

**Old Orchard Beach Planning Board Public Hearing & Meeting Minutes
Thursday, April 8, 2010 at 7:00pm in Town Hall Council Chambers**

Call to Order at 7:00pm	
Pledge to the Flag	
ROLL CALL: Win Winch, Mark Koenigs, Tianna Higgins, Don Cote, Eber Weinstein. Absent: Karen Anderson. Planning Staff: Jessica Wagner and Gary Lamb. Public: Scott & Lisa Obar, Jake & Heather Ebenhoeh, Mike Nugent, Tom Emery, Mark Burns, Tim and Kathy Smith, Mark Bureau, Steve Harding, Marie Green, Keith Babin, Kevin O'Brien, Benjamin Bucci.	ROLL CALL
APPROVAL OF MINUTES: March 4, 2010 Workshop and March 11, 2010 Meeting	MINUTES
Ms. Higgins motioned to approve both meeting minutes. Mr. Weinstein seconded Mr. Koenigs: 2 nd page of March 11 meeting has a small typo in need of correction. The second comment under my name should read: <i>"Have the business hours also changed from the previous approval?"</i> Motion carried 5-0	Motion Vote
ITEM 1: Determination of Complete Application: Conditional Use Review: Proposal to re-establish 3 dwelling units at 44 Union Avenue, MBL 315-21-1 (per <i>Sec. 78-180 Appeals from restrictions on nonconforming uses</i>).	ITEM 1
Mr. Winch explained the application based on the submission. Mr. Lamb: Planning Staff has no problems with the application and should schedule a site walk. Mr. Winch scheduled a site walk for May 6, 2010 at 5:45pm. Mr. Koenigs: I'd like to point out that this is my neighbor. Mr. Cote: I'm also an abutting property owner. Mr. Koenigs motioned to determine the conditional use application complete. Ms. Higgins seconded. Motion carried 5-0	Motion Vote
ITEM 2: Public Hearing: Proposed CMP Substation and Private Way, located off of Valley Lane, MBL 107-2-34 / 107-2-27.	ITEM 2
Opened at 7:05pm. Closed at 7:06pm with no one present to speak for or against.	PUBLIC HEARING
ITEM 3: Final Review: Site Plan Review: Proposed CMP Substation and Private Way, located off of Vallee Lane, MBL 107-2-34 / 107-2-27.	ITEM 3
Mr. Lamb asked for the engineer to explain how the drainage system made pre to post drainage stay constant. Mr. Harding: We adjusted the runoff with a trench along the edge of the substation. We thought we would have the grading easement by now, but we have not. If we cannot come to an agreement with the Ford Family Trust, we would put in a retaining wall. We would also like to ask for a 1 year extension since this we know this will take longer than a year for us to begin work. Mr. Lamb: We would like to add the "if such easement is needed" to the end of this suggested condition of approval. Incase they do not get the grading easement, we don't want to hold them to this condition of approval. Mr. Koenigs: would we need to change the plan if the retaining wall was needed and	

<p>the grading was not done? Mr. Lamb: we could consider this a minor change that may be made at the time of construction. Ms. Higgins motioned to grant final site plan review approval for the proposed CMP Substation and Private Way, located off of Valley Lane, MBL 107-2-34 / 107-2-27, with the following conditions of approval:</p> <ol style="list-style-type: none"> 1. The Applicant must provide the required <u>DEP permit</u> and <u>Army Corps of Engineers permit</u> to the Town prior to beginning construction. 2. Site work may not commence and no building permit may be issued for this project until the proper <u>grading easement from Ford Family Trust</u> is granted and submitted to the Planning Department, if needed. 3. Prior to the construction of this private way, the Applicant shall establish a <u>performance assurance and put money in an escrow account</u> to be used for inspections by the Town's engineer. This amount shall be based on the estimated cost of construction. 4. The Planning Board grants a <u>one-year extension</u> with this site plan approval, per Section 78-219. Work on this project must commence two years from the signing of the Site Plan and Findings of Fact (May 2012). <p>Mr. Cote seconded. <i>Motion carried 5-0</i></p>	<p>Motion</p> <p>Vote</p>
<p>ITEM 4: Public Hearing: Proposed Royal Anchor Motel off-site parking lot, MBL 202-3-13.</p>	<p>ITEM 4</p>
<p>Public Hearing opened at 7:15pm Closed at 7:16pm with no one for or against to speak.</p>	<p>PUBLIC HEARING</p>
<p>ITEM 5: Final Review: <u>Site Plan Review:</u> Proposed Royal Anchor Motel off-site parking lot, MBL 202-3-13.</p>	<p>ITEM 5</p>
<p>Mr. Bureau: we have ensured the shed is set at least 15ft from the lot line. Mr. Weinstein: My family owns the abutting property, so I would like to recuse myself from voting on this item. Mr. Lamb: we discussed additional lighting and additional buffering. We also discussed the Applicant providing the DEP building permit prior to construction. Also, the existing fence is under Mr. Bureau's ownership. It is a parking lot on the first floor of the abutting property, so it doesn't scream out for buffering. Mr. Koenigs: Can you screen the dumpster from the road? Mr. Bureau: yes, I can put a buffer as needed. Mr. Lamb: suggested this be a condition of approval there be some buffering around the eastern and southern sides of the dumpster. Ms. Higgins motioned to grant final site plan approval for the proposed Royal Anchor Motel off-site parking lot, MBL 202-3-13 with the following conditions:</p> <ol style="list-style-type: none"> 1. DEP permit must be submitted prior to construction. 2. Plant a vegetative buffer on the south and east side of the dumpster, as needed by Planning Staff. <p>Mr. Koenigs seconded <i>Motioned 4-0-1 (Mr. Weinstein abstained from voting)</i></p>	<p>Motion</p> <p>Vote</p>
<p>ITEM 6: Public Hearing: Proposed Police Station on E. Emerson Cummings Blvd, MBL 207-3-1.</p>	<p>ITEM 6</p>

