 staff to consult with the town attorney and report back to the PB.

39  
40 Staff contacted the town attorney who replied with the following:

41  
42 I’m writing to summarize our conversation about the interpretation of the conditional use  
43 “public/private utility facility” in connection with an application for a ground mounted solar  
44 array collection facility in the R1 Zoning District. Based on my understanding of the application  
45 from our call and the materials you sent to me, the proposed facility is comprised of a solar  
46 collection array connected through a conduit to a CMP or customer owned transformer to  
47 connect to the grid.

48 As you note below, the phrase “public/private utility facilities” is defined in the Zoning  
49 Ordinance as “facilities for the transmission or distribution of water, gas, sewer, electricity or  
50 wire communications, excluding wireless telecommunications facilities.” While the Zoning

1 Ordinance does not contain any use categories or definitions related to solar collection facilities,  
2 the Subdivision Ordinance does contain the following definitions:

3 *Solar collector* means a device or combination of devices, structure, or part of a  
4 device or structure that transforms direct solar energy into thermal, chemical, or  
5 electrical energy and that contributes significantly to a structure's energy supply.

6 *Solar energy system* means a complete design or assembly consisting of a solar  
7 energy collector, an energy storage facility where used, and components for a  
8 distribution of transformed energy, to the extent they cannot be used jointly with a  
9 conventional energy system. Passive solar energy systems are included in this  
10 definition, but not to the extent that they fulfill other functions such as structural and  
11 recreational.

12 From the description of the proposed project and the above definitions, it is reasonable to  
13 determine that a solar collection array facility meets the definition of a public/private utility  
14 facility in that it is a facility for the transmission or distribution of electricity to the grid  
15 collected through solar arrays.

16 There are also conditional use standards in Section Sec. 78-1270 of the Zoning Ordinance  
17 related to installations of public/private utility facilities (although the language in the section  
18 only then refers to public utility installations) that suggest that buildings, structures, and parking  
19 anticipated to be a part of a public/private utility facilities in addition to wires, pipes, and  
20 conduits.

21  
22 This is not the only conclusion that could be reached on this issue, but it is a reasonable one  
23 reviewing the language in the Ordinance as a whole. The Town may want to clarify the  
24 definition of a public/private utility facility or specifically delineate a specific use category  
25 related to solar array collection facilities in a future amendment.

26  
27 Based on this opinion, it does appear this proposal can move forward under the “public/private utility  
28 facility” land use classification. Our attorney notes this is not the only conclusion that could be reached,  
29 but it is a reasonable one reviewing the language of the ordinance as a whole. This opinion was sent to  
30 the solar proposal applicant who decided to move forward with the formal Conditional Use submission.

31  
32 Planner Hinderliter stated that one of the abutters that continue to have concerns about anything that  
33 happens in Paradise Park stated that they are not comfortable with this proposal and they will talk with the  
34 Town Manager about putting a moratorium on ground mounted solar array facilities and have the council  
35 enact that moratorium.

36  
37 Planner Hinderliter also stated that on the 21<sup>st</sup> of January, 2020 we expect the council to enact a  
38 moratorium on ground mounted solar array facilities. The moratorium would be retroactive so the  
39 ordinances would be retroactive also.

40  
41 What would happen with this is that Staff would work on ordinances and would go through the Planning  
42 Board, and then the Planning Board would go through our regular ordinance process.

43  
44 We want to have regulations that are specific to solar panels.

1 Chair Mailhot expressed her concern that this makes sense however she finds it somewhat disturbing that  
2 this will be a retroactive moratorium to exclude this type of thing and she does feel that this is good sound  
3 practice to have standards and conditions because they can be nuencenses to some people.  
4

5 Mark Koenigs stated that the one thing that we need to remember is that the town does not have a lot of  
6 land space.  
7

8 Whenever you have a retroactive moratorium, there is a question of vested rights and due process.  
9 As part of the process is a determination of completeness and does that mean that the person has vested  
10 rights?  
11

12 Our Attorney also works for Revision Energy which is a conflict.  
13

14 We may want to table this until we get some more answers.  
15 Moratoriums have a 180-day deadline to develop the ordinances and that deadline can be renewed.  
16

17 **An option:**

18 What if the Planning Board continued to review this as a Conditional Use Review and applied conditions  
19 that are found in Solar Energy Ordinances (height, buffering etc).  
20

21 Staff reviewed the proposal. Even if the moratorium was not a question, the Planner is not sure that this  
22 proposal is complete yet.  
23

24 Planner Hinderliter suggested that we need to be careful not to engage in any delay tactics for bad faith  
25 efforts.  
26

27 **ITEM 3**

28 **Proposal: Major Subdivision and Site Plan Review Sketch Plan: 22-lot residential subdivision  
29 and 8-10 single-resident houses to be built as part of a condo association**

30 **Action: Discussion and Recommendations**

31 **Owner: Mark and Claire Bureau, Mark Bureau**

32 **Location: Red Oak Drive (Phase II); 139 Portland Ave; Zoning: RD**  
33

34 Assistant Planner Michael Foster stated that this proposal is for a major subdivision, consisting of a 20-lot  
35 subdivision and an additional 8-10 single resident houses to be built as part of a condominium  
36 association. The cover letter for this proposal states that part of the proposal is for a 22-lot residential  
37 subdivision, but the submitted plans show a 20-lot subdivision. This appears to be a typo but clarification  
38 will be needed.

