

Town of Old Orchard Beach
 Planning Board Special Meeting
 April 22nd, 2015

Call to Order: 7:10pm	CALL TO ORDER
Roll Call: Mark Koenigs, Win Winch, Eber Weinstein Chair, Staff: Jeffery Hinderliter Town Planner, Molly Phillips Meeting Note Taker, Phillip Saucier Town Attorney	ROLL CALL
Pledge of Allegiance	PLEDGE OF ALLEGIANCE
<p>Item 1: Proposal: Subdivision and Conditional Use: Establish 24 unit free-standing condominiums (The Turn Subdivision) Action: Consideration and Signatures: Findings of Fact and Mylar Owner: Dominator Golf LLC Location: Wild Dunes Way, Adjacent to Dunegrass Section C, MBL: 105A-1-200</p> <p>Jeffery Hinderliter: We have Phil Saucier our Town Attorney and I will turn it over to him, but first a couple of things. You have the Findings of Fact in front of you. This is the most recent version in front of you today, after consulting with Phillip Saucier and a few other minor things, the changes we made aren't very significant but just adjustments to the language and misspellings. The biggest item is the paragraph now included that was read into the record by Eber Weinstein. There are certainly a lot of exhibits, if we go to the last two pages, the conditions are listed. One of the biggest issues was the density calculations and on the first page. It explains the removal of units from Section B leaving 32 units outstanding. Therefore the 24 units would be available for The Turn Subdivision. The second issue is the Open Space page relating to condition #4. The map has been highlighted showing 54 percent or 170 acres. There's one ongoing condition we have which is that DEP approval is secured before construction begins.</p> <p>Eber Weinstein: So I think that's all we need to do unless there's something you need to add to it.</p> <p>Mark Koenigs: Through the chair, point of order, we have the minutes from the last meeting and I didn't know if we were going to go through those.</p> <p>Eber Weinstein: It's not on the agenda.</p> <p>Molly Phillips: It's not on the agenda but we can do it if you want to.</p> <p>Eber Weinstein: Why don't we wait till the next meeting.</p> <p>Jeffery Hinderliter: Just to be sure, we were really careful about those conditions because as you may recall, there was a fair bit of back and forth. I asked Molly specifically to go in and pull out the conditions first for The Turn Subdivision and Orchard Estates.</p>	ITEM 1

Town of Old Orchard Beach
Planning Board Special Meeting
April 22nd, 2015

Mark Koenigs: One more thing, through the chair, I voted No on this item and I read the Findings of Fact and there are some things I don't agree with. Therefore I don't need to sign them, is that right?

Phillip Saucier: Generally you do sign the Findings of Fact as a member, there is no minority report. You would be recorded as 3 to 1 vote, but you are on record as saying no already.

Mark Koenigs: So can I review the Findings of Fact and make comments to the board and the Town Planner.

Phillip Saucier: One thing when you are adopting findings, you are the minority, but it would be appropriate to bring up any discrepancies with what really happened. These are your findings, even though Jeffery drafted them, they are your findings as a board.

Mark Koenigs: I'm just trying to show that there are some things in here that I don't agree with.

Phillip Saucier: And that would be appropriate at this time.

Mark Koenigs: I got four copies, one that I printed out and then one on the desk when I got here. I assume those are the two I should be reviewing. The fact is I reviewed the first one and I reviewed your comments.

Phillip Saucier: Well I had the draft at the same time you did and just had some notes that I suggested that it be included.

Mark Koenigs: You made a comment, the exhibit should reflect what was found in the Findings of Fact. It seems like there are a lot of exhibits that don't actually get referenced.

Phillip Saucier: It is the way that it has been traditionally done here. Really what some of these documents and plans reflect is the record. So Jeffery did change that. These documents are now considered to be part of the record of the Planning Board.

Mark Koenigs: So, the Findings of Fact should reference the final plans that we are signing the mylar copy for. So, they should be referenced as an exhibit.

Phillip Saucier: So, for example, the first one to look at is number 2 under subdivision review. I had said to Jeffery that he needed a reference for where that document is. So, wherever you made a finding for the meeting and we had a document to back up that fact, I just told him to reference that.

Mark Koenigs: Some of the others don't have references.

Town of Old Orchard Beach
Planning Board Special Meeting
April 22nd, 2015

Phillip Saucier: Well, I didn't go through and note all those changes, Jeffery would have done that. But all these things came from somewhere, in some cases it was specific like a document or a plan, but some of them were findings made based on testimony in front of you or plans presented at the meeting. If you do know of something that needs to be noted now, you should address that now. For example, I am looking at, #5, your finding I assume was made looking at the plans and materials. Perhaps as a catch-all we could write in, "has determined the following facts based on the application materials and final signed plan."

