

Town of Old Orchard Beach
Planning Board Public Hearing
March 12, 2015 7pm

- a. We are still waiting for a final position from Bill Robertson, Public Works Director, on the waiver request for the short section of road being at eight percent. I will try to meet with him prior to the next planning board meeting.
- b. We are revising the list of waiver requests to include the waiver on central sewer collection and treatment system.
- c. The checklist for Subdivision Article I-Sec. 74.2 has been amended to respond to the 14 items in that article.
- d. Plan Note 21 has been added to address the addition of Lot 32 and the existing brick house.
- e. Plan Note 22 has been added to clarify the purpose for the Open Space.
- f. Application has been revised to include Lot 32.
- g. We are including a typical site plan showing a house and septic system with suggested grading on Lot 18.
- h. We have submitted the Storm Water Permit application and the wetland alteration to the Maine DEP for their approval. Once this permit is granted we will send a copy to the Town.

Bill Thompson: Bill Robertson appreciated our attempt to address that 8 percent grade and the complications with wetlands and cuts and fills. He has indicated that he would support that waiver. We revised the list of waivers to basically add the request for individual subsurface collection systems versus the central collection system. A report letter from Mark Hampton and Associates arguing the benefits of individual collection systems is also part of your packet. The checklist for Section 74.2 is showing the 14th item. That is listed and included in the packet. Plan note 21 we added to address the addition of lot 32 saying the owner shall maintain the original style of the home. That was a key point and when that is sold we would like to see it maintained to the quality and character of now. Plan note 22 was added to clarify the purpose of the open space. The open space shall be left in its natural state except for the installment of the storm water improvements. It is for the enjoyment of the lot owners with no cutting or vegetation removal except for dead or dying trees. The Home Owners Association goes into detail on that in their HOA documents that does stipulate the care of the trees and the cutting of the trees. The application updates the number of lot to read 32 so there is not confusion later on. We also had discussions with the board and the DEP about grading of the lots. We picked lot 18, which may be one of the more difficult lot. We show the grading to show the plan to get approval from the DEP.

Win Winch: I just have a follow up question. Lot 18, those two test pits are pretty close to those wetlands? Is that a problem?

Bill Thompson: There is no setback for wetlands, but we can't grade on that.

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Mark Koenigs: You said we are including the typical site plan which includes the septic system as proposed on lot 18. Can you point to me where that's at?

Jeffery Hinderliter: Just a few quick things. I really appreciate that the owners of the property and the applicant have extended themselves to work with me on this subdivision. I'm recommending approval. We've been reviewing this since the summer of last year. There's some items we can work out so that we don't have to continue to table items. If the planning board accepts my recommendations. First, I don't believe DEP approval has been secured yet?

Bill Thompson: We are working on that.

Jeffery Hinderliter: So, one of my common conditions is that DEP approval shall be secured before any work is done. One concern of the Public Works Director and several Planning Board members is on Sheet 3 by Portland Ave the 24" storm drain. They were recommending that if there is an upgrade it be installed by the applicant. There is a note on the Sheet 1 note 21 regarding lot 32, the brick house, unfortunately the town did not move forward with that gift, and I recommend we also add that as a provision of approval. That the house be maintained in its original character and style. We've established a good working relationship with staff and the applicants. One recommendation that I have, I know there are some limitations with the ordinance regarding buffers, but to work with the Town Planner, Conservation Committee and the Town to create a plan for pedestrian and bike traffic on the open space with in the development. I am for the development of trails for human access but I also want to protect the open space for animals and their natural habitat. Toward the front of the property along Portland Ave, we do have possibilities for a connection to the Town of Old Orchard Beach land across the street. Through the establishment of relationships with the owners I think we can work on those connections. So, to summarize:

One condition to secure DEP approval before construction begins

Second condition that Note number 21 on sheet 1 be incorporated as a condition

Third condition for sheet 3 maintenance notes, the maintenance be deleted but the upgrade of the 24" storm drain is the responsibility of the owner.

Bill Thompson: Let me address those one by one. DEP approval is no problem. The brick house, obviously the developers want to make sure it gets maintained so any further language to protect that is fine. The culvert under Portland Ave, the area around it is filled in and I would like to work with Bill Robertson regarding maintenance. Our calculations show that it's close. One more 25 year storm, it could topple over. No one needs to rip

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that out, but as part of that condition we ask that we work with Public Works on the maintenance of that. As far as working with the Town, we have never advocated an open trail system. The thing about a clustered subdivision is that we preserve the nice open space and we want to keep those buffer zones. We've protected the streams and the pond, and we would prefer a natural open space and not open it up to trails.

Eber Weinstein: So, back to the 24" drain, that's your design right?

Bill Thompson: Well, it's our intention to determine if that drain is sufficient. It shows that the 15" could be impacted. What I want to do is see if there's a way we could create more storage. A lot these culverts may be undersized, but there are so many variables that may impact drainage that aren't always apparent. So we would like to work with the Public Works Director on that.

Mark Koenigs: Going through the Town Planner's conditions. I don't agree with the recommendation made about the open space completely. I don't think appropriate studies and thought have been put into how the open space ties into a community. With respect to wildlife, there are designated habitat areas but it isn't designated in that area. I think the open space areas become for the enjoyment of the land owners but I think it should be open to the public as well. I think in a dedicated open space it should have an egress for the public so that there is enjoyment of the pond. They aren't buying that property, so it should be protected for public enjoyment. My condition would be slightly modified from that. I have quite a few concerns about the project and the waivers. I think we need to take each item and create a Findings of Fact for this. I know we have encouraged the Planner and the developers to go through this process, with a number of waivers.

The first thing, looking at the shoreline zone section. The setback is 75' on their plans from the pond, the adjacent development has a setback of 100'. Looking at the shoreline ordinance it actually says 100 feet. So, to start off I think the house lots are too close to the shoreline. The banking is too steep and the lots are too small. They are asking for a variance to get the lot size down to 20,000sf. It's all within the right of the board to make the variance but I don't think it's a good idea so close to the pond. My position is that the septic system can be waived but some sort of condition should exist, also in the Home Owner's documents that the septic systems are regularly reported and maintained with the report given to the town. Just so the town is regularly informed on what is going on.

I think the easiest way to go through my comments is to look at the individual waivers:

Eber Weinstein: So, you want to go through the waivers?

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Mark Koenigs: I do, I want to go through the ones I take exception to and then let the board go through the waivers as well during discussion.

The first one is the maximum grade and Bill already stated that the Public Works Director through the Town Planner has already stated that it's okay to have a short grade according to the applicant's engineer. I have no problem with that either.

The second thing is the concrete curbs. The plans I had from the last month's submission state a bituminous material, and I want to make sure they are concrete.

The waiver for, street design standards, I still have some problems. If we are using Beachmont as a precedence for clustered subdivision, it shouldn't apply here because there is no break away gate and only one road for egress. I think there is no good way to put in that second egress without messing up the plans as they are.

Eber Weinstein: We did get the Police Department and the Fire Department on that. It seems to me, this is their area.

Jeffery Hinderliter: Thank you. Yes, the Police Department and Fire Department reviewed it and saw no problem with the single egress.