39 In 2018, the Planning Board approved a 9-lot subdivision for Red Oak and that has since expired.  
40 Based on the submitted sketch plan it appears that the 8 single resident houses to be part of a condo  
41 association share Lot 20 with the owner. There is some question as to how the condos will work with the  
42 existing single family home.

43 Also, in looking at the 8 single resident houses to be part of condo association, some of these appear to be  
44 very close or in the wetland depicted on the submitted Phase III Site Layout Plan. This wetland area is  
45 shown as Resource Protection (RP) on our Shoreland Zoning map. Assistant Planner Foster stated that we  
46 need to see some delineation to know that it is not in that area.

47 Also looking at sewer capacity. Wright Pierce did a review and stated: ***“Based on the run time data  
48 collected for 2018 and 2019 assumptions regarding the existing pump capacity and the proposed flows  
49 reported by the developments engineer from Red Oak Development, we have concluded that the  
50 existing Portland Avenue pump station would have adequate capacity to serve the proposed***

1 *development. With completion of this Development project, limited capacity would remain within the*  
2 *existing pump station without upgrades to the pumps.”*  
3

4 Another question was on street design and construction standards, subdivisions with 15 lots or more are  
5 required to have at least two street connections. In addition, questions in looking at the map the  
6 connection is not quite made and it appears on their cover letter a secondary access road is designed for  
7 public safety service.  
8

9 Chair Mailhot mentioned that Red Oak is not at a 90-degree angle with Portland Avenue. Is this a  
10 requirement? Planner Hinderliter stated that the minimum angle of street intersections is 90 degrees.  
11 The Planning Board cannot approve a subdivision that requires filling.  
12

13 Design standards requires that subdivisions containing 15 lots or more have at least two street connections  
14 with existing public streets. There appears to be a connection but it is not clear how this connects through  
15 proposed lot 18 and through lot 20. The cover letter also notes that the proposed secondary access is for  
16 public safety services. If the proposed secondary access is only designed for public safety service, a  
17 waiver would be required as outlined in Sec. 74-34. – Variances and waivers. Another question is if these  
18 streets and infrastructure are proposed to be public or private?  
19

#### 20 **Lot Size**

21 RD requires a minimum lot size of 40,000 sf with sewer or water, but this also requires a net lot area of  
22 30,000 sf with public sewer or water.

23 Frontage  
24

#### 25 **Frontage**

26 Lots in the RD zone are required to have 200’ of frontage. Lots 6 and 19 appear to have less than required  
27 and should be verified.

28 There does not appear to be a proposed cul-de-sac, but the cul-de-sac frontage is listed on the sketch plan  
29 as 75’, but the ordinance requires 125’ frontage on a cul-de-sac.

#### 30 **Lot Width**

31 Lots in the RD zone require a lot width of 200’. Lot width means *the horizontal distance between the side*  
32 *lot lines measured at the setback line*, and in this case RD has a side setback requirement of 25’. Lots 3, 4,  
33 5, 6, 15, and 19 appear to be very close or under the required width. These should be verified.

#### 34 **Sec. 78-965. – Performance standards.**

35 #4 Buffering requires all buffering for the rural district shall conform to the landscaping and buffering of  
36 division 7 of article VIII of this chapter. Sec. 78-1822. – Buffering, requires that *buffering shall achieve*  
37 *between 75 percent to 100 percent year-round visual obstruction as specified by the planning board*. This  
38 will be especially important where lots in the proposed subdivision will abut other properties and on  
39 proposed lots 4, 5, and 6 that will abut Seacoast RV Resort.  
40

41 Assistant Planner Foster stated that this is not specified but it says that they are proposing 8-10 single  
42 residential houses to be built as part of a condo association. They also have a pending DEP Application  
43 for a stream crossing for their secondary access.  
44

45 David Walker sent a couple of comments on the first two items:

#### 46 **Ross Road:**

47 “I am against the conditional zoning amendment strengthened by the town attorney’s opinion.”

#### 48 **Solar Request:**

49 “I would hesitate to act upon the solar request based upon the speculation of the pending town’s  
50 moratorium. He wouldn’t want council feeling like we are trying to pull something on them.”

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**Other Business**

**ADJOURNMENT 6:55 PM**

*I, Valdine Camire, Administrative Assistant to the Planning Board of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of Six (6) is a true copy of the original minutes of the Planning Board Workshop Meeting of January 2, 2020.*



**\*Note: Workshop Agenda Public Hearings and Regular Business items are for discussion purposes only. Formal decisions on these items are not made until the Regular Meeting.**