<p>Public hearing opened and closed at 7:29pm</p> <p>Mr. Koenigs stated that he would like to speak as a member of the public and approached the podium to speak, not as a board member.</p> <p>Mr. Koenigs (34 Fern Ave): I made an extensive list of comments to the Applicant and the Board. I have been involved in planning process for this property in the past and I have some questions on how this relates to the property and the ballpark. I wanted to take this opportunity at the public hearing to speak as a member of the public instead of as a board member. I several items: I question the positioning of this building. I am curious as to how this location was positioned on top of the old skate park. I also want to know if it was a matter of convenience that we found the lot is 7.17 acres and was created before 1994 to conform to the Zoning Ordinance. Also, the plans state the excess loam will be dumped at the ballpark. The Town uses this property, and I want to know why the excess loam is dumped on town property? In looking at building design, I ask if the building was designed to be LEED certified or a green design. I want to be sure somebody in town speaks to these issues, and I would like the applicant to respond to this. I also had concerns about the bike path. We recently put in a brand new bike path with a grant. My question here is, where is the coordination with the planning of the property? Why did we not plan for this police station? Now we will be cutting up the existing bike path and landscaping. My other concern is about drainage. This all drains from this property and flows to the ballpark pond on the adjacent property. I am not saying that the Town needs to address the condition of this pond in relation to this Police Station project, but in general, the town needs to maintain this area. I am also concerned with traffic circulation on Ballpark way, if future events cause congestion. I asked these questions to Planning Staff and the Board was able to see them, but I wanted them to be expressed publicly for the rest of the town to hear.</p> <p>Hearing closed at 7:43pm</p>	<p>PUBLIC HEARING</p>
<p>ITEM 7: Final Review: Site Plan Review: Proposed Police Station on E. Emerson Cummings Blvd, MBL 207-3-1.</p>	<p>ITEM 7</p>
<p>Mr. Nugent: The lead architect on this project, Mark Burns is on his way. I can begin by speaking to the energy conservation question. The building will comply with the Maine State energy standards.</p> <p>Mr. Emery: In our submittal on 3/31/10 we responded to all staff comments and Mr. Koenig's comments. I served on a planning board for 9 years, and when I had projects I was passionate about, I would have to decide whether I was a member of the public or if I was a member of the planning board. I am not a lawyer, but I suggest the planning board member who spoke as a member of the public recuse himself from voting.</p> <p>Mr. Burns: we have taken every effort to meet and exceed energy standards when possible. We find the codes are absolutely minimum standards and we have gone beyond the codes in many cases. We are doing everything we can within a reasonable cost to create an energy efficient building.</p> <p>Mr. Winch: how close are you to a LEED certification?</p> <p>Mr. Burns: LEED has several categories. In terms of systems and materials, we are very close to that. Due to administrative costs, it is not officially a LEED certified building.</p> <p>Mr. Weinstein: how did you decide to position the building in this way?</p> <p>Mr. Burns: this was the building footprint approved by the voters. This location and</p>	<p>Motion</p> <p>Vote</p>