Eber Weinstein: There is a reason for that in the ordinance with the 15 lots. For the future if we get something in writing from each department to the planning board then we don't have to ask these questions. Maybe for every project you could get a written thing from department heads.

Jeffery Hinderliter: I do meet with them once a month and ask for that every month, but I can't force them to do it. Bill Robertson is pretty consistent with his comments. Other departments really offer very few comments. I can set a date, with a checklist just to get a simple yes on the project.

Eber Weinstein: Speaking of which? Did we get a peer review of this?

Jeffery Hinderliter: Bill Robertson is a licensed engineer, he did the review on this project and continues to work with us. Wright Pierce and the Town have some issues right now with payment on the peer reviews. Once we get the Performance Guarantee, we incorporate those fees into the payment schedule.

Eber Weinstein: That's very important because we don't have the time or the experience to do that and the research involved. We should have that peer review on all the future projects.

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Mark Koenigs: So, the zoning regulations for 12 Rural District: You actually have to go to the 74 Section for the zoning cluster standards. I went through and highlighted everything on there. There are two things: size of the lots, request for the waivers to reduce lot size and the second thing is the sewer. This is only based on a previous approval for Beachmont. Waiving the public water to 20,00sf or half acre lots. The waiver for minimum lot width goes with frontage and these lots are different from Beachmont in that they are more rectangular and include the stream setbacks in them. The waiver for net lot area is 30,000sf to 28,000sf.

Bill Thompson: It is a "cluster" but with the waivers it was the way that Jeffery wanted it to accommodate that lot 32 house. That is how we determined how many parcels this land would fit. We are asking for a waiver of 2,000sf per lot. We have been doing these things all along the way. We've worked all these things over the last few months.

Mark Koenigs: They have, what is required in section D, a buffer of dedicated open space that is 20 feet and they have 25 feet around all perimeter of the development. It basically says in the ordinance that it shall not be paved or used for storage. I think the 'Findings of Fact' should state what the intent is and how it should be dedicated. The plans should be very clear.

I would like a simple report on septic systems that gets done every 2-3 years and each homeowner can show that they've pumped out that system. Then the lots that haven't been used would show as unoccupied and won't have a report. Then every 5 years, collect those reports and turn them into us to show what the status is of those systems. I would ask that the Town Planner and applicant work out the language and make this a condition of approval.

Eber Weinstein: Given the location of this project, I think that's not a bad suggestion. Like a maintenance report.

Jeffery Hinderliter: Something I came up with was, homeowner shall submit a septic system inspections report every 2 years to ensure the septic field and the septic tank are functioning properly.

Bill Thompson: Given the soils and the conditions out there maybe we can stretch that to 3 years.

Mark Koenigs: I wouldn't start the report until the development is completely built out.

Eber Weinstein: That would be something the association, part of their dues, could control. Given the location, and that they are asking for a waiver.

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Mark Koenigs: Under 74.2.78, the open space basic requirements under item 3 starts off with overall development requirements and then talks about common open space or "common land." It lists 8 items for use of open space. I want to make sure that on the plans it says "dedicated" open space. I want a note on the plans that allows public access to a degree to allow access to Miliken Mill Pond.

Bill Thompson: One of the concerns from the owners is that if we open it up to the public where are people going to park?

Eber Weinstein: Well, they wouldn't have to park, it would just be for foot traffic.

Mark Koenigs: The Conservation Committee is working on trails in the 50 acres opposite to this project. There would be a parking lot by the animal shelter there. There is parking within a half mile of the pond. I want to make sure they can then also get to the Easter Trail from Portland Ave as well. I would want to see a right of egress for the public for that.

Bill Thompson: So, I guess to summarize we could work with Bill Robertson for the some needs on the front of the property in conjunction with the culvert that's a benefit for everyone.

Johnny Hall: If you build this trail system out there and you have a lot of public access hiking and biking, it's going to funnel them from your trails to our development. We're worried about encouraging the shoulder development and getting too many people.

Mark Koenigs: My solution to your concern, is that the signage would stipulate what is permissible. The drainage pond is a natural barrier.

Johnny Hall: So, building out a trail from the Town side of the pond to our side of the pond, doesn't make much sense to me. The other thing is the septic system. Those are designed with a valve to alert the homeowner to a problem before it overflows the entire system. So, the symptoms show up to the homeowner first.

Eber Weinstein: Well we want to be sure with this development that we address the issue of possible break out because it's so near the pond. We approved it for the other place because it was a little farther away. If something goes wrong here, it's a bigger problem.

Win Winch: I think the thing to do is to tick through these waivers one by one. And get through a couple of them at least.

Eber Weinstein: We will start with Article 6 Street Design Standards:

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Sec. 74-309 a. Waive the maximum grade from 6 percent to 8 percent.

Win Winch: Public Works, Bill Robertson, gave the ok and then the pavement width was something we were pushing for as well.

Eber Weinstein: We will just ask informally on each one whether you are for or against it. So on 1. A. of the waiver request?

Mike Fortunato: Yes

Win Winch: Yes

Mark Koenigs: Yes

Eber Weinstein: Yes

Mark Koenigs: So I understand, we are going to go through and verbally and agree and then one official vote?

Eber Weinstein: I think we are doing it officially now. It's still legally binding even if it's informal.

Jeffery Hinderliter: I think if we have a condition or an objection a waiver we should have a call for a vote.

i. B. waive minimum pavement width from 24 to 20 feet.

Eber Weinstein: I think we'll just make a condition on that for the plans to be corrected from Bituminous material to concrete.

Jeffery Hinderliter: I'll recommend a condition that all documentation show concrete curbs.

Mike Fortunato: Yes

Win Winch: Yes

Mark Koenigs: Yes

Eber Weinstein: Yes

j. A. Waive the requirement of subdivision containing 15 of more lots having two street connections with existing street.

Mike Fortunato: Yes

Win Winch: Yes

Mark Koenigs: Yes

Eber Weinstein: Yes

k. Zoning Regulations Division 12 – Rural District

l. Waive minimum lot size with public water from 40,000sf to 20,000sf

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Mark Koenigs: Just a question for clarification, besides the perimeter buffer zone, the areas that show on the plans touching lot 15 and then 26, 27, 28, is that open space?

Bill Thompson: No, that's just the lot line.

Mike Fortunato: Yes

Win Winch: Yes

Mark Koenigs: Yes

Eber Weinstein: Yes

Eber Weinstein: I would want to get in writing the Milliken Mill access conditions before agreeing to any of these right here.

Mark Koenigs: Through the chair, I have concerns about lots 15, 27 and 28 that sit so close to the pond. I brought up earlier that the shoreline zone is 100' but I think the ordinance is 75'.

m. Sec. 78-1182 Establishment of shoreland zone and subdistricts. f) Stream protection subdistrict (SP). This subdistrict includes all land areas within 100 feet, horizontal distance, of the normal high water line of a stream and all land areas within 100 feet of the high water line of the nontidal portion of the Goosefare Brook, located from the Boston and Maine Railroad tracks upstream to the Saco border, exclusive of:

(1)

Areas within 250 feet, horizontal distance, of the normal high water line of a tidal saltwater body; and

(2)

Areas within 250 feet, horizontal distance, of the upland edge of coastal or freshwater wetlands.

