

TO: Old Orchard Beach Planning Board
FROM: Jeffrey Hinderliter, Town Planner
SUBJECT: December Planning Board Meeting Summary
DATE: 11 December 2014

*****APPLICANT NOTE- January PB meeting submissions due on 29 December*****

*****APPLICANT NOTE- Please remember the town needs digital plan submissions*****

Below is a brief summary of pertinent issues related to the December Planning Board Agenda items:

PUBLIC HEARING

ITEM 1

Proposal: To provide a recommendation to Town Council concerning the proposed Medical Marijuana Ordinance Amendments: Chapter 78 – ZONING, Article I – IN GENERAL, Section 78-1 – DEFINITIONS; Chapter 78 – ZONING, Article VI – DISTRICTS, Division 8 – GENERAL BUSINESS DISTRICT 1 (GB-1), Section 78-803 – CONDITIONAL USES; Chapter 78 – ZONING, Article VI – DISTRICTS, Division 16 – HISTORIC OVERLAY DISTRICT (HO), Section 78-1135 – PROHIBITED USES; Chapter 78 – ZONING, Article VII – CONDITIONAL USES, Division 2 – CONDITIONS, Section 78-1277 – MEDICAL MARIJUANA; Chapter 18 – BUSINESSES, Article XI – RESERVED, Sections 18-601 – 18-606 – Reserved; Appendix A – SCHEDULE OF LICENSE, PERMIT AND APPLICATION FEES – LICENSE ORDINANCE CATEGORIES

Action: Public Hearing
Applicant: Town of Old Orchard Beach
Location: General Business 1 Zoning District

REGULAR BUSINESS

ITEM 2

Proposal: To provide a recommendation to Town Council concerning the proposed Medical Marijuana Ordinance Amendments: Chapter 78 – ZONING, Article I – IN GENERAL, Section 78-1 – DEFINITIONS; Chapter 78 – ZONING, Article VI – DISTRICTS, Division 8 – GENERAL BUSINESS DISTRICT 1 (GB-1), Section 78-803 – CONDITIONAL USES; Chapter 78 – ZONING, Article VI – DISTRICTS, Division 16 – HISTORIC OVERLAY DISTRICT (HO), Section 78-1135 – PROHIBITED USES; Chapter 78 – ZONING, Article VII – CONDITIONAL USES, Division 2 – CONDITIONS, Section 78-1277 – MEDICAL MARIJUANA; Chapter 18 – BUSINESSES, Article XI – RESERVED, Sections 18-601 – 18-606 – Reserved; Appendix A – SCHEDULE OF LICENSE, PERMIT AND APPLICATION FEES – LICENSE ORDINANCE CATEGORIES

Action: Provide Recommendation to Council: Amendments to Chapter 78 (Zoning)
Applicant: Town of Old Orchard Beach
Location: General Business 1 Zoning District

Tonight, the PB will hold a public hearing and provide a recommendation to the Council in regards to the Ordinance amendments associated with Chapter 78. Below is information concerning this agenda item.