Mark Koenigs: In the future, as a planning board, we should maybe reference the materials we are sitting as our reference for a decision. This way, the Planner can understand the information we are sitting for that decision. What we do is read the applicant's response to whether we agree or disagree but we don't site the Finding of Fact.

Phillip Saucier: Sometimes the applicant's given information is sufficient enough to base a decision on. One of the more straight forward ones is sewage waste disposal. They say they are going to use licensed haulers and you can then site their application as agreeing to use licensed haulers because it's written on the application.

Mark Koenigs: The final thing that was the big one for me was number 3 and number 4. I think number 3 is covered well. Number 4 is the open space, I just received tonight the plan, but it's so small I can't read it. So, you are saying that this documents the open space so that future planning can look at this.

Jeffery Hinderliter: It is documented and verified, that was right on my bulletin board.

Mark Koenigs: So this was given to Tom and put on the GIS.

Jeffery Hinderliter: That is the plan, this is particular document isn't on GIS yet but it is part of the permanent record for Dunegrass in the files and electronically.

Mark Koenigs: Well that was the idea, to have this made part of the permanent record. I appreciate all parties involved in doing that for us. In reading this Findings of Fact it says staff requirements that should have been raised earlier and shouldn't be in the Finding of Facts as requirements. It's not something that I have found that we did vote on. It was not raised when it should have been raised and why wasn't it included in the drawings? I'm pointing it out, no one in the public will know, and the board doesn't seem to care.

Eber Weinstein: I didn't notice that before.

Town of Old Orchard Beach
Planning Board Special Meeting
April 22nd, 2015

Win Winch: I didn't see that.

Mark Koenigs: We've had the Findings of Fact for 24 hours. It wasn't until I thoroughly read it that I saw this and wondered, what is this here for?

Jeffery Hinderliter: Right, one thing, the applicants had sent letters for gathering comments from department heads. During the staff meetings I had asked for comments, but did not receive written comments. I got oral comments but nothing written. During the planning board's approval, it was asked that something be gathered in writing. So, I got this after the approval in writing.

Eber Weinstein: You definitely should have mentioned that. Especially if we are voting on that.

Mark Koenigs: If you had oral comments from the department heads you should have brought that to our attention and the applicant's attention. We want to support you, if they aren't giving you the support we need to sit down and write a letter saying to the Town Manager that you need the support of the Town to get the comments in time for us to make a decision.

Dominic Puligaris: Can I say something about the cart paths? The cart paths are separate from the sidewalks and they do not cross.

Mark Koenigs: So then to address that issue, why is that in the Findings of Fact?

Jeffery Hinderliter: Sure, I apologize.

Eber Weinstein: I think I mentioned that earlier, that we wanted written comment way back when we started.

Mark Koenigs: So I see on the plans that the carts cross the sidewalk at some point.

Dominic Puligaris: The carts never touch the sidewalk.

Mark Koenigs: Well then how do you get from Hole 9 to Hole 10?

Dominic Puligaris: It doesn't have to cross the sidewalk, it runs parallel to the sidewalk.

Mark Koenigs: (reading plan) It says relocated cart path, access easement, comes up to Wild Dunes Way and there's a sidewalk there. It's not being used in common, it's just a crossing but if the safety officer or police department thinks there is an issue there, we should have had that discussion about

Town of Old Orchard Beach
Planning Board Special Meeting
April 22nd, 2015

warning signs, should there be something there to stop them. I don't think it should be on the Findings of Fact, I think it should be struck. The other one has to do with fire hydrants. Are they on the plan tonight?

Jeffery Hinderliter: I believe they are not on the plan tonight?

Mark Koenigs: So, then what are we doing here? I know I voted No, but I still think this should be done right. I still think it should be correct.

Bill Thompson: Well, those you don't sign, they are on the detailed engineering plans but they aren't on the ones you sign anyway.

Jeffery Hinderliter: I apologize for that. What I will do is try to write a standard form letter and get input from department heads by a specific deadline. I will stipulate that if they want their comments to be included for discussion and part of the record then we need written comment sooner.

Eber Weinstein: Don't they reviewing before we even start this process?

Jeffery Hinderliter: Department Heads begin to review it when we receive it, but you don't need an ok.

Eber Weinstein: Like I say, with the next item I asked specifically if they could have just one access versus two. We asked Police and Fire about that too. I would assume that they would give us comments at that time. It'll be better in the future and we can then make it a condition of approval as we do them.

Win Winch: I would think, Jeffery, that as you sit down with Department Heads, what goes through the chief's mind is can we get the vehicles up the street and put more hydrants. I would think we would get this early on. But it wasn't documented.