Where a stream and its associated shoreland area is located within the proscribed horizontal distance, above, from such waterbodies or wetlands, that land area should be regulated under the terms of the shoreland zone subdistrict associated with that waterbody or wetland.

Jeffery Hinderliter: Shoreland zoning can be a little confusing. There is a difference between the district and the actual setback. The stream protection district is 100' but the zoning setbacks are 75'.

Mark Koenigs: Well, let's clarify with the actual ordinance I am reading: Shoreland Zoning page 78: 1182 establishment of shoreline zone districts. Letter F

"Stream protection sub-district, SP, this sub-district includes all lands within 100 feet, horizontal distance, of the normal high water line of a stream and all areas within 100 feet of high water line of the non-title pond of Goosefare Brook."

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n. **Ordinance Definition of Shoreland Zone:** *Shoreland zone means the land area located within:*

(1)

Two hundred fifty feet, horizontal distance, of the normal high water line of any river, saltwater body or the nontidal portion of Goosefare Brook downstream of the Boston and Maine Railroad bridge;

(2)

Two hundred fifty feet, horizontal distance, of the upland edge of a coastal or freshwater wetland, as defined in this chapter;

(3)

One hundred feet, horizontal distance, of the normal high water line of the nontidal portion of Goosefare Brook upstream of the Boston and Maine Railroad bridge; or

(4)

One hundred feet, horizontal distance, of the normal high water line of a stream;

(5)

In addition, the shoreland zone extends seaward to the municipal boundary.

Shoreline means the normal high-water line, or upland edge of a freshwater or coastal wetland.

Eber Weinstein: That's an important one, is this an SP district?

Jeffery Hinderliter: Yes. I certainly feel we need to look into that, what we could do is apply a condition that an amended plan be required to come back before the planning board.

Eber Weinstein: If it's a 100 feet, some of these lots aren't going to work. Where did you get that 75'? (To Bill Thompson)

Bill Thompson: I think it's like Jeffery explained, it's always been 75'. I don't know where it says it exactly but I can look that up. I'm very confident here that we are correct, but I can't quote the source.

Eber Weinstein: What did we use for Beachmont, do you remember?

Bill Thompson: I didn't do that one.

Mark Koenigs: So really, through Bill's testimony, looking at it with Mr. Winch, where it comes up here you could still put the 100' set back and it would show that the lot still works. I guess the way I am reading it is that its 100' from Milliken Mills Pond, but these other streams are a lesser grade of shoreline. I think the actual document that controls the ordinance is the map. So, if the map says it, then it would be right.

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Jeffery Hinderliter: Just to go off that, the DEP did accept the ordinance and the map. Correct the map is the controlling document.

Win Winch: I suggested to Eber that we are going to need clarification on those set back issues but we could skip down and tackle the Article 5 waivers.

- o. Article V – Review Criteria
Sec. 74-278 (b) (7) a. Waiver from the requirement of all structures being connected to central collection and treatment system. This is based on an engineering study accepted as part of a previously approved cluster subdivision. This study has determined that individual subsurface disposal systems will meet all State and local standards.

Win Winch: I think with the addition of what Mark said in the Home Owner's documents, the inspection at 3 years after full occupancy. I accept that condition.

Mike Fortunato: Yes

Win Winch: Yes

Mark Koenigs: Yes

Eber Weinstein: Yes

Jeffery Hinderliter: So do you want to mention who is responsible, I know it was mentioned the home owner's association? Ok. How does this sound:

The Home Owner's Association, HOA, shall be responsible for submission of inspection reports of subsurface waste disposal for each lot every 3 years. Submission shall go to the OOB licensed inspector with inspections to begin with occupancy of the last lot.

Bill Thompson: Can I ask where we stand on number 3?

Eber Weinstein: My personal feeling is that, from the result of our conversation about the 24" drain, we need to have that looked at before we vote.

Bill Thompson: So, you want to make that a condition or you are expecting a different action?

Mark Koenigs: My intent was to bring up all of these waivers and conditions for the Findings of Fact, that we make conditions for the approval of the subdivision knowing these things that need to happen will happen. The waivers themselves are based on the approval of the plan as a whole. We are

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saying that nothing is final until these conditions are taken care of, so that we can move forward.

Eber Weinstein: Ok. I see what you're saying. What exactly are your conditions? We have the pathway on the front going up to the pond some of the way and we have the culvert. Is there anything else?

Zoning Regulations Division 12 – Rural District Sec. 78-964

- a. Waive minimum lot size with public water from 40,000sf to 20,000sf

Mike Fortunato: Yes
Win Winch: Yes
Mark Koenigs: Yes
Eber Weinstein: Yes

- b. Waive minimum lot frontage from 200 feet to 90 feet.

Mike Fortunato: Yes
Win Winch: Yes
Mark Koenigs: Yes
Eber Weinstein: Yes

- c. Waive minimum lot width from 200 feet to 90 feet.

Mike Fortunato: Yes
Win Winch: Yes
Mark Koenigs: Yes
Eber Weinstein: Yes

- d. Waive net lot area from 30,000sf to 28,000sf

Mark Koenigs: My condition is that open space needs to be dedicated.

Mike Fortunato: Yes
Win Winch: Yes
Mark Koenigs: Yes
Eber Weinstein: Yes

- e. Waive minimum front yard setback from 50 feet to 20 feet

Mike Fortunato: Yes
Win Winch: Yes
Mark Koenigs: Yes
Eber Weinstein: Yes

- f. Waive side rear setbacks from 25 feet to 10 feet

Mike Fortunato: Yes
Win Winch: Yes

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Mark Koenigs: Yes
Eber Weinstein: Yes

Eber Weinstein: Now, we go through all the conditions.

Approval Conditions:

DEP approval

Verify the Stream Protection setback and adjust plans as necessary

All documentation shall show concrete curbs

One access to Portland Ave is acceptable upon sign off from Fire Dept., Police Dept. and Public Works

Open space shall be “dedicated”

The HOA shall be responsible for submission of inspection reports of subsurface waste water disposal for each lot every 3 years, submission shall go to the OOB licensed plumbing inspector with inspections to begin with occupancy of the last lot.

Note #21 Any Owner/Applicant shall make no changes to the exterior of the house preserving the historical style and character.

Sheet 1 where lot 32 is, there are two proposed pins to be set that face Milliken Mills Pond, I would recommend removing the one property boundary where Portland Ave is and adding a property boundary for a permanent perpetual easement for foot traffic only along the upper boundary by Milliken Mills Pond.

Applicant and/or owner shall work with the Town Engineer regarding the drainage along Portland Ave and access along the shoulder of the Westerly side of Portland Ave. Note concerning 24” storm drain shall be adjusted. Final approval of all changes will be the responsibility of the Public Works Director.

Applicant and/or owner shall work with the Public Works Director to establish access for pedestrian and bicycles along the Westerly side of Portland Ave, from the Beachmont Subdivision to the permanent public easement adjacent to Milliken Mills Pond.