1. Ordinance language summary.

- Purpose of the proposed Ordinance amendments is to create local zoning controls to regulate Medical Marijuana as a land use, restricting where growing and processing operations are allowed, requiring a public approval process, and implementing performance standards for growing/processing operations and dispensaries. Also, the Ordinance amendments establish a business licensing requirement to monitor ongoing consistency with the Maine Medical Use of Marijuana Program.
- Chapters 78 (Zoning) and 18 (Business Licenses) are the Chapters within the Town of Old Orchard Beach Code of Ordinances that are proposed to be amended.
- Before Medical Marijuana Production Facilities and Medical Marijuana Registered Dispensaries are allowed to conduct business, both uses will require State authorization, Planning Board approval as a Conditional Use and staff and Council approval through the Business License process.
- Chapter 78 amendments include:
 - A. Allowing Medical Marijuana Production Facilities and Medical Marijuana Registered Dispensaries to be established as a Conditional Use within the General Business 1 (GB1) Zoning District. Both uses are not permissible for those properties that are with GB1 and Historic Overlay (HO) Zoning Districts.
 - B. Approval process identifying applicable review standards, application requirements, extended distance for abutter notifications, site walks, and public hearings.
 - C. State authorization before submission of a Conditional Use Application. The applicant must demonstrate their authorization to cultivate, process and store medical marijuana pursuant to the Maine Use of Medical Marijuana Program.
 - D. Exempting Medical Marijuana Home Production in any qualifying patient's residence or any medical marijuana caregiver's primary year-round residence. Note- as I understand, the town cannot regulate (through its ordinances) this type of Medical Marijuana use
 - E. Performance Standards that are specifically designed to regulate Medical Marijuana Production Facilities and Medical Marijuana Registered Dispensaries. These standards include, but are not limited to security, outside appearance, odor control, and proximity limits (by distance) to other Medical Marijuana Production Facilities and Medical Marijuana Registered Dispensaries as well as uses that may not be compatible.
- Chapter 18 (Business Licenses) amendments include:
 - A. Requiring staff and Council approval of a Medical Marijuana Business License before a Medical Marijuana Registered Dispensary or Medical Marijuana Production Facility can conduct business.
 - B. State Authorization. Before issuance, renewal or amendment of a License, the applicant must demonstrate their authorization to cultivate, process and store medical marijuana pursuant to the Maine Use of Medical Marijuana Program. Loss of such State authorization shall automatically invalidate the Town-issued License.
 - C. At initial and subsequent licensing, the Old Orchard Beach Police Department, Fire Department and Code Enforcement Officer shall inspect the premises to ensure security meets State requirements and applicable Town of Old Orchard Beach licensing criteria.

2. Creation of the Ordinance.

- During the Summer of 2014, the Town received inquiries regarding the establishment of a facility for the cultivation of medical marijuana outside of a primary residence and for the production of edible medical marijuana products.
- In response to these inquiries, staff reviewed ordinances and found the Town's existing ordinances do not provide an adequate mechanism to regulate and control medical marijuana non-residential production facilities.
- As a result of this finding, the Council decided to enact a Moratorium to allow staff a reasonable amount of time to study the land use implications of medical marijuana non-residential production facilities and to develop reasonable regulations governing their location and operation.
- Town staff began its study by meeting with the Program Manager of the Maine Medical Marijuana Program and discussing the rules governing the Maine Medical Use of Marijuana Program.
- Further study was done by contacting other municipalities and people who have been involved with Medical Marijuana.
- Using York, Maine's proposed Medical Marijuana Ordinance as a model, Town staff and the Town's Attorney created its own Medical Marijuana Ordinance (see highlights above). This ordinance includes amendments to Chapter 78 (Zoning) and Chapter 18 (Business Licenses).
- The law firm that created York's Ordinance, Bernstein/Shur, is the same firm used by the Town. The Town consulted with Bernstein/Shur during the creation of OOB's version of the Ordinance.
- As part of the creation of the Ordinance, the Town analyzed current Town Zoning standards and existing land use patterns in order to determine which Zoning District(s) Medical Marijuana Registered Dispensary and Medical Marijuana Production Facility land uses could be allowed. Analysis attached.

3. Planning Board review process.

- Because some of the proposed amendments are within Chapter 78 (Zoning), the Planning Board (PB) must review and provide a recommendation to the Council. PB responsibilities include reviewing proposed changes to Chapter 78, holding a public hearing and providing a recommendation to the Council.
- As part of the PB's recommendation, they can propose changes to Ordinance language.
- PB and Council consideration can happen at the same time but the Council cannot rule on Chapter 78 amendments until the PB provides a recommendation.
- The typical PB process takes two months which includes two formal meetings. The first meeting, scheduled for 13 November, includes Planning Board discussion and scheduling of the public hearing. The second meeting (which if the PB agrees, I will schedule for 11 December) will include the public hearing and a "Provide recommendation to Council." Assuming the PB provides a recommendation at the 11 December meeting, the Council will then have the ability to rule on the amendments.
- In addition to Chapter 78, Chapter 18 (Business Licenses) and Appendix A (Schedule of License, Permit and Application Fees) are proposed to be amended. Chapter 18 and Appendix A do not require review and recommendations from the PB. Only Council review is required.