<p>this footprint were included in the voter’s approval, so we didn’t want to change things. There are other ways to lay this building out that may have allowed us to gain parking or be in a better location for some utilities. However this orientation has many benefits as well, and we kept it to produce the proposal you have before you.</p> <p>Mr. Koenigs: Sheet C-102 shows the tree removal and drainage on the ballpark property. If this was a separate property owner from the Town, there would be a problem. All of the changes in C-103 helped me better understand the project. I want to ensure the legends match up for ease of transition for construction. I am curious to know whether there is a 3.5” or 3.4” orifice size in the stormwater plans, as there are two different sizes mentioned.</p> <p>Mr. Emery: we increased the size of the detention pond to ensure there is a zero increase in runoff. We will ensure the final plans show an orifice size that matches the Stormwater Management Report.</p> <p>Mr. Koenigs: Sheet C-202, detail 5 has Section B & Section A. There are two separate sizes shown on the drawings.</p> <p>Mr. Emery: We will update the drawings to clarify the relationship between the detail and the report.</p> <p>Mr. Koenigs: the lighting on the sidewalk is required to be a certain level, at least 1.0 footcandle I believe.</p> <p>Mr. Emery: more important than lighting level is lighting consistency across the parking lot, rather than have certain areas with more light than others.</p> <p>Mr. Koenigs: If you look on C-102, the fence is terminated in without a finished corner. It shows a termination on the fence into the athletic field.</p> <p>Mr. Lamb: the fencing is coming out 360ft. What is your question?</p> <p>Mr. Koenigs: there isn’t a problem, just a loose end. The fence isn’t doing anything here.</p> <p>Ms. Higgins: I would like to add two conditions of approval: the lighting on the side walk and the orifice size need to amended on the final plans to meet Ordinance.</p> <p>Mr. Koenigs made a motion to waive a digital submission requirement, since the Town would be responsible for supplying this information.</p> <p>Ms. Higgins seconded.</p> <p>Motion carried 5-0.</p> <p>Mr. Koenigs made a motion to grant final Site Plan Review approval to the Police Station on E. Emerson Cummings Blvd, MBL 207-3-1, with the condition that the photometrics plan is reviewed and found to be consistent with the Town Ordinance.</p> <p>Mr. Cote seconded</p> <p>Motion carried 5-0.</p>	
<p>ITEM 8: Public Hearing: Smith’s Garage Conditional Use amendment, located at 2 Whispering Pines Drive, MBL 105-1-16.</p>	<p>ITEM 8</p>
<p>Public Hearing opened at 8:25pm</p> <p>Mr. Smith (owner of Smith’s Garage, 2 Whispering Pines Drive): I was approved in September 2004 for a conditional use to operate an automotive repair garage. There are three issues that you will here about at the public hearing tonight. (1) buffering (2) hours of operation and (3) drainage. BUFFERING: we removed buffering to eliminate icy conditions in the front yard. We did not know that we were creating a violation of our 2004 planning board approval by removing this buffer. We have worked with</p>	<p>PUBLIC HEARING</p>

planning staff to install a fence that is 9 feet tall (8 foot fence elevated 1 foot from the ground). We would be willing to install additional vegetation if necessary. We have also relocated the parking to the other side of the house and plan to install a second fence next to this parking area. This will further reduce the visual impact of the business. The DEP was called twice. Twice we walked the property and no violations were found. HOURS: I have always worked nights. In 2004 when I was filling out the paperwork for the planning board application and the staff person in the office told me to just put 6pm. I put 6pm on my application and was not aware this was a formal condition of my approval. I have always worked at night. I am self employed. Unscheduled interruptions force me to work late. I do not want to hire additional employees, which would create additional impact on the neighborhood. I am respectful of my neighbors, and my tenants above the garage do not have any problems with noise. DRAINAGE: Our property has always had low wet areas. When we built our house we hit water, and we have two sump pumps to deal with the water. We have areas where trees are taken down that are low lying areas. The removal of this vegetation had nothing to do with the business; it had to do with our home on the same property. The DEP came out twice to look and nothing was in violation.

Mr. Ebenhoeh (124 Ross Road): My wife grew up in Old Orchard Beach and my family is from South Portland. We moved here in summer of 2008. When we bought the house we were aware of the Conditional Use business next door. In May of 2009, I noticed construction vehicles on Mr. Smith's property. He indicated that he would be removing a few trees. When we came home a few days later, all of the trees were gone. Mr. Smith was incorrect in saying that we did not contact him first. We did contact him. We called the DEP, he did not look at the site completely the first time, so we called him a second time to look at the property. Mr. Coppi (DEP representative) stated that there were no DEP violations. In the April 2010 Staff Notes to the Planning Board, under Sec. 78-1240(4) it states there is no threat to the water supply. What professional opinion states that there are no water supply issues with this application? Sec. 78-1240(8) states that The town assessor has stated the change in buffering will not affect adjacent properties assessed value. We have not seen any documentation of this. Sec. 78-1240(9) references hours of operation. The current hours of operation bother us, and want the original hours upheld. Originally there was natural vegetation serving as a buffer. Once this was removed, it was going to be replaced with a berm and with natural vegetation. But instead, a fence was installed. We ask that you take into account the hours of operation for this business, the drainage, and the loss of visual buffering.