Article 1 Sec. 74.2

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<ol style="list-style-type: none">1. The proposed subdivision will not result in undue water or air pollution. In making this determination it shall at least consider the following:<ol style="list-style-type: none">a. The elevation of the land above sea level and its relation to the floodplains;<ol style="list-style-type: none">i. Development Area is generally 15 to 30 feet above the 100 year flood zone.b. The nature of soils and subsoils and their ability to adequately support waste disposal;<ol style="list-style-type: none">i. Soil Tests for individual subsurface disposal systems indicate sandy soils with 15" to 16" to mottling.c. The slope of the land and its effect on effluents;<ol style="list-style-type: none">i. All area proposed for subsurface disposal systems are on slopes from 3 to 8 percent.d. The applicable state and local health and water resources regulations;<ol style="list-style-type: none">i. All construction of subsurface disposal systems will meet local and state plumbing codes.2. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision;<ol style="list-style-type: none">i. Public Water is available for this site. We have secured a letter stating "ability to serve" from Maine Water.3. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be utilized;<ol style="list-style-type: none">i. There will be no unreasonable burden on the existing public water supply.4. The proposed subdivision will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result;<ol style="list-style-type: none">i. All construction will be per Maine DEP Best Management Practices. This includes all measures to stabilize this site and minimize erosion and its capacity to manage surface water.5. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed;<ol style="list-style-type: none">i. The proposed units will access from Portland Avenue with a 90 degree intersection. Sight distances in both directions exceeds 500 feet.	
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<p>6. The proposed subdivision will provide for adequate solid and sewage waste disposal;</p> <p>i. Solid waste will be handled under the existing Town's collection system with licensed haulers. Sewage waste will be treated on individual lots with a subsurface disposal system.</p> <p>7. The proposed subdivision will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized;</p> <p>i. There are no known issues with the ability of the municipality to handle the solid waste from these 31 units. The municipality will not be handling any sewage waste.</p> <p>8. The proposed subdivision will not place an unreasonable burden upon local, municipal or governmental services;</p> <p>i. There will be no unreasonable burden on local municipal or governmental services from 31 residential units.</p> <p>9. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas;</p> <p>i. The proposed subdivision has been designed so as to not impact the scenic or historic significance of this site. We are proposing 6.6 acres of open space along Milliken Mills Pond for the enjoyment of all lot owners. In addition the applicant is gifting the existing brick home along Portland Ave with one acre of land around it for further protection.</p> <p>10. The proposed subdivision is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan, if any;</p> <p>i. This project will conform to subdivision regulations with the exception of a waiver on density. All lots will still meet the requirements of being 20,000 square feet or larger.</p> <p>11. The subdivision owner has adequate financial and technical capacity to meet the standards stated in subsections (1) through (10) of this section.</p> <p>i. The applicant has the financial and technical capacity to complete this project. The applicant will submit a Performance Guarantee prior to construction.</p> <p>12. Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, the proposed subdivision will not adversely</p>	
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<p>affect the quality of such body of water or unreasonably affect the shoreline of such body of water;</p> <p>i. The three proposed lots within 250 feet of the existing pond will not adversely affect the quality of the water in Milliken Mills Pond.</p> <p>13. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater;</p> <p>i. The approval of this residential project will in no way adversely affect the quantity or quality of groundwater.</p> <p>14. The proposed subdivision will not unreasonably interfere with access to direct sunlight for solar energy systems.</p> <p>i. The proposed construction of homes under the current zoning of height limits will not unreasonably interfere with access to direct sunlight for solar energy systems.</p> <p>Mark Koenigs: I motion that the board conditionally approve the 31 cluster subdivision Orchard Estates with the following conditions:</p> <p>Approval Conditions:</p> <p>DEP approval</p> <p>Verify the Stream Protection setback and adjust plans as necessary</p> <p>All documentation shall show concrete curbs</p> <p>One access to Portland Ave is acceptable upon sign off from Fire Dept., Police Dept. and Public Works</p> <p>Open space shall be “dedicated”</p> <p>The HOA shall be responsible for submission of inspection reports of subsurface waste water disposal for each lot every 3 years, submission shall go to the OOB licensed plumbing inspector with inspections to begin with occupancy of the last lot.</p> <p>Note #21 Any Owner/Applicant shall make no changes to the exterior of the house preserving the historical style and character.</p> <p>Sheet 1 where lot 32 is, there are two proposed pins to be set that face Milliken Mills Pond, I would recommend removing the one property boundary where Portland Ave is and adding a property boundary for a</p>	<p>Motion</p>
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clarification came up for open space with the summary. The board does have it on the plan and in their packet with outlines of the approvals from 1988. We are still at just under 50% with 35% being required as the open space for the entire project. The third point of my letter is the Maine DEP minor amendment for the subdivision. It's a pretty straight-forward process.

Matt Warner: The other item outstanding was the chart of the density issue. With approval, "The Turn" will fall into the requirements of density. The PMUD district requirements, 20,000 square feet per lot, as indicated here. Then in 2009 the Dunegrass Development was approved complete with 589 units meeting the density requirements. (*Chart shows: -52 units (Section B, 2009) +5 units (WDW, 2009) +4 units (Hole 13, 2012) +11 units (Hole 16, 2013) +2 units (Section A, 2012) = -30 units.*) We are still 30 units below the number for which we were approved in 1988. Furthermore, Sawgrass is at 18 units leaving 48 units from the original approval. The Turn is 24 units, leaving another 24 units below the approved amount. In other words it would take another project being approved at 24 units to be back to the original unit count from 2009. This is the density requirement that has previously been used in every previous approval and using that standard we are within the density requirements for Dunegrass.

There are couple of items that came up at the Public Hearing last month, the Butet Family Attorney asked that he be given a chance to talk on behalf of his clients. Since then he has submitted 12 pages of comment in opposition to this project. Frankly we feel, there ought to be some protection from his comment at this hearing.

Jeffery Hinderliter: I will turn it over to our attorney in a minute. There are two remaining questions, the Planning Board wanted a site plan showing the open space and the confirmation of density.

Eber Weinstein: I think the big question was whether the golf course was considered open space and it was.

Phillip Saucier: There was some confusion over open space and I wanted to address that first. The wrong definition was being used as the definition for open space. So, I reviewed the ordinance for the PMUD zoning, so the specific definition does allow passive and active recreational activities. So, trails, hiking, biking, and the use of swimming pools but only applies in the PMUD. The open space use definition used last time is actually an "orphan" definition, but it doesn't seem to apply in the PMUD which has its own definition. You asked me to look through prior approvals, it did state in the original approval about the golf course, that it be made public.

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Mark Koenigs: It doesn't mean that we have to let him get to 35% because when Dunegrass was originally approved it was more than that. I'm not going to let them build everything out until there's just 18 fare ways. That's not what the original approval intended. We can't really stop this project, but we do need time to get all the facts in. What I am getting at, that when we do approve this project, a condition be made to settle the open space once and for all. I want them to sit down with staff and engineers, to the level of GIS mapping, the areas that will be dedicated open space. That will define the open space for future projects. Right now it's 49.1% according to the engineer. I put forth to the board that it should be somewhere between 45 and 49 percent and have the current open space shown on a plan with notes indicating which parts are dedicated.