4. Consideration of other zoning districts.

- As part of town staff research for the development of the proposed ordinance, we considered all zoning districts. Research included, but was not limited to zoning ordinance standards, existing development, access to public water and sewer, and land availability. Staff determined that three zoning districts, GB1, GB2 and RD, were the most appropriate districts for Medical Marijuana land uses. We then further analyzed these three districts and decided GB1 was the best fit.
- The PMUD district was considered during our initial research. PMUD zoning ordinance standards allow many different land uses but when considering existing development patterns (which is primarily residential and education), we determined the proposed Medical Marijuana uses appear to be not compatible with the existing use of land.

5. Include additional ordinance amendments to specifically state the proposed Medical Marijuana uses are not permitted in those zoning districts where it is not identified as an allowable permitted or conditional use? I believe we do not need to include these additional amendments because current ordinance language already covers this (see below).

Sec. 78-148. - Omitted uses.

Any use permitted in one zoning district of the town and not specifically prohibited in any other district shall be considered prohibited in such other districts. Any use not specifically allowed as either a permitted use or a conditional use is specifically prohibited. As new uses occur over time or existing uses are found to have been omitted, action allowing such shall be by amendment to this chapter.

6. Include additional ordinance language that is not within the proposed ordinance? If there PB wishes to do this, they can as long as they include a summary of the added or deleted language as part of their recommendation to the Council. There has been comment to allow Medical Marijuana Production Facilities in the GB2 district. This could be done as part of your recommendation.

7. Comment concerning adding Medical Marijuana Research and Development as a conditional use. The town contacted Mary D'Agostino, Maine Medical Marijuana Program Manager if she could offer her understanding of whether under statute caregivers are allowed to conduct research and development as a distinct undertaking separate from the permitted cultivation of plants for qualified and approved users. Ms. D'Agostino responded by stating there is no statutory language which would allow a caregiver to open and operate a research and development enterprise unless any aspect of the operation falls fully under the parameters for being a caregiver. This means they would have to abide by all of the requirements for plant counts, security, etc.

RECOMMENDATIONS: I recommend the PB provide a recommendation to the Council regarding the proposed Medical Marijuana Ordinance Amendments associated with Ch. 78 (Zoning). This recommendation could be one of the following:

1. Recommend Council approve the proposed amendments to Chapter 78 as written.
2. Recommend Council approval the proposed amendments to Chapter 78 including the following changes_____.
3. Recommend the Council not approve the proposed amendments to Chapter 78, If the PB chooses to make this recommendation, I expect the Council will want to know why.

ITEM 3

Proposal: Site Plan Review: Construct 50 x 100 Retail Building
Action: Review new submissions; Discussion; Schedule Public Hearing; Schedule Final Review
Owner: Ike Naim
Location: 36 Old Orchard St., MBL: 205-3-8

(From October 2014 Meeting- Tabled at November Meeting, Site Walk Complete)

This proposal involves the construction of two, 50' x 100' buildings on vacant lots. Each building is 1 story, will have two separate suites with a proposed retail use. The proposal requires both Site Plan Review and a Design Review Certificate as administered by the Design Review Committee (DRC) and the PB.

First, I'd like to thank Mr. Naim for making this significant investment at two important locations in town. Also, I thank Mr. Naim again and Weger Architects for their careful consideration of building design. I think both projects are fantastic and look forward to working with all involved throughout the permitting process and completion of construction. Below are a few comments and questions:

- The submitted packet is quite complete. The one piece that is lacking, which is important for PB review purposes, is the site plan. According to the Architects, the plan will be prepared in time for the November meetings.
- Because the proposed buildings are within the DD1 Zone, zoning standards are quite lenient for non-residential uses. For example, there are no setback and off-street parking requirements.
- Design standards for new construction in the DD1 state, in part, that "all buildings should be a minimum of two stories." This standard (78-686 (b) (2)) further states "If market conditions cannot justify multiple stories, the owner is encouraged to either: a. Construct but not finish off the second floor; or b. Construct with adequate loadbearing walls and truss roof construction to enable addition of additional floors when market conditions can justify additional floors." Currently, the proposal is 1 story. Has the owner considered the above-mentioned design standard to either include a second floor or design or construct a building that will enable future vertical expansion?
- Please document how the stormwater management system will work.
- Regarding the building that is proposed to be attached to adjacent buildings (Lot 36)- does the owner have permission from the abutting property owners to attach the buildings? How will the design allow for adequate fire protection if one or both of the existing buildings does not have adequate fire protection built into the common wall?
- Where will loading/unloading vehicles park?
- Does either property have any easements of ROW's?
- In addition to the PB, DRC has jurisdiction over this project. As you may know, DRC review of a proposal is primarily associated with aesthetics and how building design fits within a particular setting. The DRC is an advisory Committee that provides a recommendation to the PB. Upon receiving the recommendation, the PB provides the final decision. The DRC use Design Review Criteria (78-686, attached to this memo) to rule on a proposal. Due to the location and importance of building design, I believe DRC consideration and their recommendation is a critical part of town review of this proposal.

DRC began review on 6 October and it was well received. DRC will hold a site visit on 17 October and continue consideration at their November meeting.

Summary:

1. Submission of a site plan
2. Vehicle loading/unloading location
3. Permission to attach to existing buildings (Lot 36)
4. Fire protection
5. Consideration of adding second floor or design building to allow future construction of a second floor
6. Explanation of stormwater management
7. Existence of any easements or ROW's on both properties
8. Building aesthetics and consideration of how design fits into the Old Orchard Street area

RECOMMENDATIONS: I recommend the applicant address my above-mentioned comments and the PB schedule a site walk on 6 November.

(December 2014 Meeting Comments)

The town has received the complete submission, including plans. This allows the PB to schedule a second public hearing and final review (site walk already complete), both of which I recommend for our 8 January meeting. Tonight, the PB's primary action is to schedule the public hearing and final review. Below are my comments concerning the most recent submission.

- Abutters have asked questions and have some concerns. The information I received is attached to this memo (PB version). The questions and comments are primarily associated with: fire protection, drainage, easements/Right-of-Ways (ROW), potential for adjacent building to be structurally comprised during proposed building construction, access to sides of adjacent building for maintenance and utilities.
- Construction time frame- approx. beginning, ending, how long?
- How will sidewalk remain open so pedestrians, snow removal, etc. can safely use? Coordinate with Public Works (PW).
- Fire Chief highly recommends that the building has a sprinkler system.
- Fire rated construction for protection of adjacent buildings and proposed building.
- Gap between buildings- construct or install something that prevent or limits access to these areas. For the gaps facing Old Orchard St., this could be a wall matching building facades (something attractive). Gaps towards rear could be a locked gate with limited access.
- How will proposed building be constructed in those areas where there is limited access due to existing buildings?
- How will adjacent buildings be protected during construction of proposed building?
- Sidewalk work and improvements. On both town and owners property? Applicant mentions ADA improvements- where will these improvements be located? Coordinate with PW.
- Where will deliveries to the building be made (front and/or rear) and where will delivery trucks park?
- Site Plan Review Criteria #7 and #9 applicant response. These two criteria are associated with abutter impacts. Does the PB feel the response to the criteria and submissions successfully address abutter concerns (at least those the PB has authority over per ordinance)?

- Post construction maintenance plan for dry well?
- Deed, Easement, ROW Comments (further information attached to PB's memo).

It appears there may be deeded easements associated with the subject property. These easements include: A). Rear- 10' wide, "to be used in common with others for travel on foot or by vehicle from Seavy St." (identified on plan and in submitted deed and title); B). Front- 15' wide, from inside town sidewalk to front of building, "grantee shall at no time use the space of 15 feet between the front of the building on the lot hereby conveyed and the inside side-walk line for any other purpose and the same is used now" (not identified on plan or submitted deed and title); C). A prescriptive easement arising from continuous use of the electrical and other transmission lines from the utility pole on Old Orchard Street to the building on MHM's (Beach Bagel) abutting property.