Jeffery Hinderliter: Right, well the concerns were brought up with the chief and public works but it was not documented.

Eber Weinstein: How long ago was that?

Jeffery Hinderliter: Definitely before March.

Eber Weinstein: If we could get that earlier. I don't have a problem with is now, but we should get those in writing earlier.

Mark Koenigs: So, we are just asking the applicant to update the two site drawings showing these hydrants? We have agreement on these?

Town of Old Orchard Beach
Planning Board Special Meeting
April 22nd, 2015

Bill Thompson: The location of those hydrants only show on the engineering plans.

Win Winch: Are they on there now?

Bill Thompson: No, we just got word. We thought we could use the one right outside the project, but that's not the case.

Mark Koenigs: So does a dialogue need to take place.

Matt Warner: We'll put that on the plan and include that in the record.

Mark Koenigs: And then we'll update that with the Town Planner. There's some of the front matter. I don't remember discussing that as a Planning Board, the paragraph giving a summation of the project. The way it's characterized is not enough to cover the facts.

Phillip Saucier: It's obviously put together by staff and you are clearly adopting it by signing it. I think that's a standard way going forward. It just summarizes the project for the record. What the amendment is trying to do.

Jeffery Hinderliter: Actually that is a cut and paste of numerous Findings of Fact that you have already signed.

Mark Koenigs: So it's the way it's done. But it's not done on Orchard Estates.

Phillip Saucier: I'll let Jeffery speak for himself, but on this one it's obviously a lot of moving parts and it affects the larger subdivision so you need to have a little description.

Jeffery Hinderliter: I've done it in the past and this is the way it's been done just for Dunegrass.

Mark Koenigs: It flip flops between condos and condominium homes. This portion isn't relevant.

Phillip Saucier: Let me clarify, it's very much a part of the Findings of Fact, but it's just a description of what is going on. If it's not accurate, then this is the time to correct.

Mark Koenigs: It keeps changing every sentence. All of a sudden it goes into slang from condominium homes.

Phillip Saucier: So, why don't you write there, condominium homes if that is what you would like it to say there?

Town of Old Orchard Beach
 Planning Board Special Meeting
 April 22nd, 2015

<p>Mark Koenig: I'm just trying to be really clear about this. The other word I didn't like was "carved out" because it was slang. I was wondering if there was a legal word.</p> <p>Phillip Saucier: I think "carved out" works.</p> <p>Molly Phillips: Would you want it to say "developed" out of the golf course area?</p> <p>Eber Weinstein: If it meets the legal requirement I think we are good.</p> <p>Mark Koenig: Under the project history it talks about sections, it says that, "as this subdivision has been amended and built over time some units have shifted sections. And into areas that were not originally residential sections." And then it tries to define what a residential section is by "some sections will be built out with more than and other sections will have less units than the 1988 approval." I would ask that we strike that in parentheses because I don't think it adds anything. Under Amendment Proposal I would ask that we keep the words "carved out" but I would also ask that we change the wording from condos to condominium style homes.</p> <p>Eber Weinstein: Or "single family style condominium homes."</p> <p>Mark Koenigs: The other item to be struck under staff requirements is item 2. Also number 1 should be struck with the note added that the applicant has agreed to amend the engineer drawings to add the two fire hydrants and those plans be submitted to the Town Planner for Town records. So I close my remarks on that Findings of Fact.</p>	
<p>Item 2: Proposal: Subdivision: 31-lot cluster subdivision for single-family homes (Orchard Estates Subdivision) Action: Consideration of Signatures: Findings of Fact and Mylar Owner: Diversacorp LLC Location: 202 Portland Ave., MBL: 103-1-45 & 103-1-32</p> <p>Eber Weinstein: Do you have any preliminary comments?</p> <p>Jeffery Hinderliter: Just a few things, there weren't as many changes to this document from our attorney as The Turn. There weren't any staff comments and there were no density issues. The only thing is the last two sheets with all of the conditions. These are all met or in the process of being met.</p> <p>Mark Koenigs: I believe under the project description we should actually add the owner, Diversacorp LLC, to be consistent. So we are doing the same thing on this one, Jeffery, where we are saying that these documents aren't referencing a specific finding...</p>	<p>ITEM 2</p>

Town of Old Orchard Beach
Planning Board Special Meeting
April 22nd, 2015

Jeffery Hinderliter: It's just part of the record, correct.

Mark Koenigs: Thank you Jeffery. Again, there are documents here that I don't think the board has seen in our packets or part of what we voted on. But, you can call them part of the record because they were submitted to the Town Planner. For Example AA and BB which are e-mails that happened after the vote. We saw the one from the Public Works Director. Under the criteria on item 12, with the minutes of the meeting, I just wanted to make sure that this answer of N/A was accurate.