Sec. 78-1026. - Distribution of uses. A minimum of 35 percent of the project parcel shall be retained in dedicated permanent open space. Roads, parking lots, utility facilities and easements shall not be eligible for open space designation. (Ord. of 9-18-2001, § 9.3.4; Ord. of 12-15-2009(3))

Eber Weinstein: We can't just day let's keep it to 45%?

Mark Koenigs: The original approval was more. Where am I wrong in that? If it was 162 and now we carve it out to the 35%, there was intent in the original approval. Just because it was changed along the way and the PMUD standard is 35%, I'm going back to what was originally approved. The problem is the net density. You have to have the open space to create that number for the net density. I don't really care about the units, we know they are going to be single family units on smaller lots, but the homeowners will actually have some yard.

Matt Warner: If I could just interject two points of clarification. One, just to be clear, our open space does calculate the Hole 13 subdivision and the 5 lot subdivision and the lots on Wild Dunes Way.

Mark Koenigs: Well, if you're going to bring up calculations, I want to know what happened to the maintenance area. What was that in the original plan? If we talk about taking things from the original approval I would like to know where this subdivision is taking from and where else the open space is going.

Matt Warner: Mr. Chair Open Space is a purely legal question, it's defined by the ordinance. For better or worse that's what we have as our standard. The maintenance area was not open space because it doesn't fit within the open space per the ordinance. Furthermore, if this project were approved based on a condition that all parties agree on open space, then the Board would be squarely in the middle of issues that are now subject to litigation.

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Win Winch: So, maybe we should table everything and perhaps have a study. We ought to table it to figure out these issues. We are going to get down to those last few developments who want to go ahead and it'll be a crap shoot who gets those last few units, I think. It's like a race to the finish. I think it's good to get this figured out.

Eber Weinstein: You know something, their court case is nothing we want to involve us and that's their problem.

Phillip Saucier: Let me just reiterate, what I think we've said in 3 different letters to you including 1 from my predecessor, which is we are not in the business of deciding who owns these units. We don't have a responsibility or an obligation to do that. At the end of the day, does it meet the ordinance, does it meet the original approval, and these are the relatively simple tasks you have. That's a question of math. You are seeing it tonight for the first time and I would think that Jeffery would like to analyze those numbers. The Boutet family has submitted their numbers. You would want to analyze whether or not the numbers support a decision that this project falls under the 589, if it does not, then does it meet density requirements for the PMUD. Because that is how you would exceed that. Maybe this needs to be done by applicant or the Town, but a third party could verify how many units are built. Then figure out how many can still be built according to the plan. Because they are still shown on the plan as non-amended. Then figure out how many have actually been built. It's a pretty straightforward calculation but somebody needs to do it. It's not my Baileywick. I think I would leave it at that at this point is the numbers that are needed to get the correct density and open space requirements.

Mark Koenigs: How do you build outside the approved sections into other areas? Other than by amendment, which takes up more space that changes density and therefore open space?

Phillip Saucier: Well, I think you said it, you would need an amendment.

Mark Koenigs: The amendment is only changing the density all the time. My problem is that each time we amend we take away open space and change that density measurement. That's all I wanted to make clear.

Eber Weinstein: Well there's that maintenance area that we gave permission to.

Mark Koenigs: There's no accounting for that open space used and then you can't really rely on the original approvals. To me you can't mix and match standards. It's up to us to figure out what the intent was and how it should be applied. If this is going in a spot that was originally planned open space then my vote is no. That's it, no!

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Eber Weinstein: But we approved the maintenance area that was taking out open space?

Mark Koenigs: That wasn't open space according to the lawyer.

Matt Warner: The 5 along Wild Dunes Way and the 4 from Hole 13 were open space.

Mark Koenigs: Yeah, but what's happened, happened. We can't let it continue to happen in the next 40 years. This is for the board to discuss, I don't think we need any more input from the public.

(Ron Boutet tries to interject.)

Eber Weinstein: This is Dominic's project, you can't give comment right now. I will let your lawyer speak later.

Mark Koenigs: Looking at the PMUD ordinance Sec. 78-1025 Space and bulk requirements, under "with sewer," density and general residential is 20,000sf per unit. How do they get to that number? They would have to use open space somewhere else within the whole project. Which is where I keep coming back to, the cluster development open space definition. Where is the open space dedicated?

Eber Weinstein: The fact that we gave the units on Wild Dunes Way and we didn't ask for open space.

Win Winch: Those were standalone lots that came out of open space.

Eber Weinstein: Yes, that ate up the open space and we still approved it. How big were those lots? 100 feet by 75 feet so about a half-acre.

Jeffery Hinderliter: And you can always, vary from the minimum lot size, as far as I am aware and propose a cluster subdivision. Just like we did for Orchard Estates Subdivision. What makes this one a little different, that benefits this project, is that they are using public sewer and water so they are now bound to the minimum lot size of 20,000sf.

Eber Weinstein: Well, also this project is not really its own subdivision, so it is easier to approve. Because it's part of Dunegrass, we have had an easier time of it.

Mike Fortunato: In the case of the open space, the original approval of 162 acres seems to be in opposition to the PMUD standard of 35%. So, which one trumps the other?

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Phillip Saucier: The approval in 1988 is allowed to be built as is. You certainly couldn't go below the 35%. But somewhere between the current open space and the 35% is where you have to make the decision. If the applicant is meeting all the criteria, then you have to weigh the amendment to the plan. What I understand from tonight is that the overall density standard would be met given that previous projects have been built with lesser units. So, they could build this today and be within the density standards.

Mark Koenigs: Say the golf course is no longer a golf course at some point in the future. And it's left to go fallow, then all of a sudden there's 50 acres to be developed. Has the board thought of that? I think we have to consider what will happen 20-30 years from now. I think that's why the open space is important and we have to consider it. I think it's for the enjoyment of everybody.

Mike Fortunato: Well, that's what I'm saying. On every other plan there's a dedicated open space as the golf course. So, on this plan, that's going on the golf course, we need to see what "open space" is exactly and what's open for development.

Eber Weinstein: This is a very special project and the way it was approved originally is from a legal stand point, messed up. Because what can be done here is subject to the regular approval process. Because of the way it was approved with the number of units being built, from the legal and planning point of view, it's messy.

Mike Fortunato: I will say it's been challenging.

Dominic Puligaris: We all know what the golf course is, and without the Dunegrass development as a whole would be worth half of what it is now. There is no way in the world that golf course is going anywhere.

Mark Koenigs: So, then you would be willing to dedicate that?

Dominic Puligaris: I am willing to keep the golf course there, the way it is, and build up to the 35%. I am not willing to say that I am going to give up to 10% of that. The ordinance allows me to build up to 35%. And I will build up to 35%, I am going on record saying that. It will bring in people and make the golf course stronger because without it there is no development there. Dunegrass is a well-designed golf course, the way it's laid out now is perfect. Since we built the other developments like Cherry Hill, the restaurant has been able to stay open year round. That brings money into the town. I understand that you want open space. I want my golf course to be as good as it is today. Putting these 24 houses doesn't affect the golf course. By the way, it's my golf course and if I think it's okay to have a road going across that, I don't think that should have any bearing on this.