Mr. Smith: the first time I met Jake Ebenhoeh, he came over to ask if my bulldozer was on his property. In response to his comments regarding the berm – I came to the town planning office and staff told me that I needed to build a fence. I didn't want a fence, so I investigated the possibilities of installing a berm to serve as a buffer instead. However, the size of the berm required a grade that would have taken up my whole front yard. This was not possible, so we put in a fence instead. In regards to drainage, this area has always been wet. I recently also spoke with neighbors, to see why trees were marked on the Ebenhoeh's property. There are large trees being taken down on their property. It is our responsibility to ensure there is proper buffering, but the removal of trees on the Ebenhoeh's property will not help increase the vegetative buffer.

Mr. Ebenhoeh: We keep hearing about past storms and the past situation. I think this

is interesting. I have spoken with my neighbors in the past as well. If there was a storm several years ago, the same storm today might react differently because of the loss of vegetation. I have been making changes at my house, but I don't have an automotive repair business at my house, so it is different. If I do go for a conditional use permit on my property, they I would be sure to comply with my conditions of approval. I also want to be clear that we have no issue with a small business owner. What I want is for him to meet the guidelines set by the Planning Board. I would like you to keep in mind that we are not talking about whether he is a good neighbor or not. We are talking about what he has done with his property.

Mrs. Lisa Obar (1 Whispering Pines Drive): we have been neighbors of the Smiths for twelve years. It seems this issue has come to head because of the removal of trees. Mr. Smith's garage doors face our bedroom windows, and we have never had any issues. We personally do not have any issues. I don't care when he works, whether it be early or late. We get up early in the morning and do not stay up late, and we have never been disturbed by the noise at his property. In regards to water and drainage - these storms have made all of our areas wet. Yes, it is wetter than usual. Is this because the Smith's removed vegetation? No, this is because we have had more rainfall than usual. If there is an issue with buffers and noise, I think the Ebenhoehs are hurting their own purpose by removing vegetation on their own property.

Mrs. Kathy Smith: I'd like to make the comment that we do not have a growing business. We have no signs that display our garage. We do not have additional employees. Mr. Ebenhoeh indicated that this was a starter business. This in false. This is not a Home Occupation. This is a conditional use to legally have an auto repair garage on this property. I think we have a nice home. I don't want it to look garage either, so Mr. Smith has made an effort to conceal the parking and keep the area clean. In regards to drainage - I think the area where fill was placed is keeping the water from flowing on to the Ebenhoeh's property. Also, the ducks that were present at the Site Walk on April 1st are there every year. We have always had enough water in our yard for ducks to land. This shows that it is wet there and always has been. Nothing we have done in relation to the automotive repair business has negatively impacted drainage in this area of our property. Our neighbors, the Obars are the most affected by this business because we share the cost of the road with them. We have always been close with our neighbors. We love trees, and the only reason we took the trees down is for landscaping of our residential property. It is nice to be able to sit on our front porch in the sun. I would also like to offer to Jake and Heather that we can paint the fence what ever color they would like.

Mr. Smith: I would like to address the idea of the 'growing' business. Business has been the same since it first started. It is not going to get any bigger unless I hire an employee.

Mrs. Heather Ebenhoeh: There are a lot of distracting issues here, but the primary cause of our concern is the removal of the trees. The fence doesn't block our first floor living space and it doesn't block the noise. I would like to point out that in the April 2010 Staff Notes, it states that Smith's Garage is a growing business. We want to make sure these issues are addressed now, so in the future Mr. Smith can proceed in confidence with what he does at the business. Lastly, we have not been approached ever by our neighbors. We hope we have given you clear issues, and you can see through all