Molly Phillips: We had the applicant's answer there, and then someone suggested it be N/A.

Mark Koenigs: But it doesn't say that in the minutes.

Eber Weinstein: I think it was in the discussion of the pond as not a pond by definition.

Molly Phillips: Right, I think we decided it was a stream and then I added in the stream protection ordinance.

Mark Koenigs: Ok, so that stands as N/A. We have added references for concrete curbs. Exhibit H is the final amended plan which gets referenced here. Verify the stream protection setback and adjust plans for the Town Planner Exhibit H again. Which means the applicant actually added that boundary line. Then we have the fire department saying it's okay to have one entrance instead of two. We were asking for that kind of stuff to be put in writing. I believe we should reference that, is that in the email from Dana?

Jeffery Hinderliter: They don't specifically state one access is acceptable but they state that they are okay with the plan as presented. I know it's tied down.

Mark Koenigs: Didn't we already ask for that in writing?

Eber Weinstein: We did, I remember that too.

Mark Koenigs: So, if the email says that accept the plans as is, then what exhibit should we reference?

Jeffery Hinderliter: Exhibit T, BB and CC are from the Fire Department.

Mark Koenigs: I would suggest that we add that to the Findings of Fact. We made a condition that the open space should be dedicated and the words here are that the open space shall run with development. So, the Town Planner added this?

Town of Old Orchard Beach
Planning Board Special Meeting
April 22nd, 2015

Jeffery Hinderliter: Yes, there are still some conditions that need to be worked through.

Mark Koenigs: What was the decision on the actual culvert?

Jeffery Hinderliter: The note was changed so it doesn't say that the Town is responsible any longer. There has been no final decision on the part of the Public Works Director.

Mark Koenigs: The bottom side of that culvert have rotted out. It's hard to see because it's underground. At some point it has to be repaired.

Bill Thompson: Through the chair, the plan does say maintenance and upkeep of the culvert so that will be part of the construction plans.

Mark Koenigs: The last condition is number 10 is still open?

Jeffery Hinderliter: That is still open.

Win Winch: There's a couple things that are left hanging here, Jeffery, and how do we know they will get done?

Jeffery Hinderliter: That's the problem with conditions, they do sort of get left hanging unless you have a way to track them. With staff changing it's often a problem we run into here. I know I do the best I can with tickler files with special conditions and waivers. The key is for the Planner and Code Staff to be more on-site. We will be dealing with someone completely different for the construction process than the planning process. So, we do the best we can, but number 10 is obvious and we will be well aware of.

Mark Koenigs: Is there any way we can track these conditions, even though I'm the one mostly coming up with these conditions, that we put time constraints on them? I don't want a cumbersome condition but I don't want it to get lost if it has value.

Jeffery Hinderliter: Sure, I understand. I've run into these sorts of issues a lot of times. The system I have implemented, I am hoping will continue, because I don't know who will be after me. I don't know how long code staff will be here. Putting a time frame, can be difficult, but we might put it on the notes of the plan, that way everyone can see it.

Win Winch: These are considered public improvements, right? In Scarborough they had to issue a bond or a letter of credit or something to get this done. When you have a letter of credit out there the developer will get it done.

Town of Old Orchard Beach
 Planning Board Special Meeting
 April 22nd, 2015

<p>Jeffery Hinderliter: It does get lost in the Performance Worksheet because of the wording just saying, "500 linear feet of sidewalk." It doesn't identify the Findings of Fact.</p>	
<p>Other Business: Sign Mylars:</p> <ul style="list-style-type: none"> • 36 and 29 Old Orchard Street: Retail Building Projects (Site Plan Review) • Granny Smith Court (Cider Hill): 3-lot Functional Subdivision (Subdivision Amendment) • Cascade Road (Castle Estates): Removal of sidewalk on one side of the road; Reduction of street lighting to 1 per lot. (Subdivision Amendment) 	<p>OTHER BUSINESS</p>
<p>Good & Welfare</p> <p>Mark Koenig: I don't know how this should be addressed, but the nice new ice cream cart that opened on Saco Ave. never came before the Planning Board. People have to make a left hand turn coming into Town. That shoulder then becomes a passing lane for the person stopped to make a left hand turn. I know that's an illegal move. I think the public needs to be made aware of that. I see it as a safety issue.</p>	<p>GOOD & WELFARE</p>
<p>Adjournment 8:17pm</p>	<p>ADJOURNMENT</p>

I, Molly Phillips, Secretary to the Planning Board of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of nine pages (10) is a true copy of the original minutes of the Planning Board Meeting of April 22, 2014.

Molly Phillips