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Mark Koenigs: You said, that the 24 units would have no effect on the golf course. To me, that's a change.

Mike Fortunato: I just wanted to ask Dominic this question: What is the actual acreage of the 18 holes?

Dominic Puligaris: I think it's in the 150 range.

Mike Fortunato: So, you would be able to get down to 35%, since it's more now. Your calculations now say that it's 154 acres. So that only leaves 4 more acres to be built upon.

Dominic Poligaris: I'm not sure of the math, but the golf course is somewhere in that range and there is land to be developed. On the perimeter that won't affect the golf course.

Mike Fortunato: But, what is the 18 holes, how many acres is that?

Eber Weinstein: Ok. That's enough discussion of that. Let's allow the other lawyer to speak, but can you keep the comments brief.

Edward McColl: Thank you for the opportunity to speak. I want to make sure that the board understands, there are other owners at Dunegrass. We think it's a mistake that they didn't get notice of this development. The Planning Board doesn't give notice to the other owners for exactly the reason that you are outlining. My reading of the dedicated open space is that if you show the golf course as open space and it's more than the 35% than it is permanent and done. I don't think the ordinance was created to allow for more development. We have documents that we have submitted from the original approval that this is dedicated green space. The owner of the golf course contends that he can come along and build homes in front of the Mrs. Boutet's sections of Dunegrass and he can do that to anyone else he wants. That's not what is in line with the ordinance or the original plan for green space. I think there is dedicated open space and it's the golf course and it can't be whittled down to 35%. With respect to density, Mr. Saucier has said that the PMUD takes precedence with the density requirement. Which means that somebody has to do the calculations for density, and no one has submitted anything either for the little area here or the overall Dunegrass. At the last hearing, they contended that they have grandfathered rights in the 589. The golf course has no grandfathered rights in the 589 because no units were ever planned to be built there. Even if they did, their math is leaving out increased units in other sections of Dunegrass. We submitted a detailed plan showing 575 specific locations leaving 14 units that could be built today under the 589 unit density at Dunegrass. We submitted this to Jeffery and we

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would be happy to walk the site and point out this layout. But certainly, there's no way that 24 units exist in the plan to be developed.

Matt Warner: A couple of quick points. The Boutet family can talk about dedicated open space and no one should be able to build on it. But, they built on it. Those 5 units on Wild Dunes Way was a Boutet family enterprise. None of these concerns were brought up then. The Planning Board is the one who interprets the ordinances and they have consistently, with Hole 13, decided that the open space is open for development. This is the way the Planning Board has done it. Look at what's been built, what's still available. I have no way to verify Ed's chart that he gave to Jeffery. The units he is referring to here are from a 1999 approval and a 2005 approval that are 10 and 15 years in the past. I have accounted for them on my visual, again, before Section B approval in 2009, even with this approval there are 24 units still available at Dunegrass. I agree that the town should have some sort of exercise and find out what is built at Dunegrass and what is not. That has nothing to do with this approval and frankly we've met every requirement that has been mandated by this Planning Board over the last few 4-6 applications.

Mark Koenigs: Even with all that said, with both lawyer's comments, I still have my view of things. I don't need to keep hearing the same thing over and over. I am willing to move this forward with a motion. If it goes forward as a project we need a condition that open space and density requirements be verified by the Town Planner.

Eber Weinstein: Let's go through the Section 74.2 answers.

1. The proposed subdivision will not result in undue water or air pollution. In making this determination it shall at least consider the following:
 - a. The elevation of the land above sea level and its relation to the floodplains
The elevation of the land for the entire project is approximately 100 feet above sea level.
 - b. The nature of the soils and subsoil and their ability to adequately support waste disposal
Public sewer is being proposed.
 - c. The slope of the land and its effect on effluents
No on-site waste disposal systems
 - d. The applicable state and local health and water resources regulations.
Public utilities meeting all local and state regulations.

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2. The proposed subdivision has sufficient water available for the reasonably foreseeable needs of the subdivision.

Public water is available for this site. We have secured a letter stating "ability to serve" from Maine Water.

3. The proposed subdivision will not cause an unreasonable burden on an existing water supply, if one is to be utilized.

There will be no unreasonable burden on the existing public water supply with an existing 12" water main in Wild Dunes Way.

4. The proposed subdivision will not cause an unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.

All construction will be per Maine DEP Best Management Practices. This includes all measures to stabilize this site and minimize erosion and its capacity to manage surface water.

5. The proposed subdivision will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highways or public roads existing or proposed

The proposed units will access from Wild Dunes Way with a 90 degree intersection. Sight distances in both directions exceeds 300 feet.

Mark Koenigs: Wild Dunes Way was not designed as a major thorough way, so I think with each new approval, going forward, we need a traffic study. We at least need a letter from a traffic engineer that the study has been updated.

6. The proposed subdivision will provide for adequate solid and sewage waste disposal.

Solid waste will be handled under the existing Town's collection system with licensed haulers. Sewage waste will be pumped to the Town's Municipal Sewage Treatment Plant.

7. The proposed subdivision will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage if municipal services are to be utilized.

There are no known issues with the ability of the municipality to handle the solid waste from these 24 units. The municipality will be handling any sewage waste.

8. The proposed subdivision will not place an unreasonable burden upon local, municipal or governmental services.

There will be no unreasonable burden on local municipal or governmental services from 24 residential units.

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9. The proposed subdivision will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare and irreplaceable natural areas.

The proposed development has been designed so as to not impact the scenic or historic significance of this site. The units are bordered by Golf Hole 9 and 10 and an undeveloped parcel to the west.

10. The proposed subdivision is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan; if any.

This project will conform to subdivision regulations for the PMUD zone.

11. The sub divider has adequate financial and technical capacity to meet the standards stated in subsections (1) through (10) of this section.

The applicant has the financial and technical capacity to complete this project. The applicant will submit a Performance Guarantee prior to construction.

Mark Koenigs: Don't we include this in our packets?

Jeffery Hinderliter: I think this one is the prior application and one has been submitted.

12. Whenever situated, in whole or in part, within 250 feet of any pond, lake, river or tidal waters, the proposed subdivision will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.

N/A

13. The proposed subdivision will not, alone or in conjunction with existing activities, adversely affect the quality of quantity of groundwater.

The approval of this residential project will in no way adversely affect the quantity or quality of groundwater.

14. The proposed subdivision will not unreasonably interfere with access to direct sunlight for solar energy systems.

The proposed construction of homes under the current zoning of height limits will not unreasonably interfere with access to direct sunlight for solar energy systems.

Eber Weinstein: So everybody agrees with all those? (4 yes answers) Do we have a motion?

Jeffery Hinderliter: I know the Planning Board discussed a condition. I don't have that written down. I think it was regarding the density calculations.

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Mark Koenigs: I would like to make a motion with that condition worded in a way agreeable to the board members. I wanted to ask first, did you have any recommended conditions for the approval. The DEP letter you have? Do we have what we need for the GIS file copy and update that?

Jeffery Hinderliter: I believe the DEP condition is applicable here.

Mark Koenigs: So, if there are any changes, the applicant would come back and notify the board. Is the GIS one necessary?