<p>of the emotional issues. I am a home town girl who has returned home.</p> <p>Mrs. Obar: Regardless of whether or not this is a growing business, when can you find someone to operate a little out of the standard 9-5 timeframe? It makes it easy for customers to drop off cars and pick them up at times that work for their schedules. Customers drop off cars at different times of the day, sometimes leaving them in our driveway instead. This doesn't bother us and we think the extended hours of operation allow this business to be successful.</p> <p>Mr. Smith: The fence provides a visual buffer sufficient enough to meet the standards of the Ordinance. I didn't approach the neighbors because I was attacked by the town and the DEP during this process. The Ebenhoehs weren't really approachable.</p> <p>Mrs. Smith: In regards to the tote road that was added to during this process – this is doing a better of stopping water from flowing on to the abutting property. It is keeping the pond in our yard. In addition, this as nothing to do with the business. I could understand if parking was being placed in this area where there was a vegetative buffer, but it is not.</p> <p>Closed at 9:01pm</p>	
<p>ITEM 9: Final Review: <u>Conditional Use Amendment Review: Smith's Garage</u> Conditional Use amendment, located at 2 Whispering Pines Drive, MBL 105-1-16.</p>	<p>ITEM 9</p>
<p>Mr. Winch: Are you on public water or well?</p> <p>Mrs. Ebenhoeh: our homes are on well water and we have septic disposal in our front yard. Yes, it is wet, there are drainage issues, and we don't want them to impact our water resources.</p> <p>Mr. Smith: we are on public water and have septic disposal.</p> <p>Mr. Winch: right now the existing hours are 6:00pm according to the original 2004 findings of fact.</p> <p>Mr. Lamb: read Sec. 78-1823, the screening and buffering standards. If there were a 4ft berm, the base of it was 30ft wide. He said he wanted to have a berm, but the geometry didn't work. I then went to the fence as a buffering solution. He built a 9ft fence (8ft tall elevated 1ft from the ground). This fence is conservatively much longer than required to buffer the three garage bays. The relocation of the parking and the fence around the parking is also an improvement.</p> <p>Mr. Cote: This application seems to have two relevant issues: hours of operation and the removal of the buffer. I want to be sure we stick to the Ordinance. We want to be sure the hours of operation are reasonable and the buffering requirements are met.</p> <p>Ms. Higgins: Yes, buffering helps with noise but the abutters should be aware that this will not be an immediate fix. Let's deal with buffering first: the arborist came up with a plan for potential buffering species.</p> <p>Mr. Lamb: you can take her information, and decide where the trees should be placed.</p> <p>Ms. Higgins: It is my opinion to improve the buffer in the area where the tree stand was taken down, but this may create the same icing and shade issues there were before. I think the planting should take place up closer to the garage.</p> <p>Mr. Cote: I would like to see a planting plan prior to making a decision.</p> <p>Mr. Winch: can we have a landscape plan in front of us, submitted by the applicant?</p> <p>Ms. Higgins: I don't feel we have a say in someone's hours of operations.</p> <p>Mr. Weinstein: it seems like the problem of noise will be taken care of with an improved vegetative buffer.</p>	

<p>Mr. Cote: Mr. Smith did mention that after a certain time, the garage doors may be closed and he continued to operate. This would be fine, but on a hot summer night, that is difficult to enforce.</p> <p>Mr. Lamb: the applicant is asking you to comment on days and hours of operation.</p> <p>Mr. Winch: if you address the buffering problem, this should take care of hours of operation.</p> <p>Mr. Cote: I can say from experience, when I didn't have a vehicle, Mr. Smith dropped off my vehicle at 9:30pm at night. This was essential to me in that circumstance.</p> <p>Mr. Koenigs: The Findings of Fact were not followed because of hours of operation and removal of a buffer. Unfortunately, as a Board it seems we are trying to mend ties between the neighbors. It is unfortunate that we need to play mediator. If we can give these folks some time, they can work it out. If the Smiths can talk to their neighbors and the neighbors can talk to the Smiths, then they can come back with a good buffering plan.</p> <p>Mr. Winch: In the Findings of Fact, they never identified what vegetation was important to the buffer. It just stated the natural vegetation was suitable.</p> <p>Mr. Koenigs: the neighbors don't want to shut the business down. Are we only looking at buffering and hours of operation? What about drainage? Since we are creating a brand new findings of fact, should we look that the whole application?</p> <p>Mr. Lamb: This is an existing business, and we are amending the plan because the prior buffer was removed. The applicant will come back to the Board with a new plan.</p> <p>Mr. Cote: I motion we table this application.</p> <p>Mr. Koenigs: seconded</p> <p><i>Motion carried 5-0</i></p>	<p>Table Motion Vote</p>
<p>GOOD & WELFARE</p>	
<p>Mr. Lamb: congratulations to Tianna for being reappointed to Planning Board. Mr. Perrigo withdrew his name so we are still looking for another member.</p>	
<p>ADJOURNMENT at 9:41pm. Chair, Win Winch</p>	<p>Adjournment</p>

I, Jessica Wagner, 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 April 8, 2010.