Jeffery Hinderliter: We usually deal with this internally and we get a fairly decent response to it. If you feel it's applicable, then we can add it.

Phillip Saucier: I was just clarifying what your condition on density is. Are you saying you want the applicant to come back with different density conditions? I would recommend that you make findings on these density issues. If you approve it without finality on that, it leaves questions on that. You would need to provide criteria for your decision on the findings of fact whether they meet the density requirements or not. You asked the applicant to give you those numbers and you should have a finding on that.

Mark Koenigs: You are recommending that the Board make those "Finding of Facts" statements and then vote on those or just state the facts?

Phillip Saucier: Well I think one of the questions for you is do they meet the density requirements? There should be some sort of vote or finding on that requirement. I think you need to find whether the units they are proposing fit into the standards of the development. You have two competing arguments, I don't think Jeffery has seen this number until tonight.

Mark Koenigs: So, does it make it difficult to even come to the Findings of Fact if the Town Planner recommendation, or can we proceed without it?

Jeffery Hinderliter: I think that what Phil is saying is that you need the finding first before you make a conditional approval.

Mark Koenigs: We can make "Findings of Fact" but I don't know if we vote on it that the findings will support a good outcome for the applicant. I have an issue with that. No matter how many times they describe it, it doesn't match my understanding of the original plan as amended through your letters and the ordinance. I have in my mind tied open space, density and dedicated open space together. So, as a finding of fact I would say that the open space is not dedicated on these plans. If they could dedicate it on the plans for me. I can't make a conditional approval without that finding of the open space requirement.

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Eber Weinstein: Basically you are saying that unless we agree right now what the unit count is and the density, we can't really vote on it. Or can we make a conditional approval and get that after the fact? We've done it before where we made a condition that it isn't a violation of any density requirements. That is a possibility?

Phillip Saucier: So, you are saying that you would request the applicant submit further information on the density and open space to meet that condition? It needs to be addressed, one way or another.

Eber Weinstein: We agree that if it doesn't violate any of these conditions, we have no problem. It doesn't need to be made tonight.

Phillip Saucier: As long as it's made clear what Jeffery's charge is. You are the board making the decisions and findings, so if you have a condition for Jeffery on unit count and density that needs to be clear.

Mark Koenigs: So, the board needs to discuss what I put on the table for the dedicated open space that comes from the 1988 original approval. I believe at that time, by the approval and information submitted, that the golf course is open space and dedicated as such. The only caveat there, is that it was supposed to be open and accessible to the public.

Phillip Saucier: It just can't be a member's only golf course. The public can pay to use the facilities.

Mark Koenigs: If we just let this go through the way it is, with whatever notes, we approve of his subdivision and the next time we have to approve it again.

Eber Weinstein: The difference is that we will have an official report from the Town Planner on percentage of density and units.

Mark Koenigs: We always have density and units, every Town Planner before has done that. I went through each individual plan with number of units and where they came from. So, it has been the precedence that we ask for the unit count and how it fits into the plan. It's not clear on here because they want to change the precedence. They want note #22 that says it doesn't matter where they come from. That's what the lawyer said.

Phillip Saucier: I actually think the parties all agree on one thing from the lawyers, and that is 589 as a unit count that has been used for density historically. We've always used that for the purposes of Dunegrass and every proposal has shown how they fit into the development as a whole, whether they were subtracting or adding, they have showed that. What's being litigated is the ownership of units that have been subtracted over time through amendments. That's something that is private. From the Town's

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perspective, we only care that it fits into that development under those density standards historically used. The only time we worry about the PMUD standard for density is if the number of units being built goes over the 589. So it is not necessary to re-calculate the density each project, until it would exceed the 589. Because at that point, you would be beyond the original approval. If someone wanted to go beyond 589 units they would have to show you how they meet that PMUD standard for density, I don't know if they could or not. You don't have to take my advice. They are separate standards density and open space.

Mark Koenigs: Since 589 is part of the original approval, the applicant can follow that original count and be within the standard. We already found as a statement of fact, that they are meeting all the regulations or ordinances. The only way they can get there is using space from somewhere else. I just want this to be clear going forward is which open space for development is and which is for dedicated golf course.

Matt Warner: We can just remove the units from Section B and call that the place where these units are coming from on the plan. The fact is that those units exist and it is not a concern of the Town who owns them.

Mark Koenigs: So the units they are developing, in their mind is the 24 that's left over from Section B. You have to remember that 24 from B also went into the maintenance area. So the quick math on that is 72 units with 24 to the maintenance area and 24 to this project, I think that works out. Does anyone know what's in Section B?

Jeffery Hinderliter: I couldn't tell you the amount of units built in B, we can certainly do that analysis.

Mark Koenigs: Section B was 76, 24 were built and approved for Cherry Hill, 38 is in one column and 14 is in the other. This is the chart that one of the attorney's provided. I think the town has in their record a very similar chart to this. In fact Mr. Winch has it here for us. So, there seems to be enough left over for this. So, I agree with the applicant that we can add a note to the plan that the units are coming from Section B.

For density from the original approval, findings of fact are that with the 24 units coming from Section B, the unit count is not exceeding 589. Just to get that one Finding done. Does anybody think it has to be conditioned in the approval?

Eber Weinstein: Well given the fact that their lawyer is upset, I would like a condition that Jeffery go ahead and make sure it's correct.

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Mark Koenigs: Well, it's going to happen as a finding of fact, and a condition of approval, so if the facts are wrong we have a problem with our approval.

Phillip Saucier: What it sounds like is a condition of approval. You are sort of finding a fact without verifying it, so it would have to be a condition of approval.

Matt Warner: We don't want to burden you, but what's the time frame on that?

Jeffery Hinderliter: I have 30 days from this approval.

Mark Koenigs: And that's adequate time? If we do make it a condition and the time frame will be by our next regular meeting.

Matt Warner: I just want to confirm what our obligations are. Jeffery is just confirming that since Section B was amended, fewer than 24 units were added back to the plan in subsequent amendments.

Mark Koenigs: On open space I want to keep it real simple. I don't think I can. It requires me to ask for them to do something we haven't asked for before and show the dedicated open space.

Eber Weinstein: So, we'll have to leave that out.

Mark Koenigs: So we have to come up with the Finding of Fact, with something they have already submitted.

Jeffery Hinderliter: If I may, in a way you have that on item 10, where you already approved review criteria 10. Where it says: *"The proposed subdivision is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or land use plan; if any:"*

Mark Koenig: So, my condition would be that the open space meets the condition of the PMUD with the meets and bounds of the golf course as required by the original plan.

Mike Fortunato: And I think you are on the right track, at least starting with the golf course. Like I said before, verifying the acreage of the golf course, that might be enough to cover everybody.

Mark Koenigs: As a finding of fact, we can show that it does meet the 35% with these calculations.

Mike Fortunato: Right, because 109 acres is the minimum that the golf course can be. Then I think where you are going with this and taking it one step

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further is that, that won't change. That the golf course will remain as it is today.

Molly Phillips: I'm sorry, I just want to clarify as a condition of approval you do not want them to develop the dedicated open space of the golf course that exists currently? Or with the 1988 approval?

Eber Weinstein: I don't think we can do that.

Mark Koenigs: I'm trying to agree on a finding of fact based on what's been submitted and what the ordinance is itself. It has to go back to the 1988 approval, and all the conversation we have had. It was dedicated space, as I recall from the plan that was presented. The fairways, the golf holes and cart paths are all set up and designed a certain way for golf. And you can build houses up the limit of that but that's not what the '88 approval had. But, it's conceivable within the ordinance that it can happen and it's the legal right of the owner to build up to that point. The owner still has to amend the plan and get approval every time we do this. I just want the units and open space to be accounted for so that going forward there's a follow through on the conditions of the ordinance. Is what they have stated on the plan enough?

Mike Fortunato: I would like to have that verified.

Mark Koenig: So, which are they verifying? I think the math is pretty simple. It's a subtraction of acres. The original approval had 162 acres and if you take that, it's 52.1% or so. We're amending the original plan for open space and that is a fact. We are reducing the open space that was originally intended, we've done it before in a minor way.

Eber Weinstein: It doesn't say open space required in 1988, it says open space provided in 1988. If that's the case than nothing can be built.

Mike Fortunato: It's already underneath that number.

Eber Weinstein: If we have already approved less than the 162 acres then we gained open space with Cherry Hill.

Win Winch: I wanted to table this an hour ago, because we need clear heads to make this decision. It's so confusing and it's 11:45pm at night.

Mike Fortunato: I think you're on the right track. I think that's all we are going to be able to do, based on what you are saying. And what the lawyer was saying earlier tonight is that it's somewhere in between the way it is now and the 35%.

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<p>Call for a Vote: Mike Fortunato: Yes Win Winch: Yes Mark Koenigs: Yes Eber Weinstein: Yes</p> <p>Passes 4-0</p>	<p style="text-align: center;">Vote</p> <p style="text-align: center;">4 Yes – 0 No</p>
<p>Item 4: Proposal: Subdivision Amendment: 3-Lot Functional Subdivision (Cider Hill) Action: Ruling on Amerndment Owner: CHA Builders LLC Location: Granny Smith Court (Cider Hill) MBL: 107-3-1</p> <p>Jeffery Hinderliter: This is the addition of three lots with no other changes to an existing subdivision. One lot is where a congregate care facility would be, one was for a medical facility and another is for 10 individual care units will be. The original Planning Board approval was in 2013/2014.</p> <p>Mark Koenigs: They are basically asking for clarification on the lots and their uses in a phase?</p> <p>Jeffery Hinderliter: They didn't mention a phase, but I think they are trying to clarify the ownership of them.</p> <p>Mark Koenigs: Ok, that makes sense. I was worried about phase, but I just want it to be finished.</p> <p>Motion to approve subdivision amendment by Mark Koenigs Seconded by Win Winch</p> <p>Call for a Vote:</p> <p>Mike Fortunato: Yes Win Winch: Yes Mark Koenigs: Yes Eber Weinstein: Abstain</p> <p>Passes 3-1-0</p>	<p style="text-align: center;">ITEM 4</p> <p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p> <p style="text-align: center;">3 Yes – 1 Abstention – 0 No</p>
<p>Item 5: Proposal: Subdivision Amendment: Removal of Sidewalk on the Side of the Road; Reduction of street lighting to 1 per lot. Action: Ruling on Amendment Owner: BBI Properties LLC Location: Castle Estates Subdivision, Cascade Road, MBL: 103-4-4&7, 105-4-7</p>	<p style="text-align: center;">ITEM 5</p>

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<p>Bill Thompson: They purchased this project and had an amendment with DEP to get the title. When they purchased the project the side walk on each side was planned for. What I would like to do is get one side walk on one side and a traditional road with no sidewalk on the other side. Both sides are curbed catch basin closed system. The original plan note calls for two lamp posts on the private property out of the right of way. We'd like to go down to one.</p> <p>Eber Weinstein: What's the reason on both of those?</p> <p>Bill Thompson: Economics, the redundancy of two sidewalks and two lights is not necessary.</p> <p>Mike Fortunato: Wasn't there a gas line where one of those sidewalks was?</p> <p>Bill Thompson: I think there is gas into that development.</p> <p>Eber Weinstein: It would just be a certain wattage for those lights?</p> <p>Bill Thompson: I don't think they put the wattage on there, but one looks better if you are on the street. Neither of those two items were required in the subdivision ordinances. The original owner just wanted to kick it up a notch.</p> <p>Mark Koenigs: If the applicant could show all the sheets?</p> <p>Bill Thompson: You have sheet 1 & 3, the plans will be amended but these two items are the ones in question. It's being built in phases and this phase would bring the side walk down to one side.</p> <p>Mark Koenigs: How do we handle these types of amendments? We are amending the one sheet as recorded? The date going to change. The original Findings of Fact? How do we amend that?</p> <p>Jeffery Hinderliter: It's more of a simpler Findings of Fact similar to a notice of decision.</p> <p>Motion to approve by Mike Fortunato Seconded by Win Winch</p> <p>Call for a Vote: Mike Fortunato: Yes Win Winch: Yes Mark Koenigs: Yes Eber Weinstein: Yes Passes 4-0</p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p> <p style="text-align: center;">4 Yes – 0 No</p>
<p>Item 6:</p>	

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<p>Proposal: Streetscape improvements associated with parking lot expansion Action: Rule on DRC Certificate of Appropriateness Recommendation Owner: Old Orchard Beach Associates, LLC Location: 1 Heath St.; MBL: 309-9-30, DD-2</p> <p>Mark Koenigs: The plan that we have looks really good. It's going to take the Americana site and join the parking lot adjacent to it.</p> <p>Win Winch: I'll move to approve the Certificate of Appropriateness Mike Fortunato: I'll second it.</p> <p>Call to Vote: Mike Fortunato: Yes Win Winch: Yes Mark Koenigs: Yes Eber Weinstein: Yes</p> <p>Passes 4-0</p>	
<p>Other Business: Elect Chair and Vice-chair</p> <p>Mark Koenigs: I move to nominated Eber Weinstein as chair for the next 12 months.</p> <p>Mike Fortunato: I second that.</p> <p>Call to Vote: Mike Fortunato: Yes Win Winch: Yes Mark Koenigs: Yes Eber Weinstein: Yes</p> <p>Passes 4-0</p> <p>Mike Fortunato: I make a motion to nominate Mark Koenigs as vice-chair Eber Weinstein: I second that.</p> <p>Call to Vote: Mike Fortunato: Yes Win Winch: Yes Mark Koenigs: Yes Eber Weinstein: Yes</p> <p>Passes 4-0</p> <p>Sign Mylars: 36 and 29 Old Orchard Street New Building Projects</p>	<p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p> <p style="text-align: center;">4 Yes – 0 No</p> <p style="text-align: center;">Motion</p> <p style="text-align: center;">Vote</p> <p style="text-align: center;">4 Yes – 0 No</p>

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Good and Welfare:	
Adjournment @ 12:30am.	ADJOURNMENT

I, Molly Phillips, Secretary to the Planning Board of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of thirty-six pages (36) is a true copy of the original minutes of the Planning Board Meeting of March 12, 2015.

Molly Phillips