Regarding the rear easement/ROW, it is shown on the plans but not within the submitted deed. I found a deed associated with the subject property dated from 1980 (attached) which does include language identifying the easement/ROW. Why is this language not within the submitted deed? Nonetheless, even if this language exists, it appears the proposed development is not within the 10' wide easement/ROW (based on the submitted plans); therefore, will not interfere with travel by foot or vehicle.

Regarding the front easement, this is a bit more complicated. The easement is not identified on the plans, within the submitted deed or within the 1980 deed. But, review of aerial photos, 1985 survey, 1929 plan (from assessors plan book), and a measurement of where the existing stockade fence and inside of sidewalk all show a clear space of approx. 15'. So, it seems possible that this easement does exist. The problem is I cannot find a legal document that clearly establishes its' existence. This is significant because it impacts the location of the building. So, does the 15' easement continue to exist? If so, what will this do to the building location?

Regarding the prescriptive easement, the easement is not identified on plans, within the submitted deed or within the 1980 deed. Also, I've found nothing that indicate it may exists. Does the prescriptive easement exist? If so, does its existence impact the proposed buildings location or adjacent building?

- Plan C2 comments:
 1. Proposed contours and finished grades show? Will contours not change? Estimated amount of cut and fill?
 2. Mechanicals on Beach Bagel. Plan states to be relocated- has the owner of Beach Bagel and property owner authorized this? If so, where will they be relocated? If not, what will happen? How will they accessed, maintain and continue to operate as intended?
 3. Access for maintenance to both adjacent buildings and proposed building?
 4. Overhead electrical line from Old Orchard St. to Beach Bagel- will the proposed building interfere with the line? Will the line be relocated? Access to the electrical meter?
 5. All work on public property must be coordinated with the appropriate town department such as PW, Wastewater and Police.
 6. Water and sewer lines- using existing or installing new? If using existing, have they been inspected?
 7. Water line- please contact Maine Water as the PB wants to ensure they approve of the work associated with the water system.

8. How will vehicle and pedestrian traffic be managed during construction?
 9. Please be sure bricks that are removed or damaged are replaced as-is or as acceptable to town officials.
- Public Works Director, Bill Robertson, comments:
 1. It appears that a new sewer line and a new water line will be installed for each building all the way to the sewer and water mains in Old Orchard Street. If this is the case, they will need a Road Opening Permit for each building and a pavement bond for each building. They will need to have an excavator contractor licensed by the Department of Public Works.
If they're using existing sewer and water services they will need to excavate the services so that a determination can be made as to the integrity of each existing service.
 2. The construction entrance detail for each building should be tapered both up and down the sidewalk at a 1 to 12 grade for handicap access. These ramps should also be able to handle the weight of a pickup with plow and sander because these sidewalks are plowed by that equipment. The DPW will "NOT" be responsible for any plow damage to the ramps.
 3. The construction entrance detail within the street area a 24" ramp should be removable by the owner or contractor prior to any snow event so that the street can be properly plowed.
 4. A drainage maintenance plan and schedule needs to be incorporated with any approval by the Planning Board for the dry wells. How will they be maintained, access to them etc.
 - Attachments to PB memo:
 1. Air Photos (1987)
 2. Plan from assessors old plan book (1929)
 3. MHM Associates Boundary Survey (1985)
 4. Deed (1980)
 5. Lafayette Abutter Letter
 6. Harrisburg Abutter Submission, Bernstein Shur

RECOMENDATIONS: I recommend the applicant address the above-mentioned comments and questions and the PB schedule a public hearing and final review for 8 January.

ITEM 4

Proposal: Site Plan Review: Construct 50 x 100 Retail Building
 Action: Review new submissions; Discussion; Schedule Public Hearing; Schedule Final Review
 Owner: Ike Naim
 Location: 29 Old Orchard St., MBL: 206-31-5

(From October 2014 Meeting- Tabled at November Meeting, Site Walk Complete)

This proposal involves the construction of two, 50' x 100' buildings on vacant lots. Each building is 1 story, will have two separate suites with a proposed retail use. The proposal requires both Site Plan Review and a Design Review Certificate as administered by the Design Review Committee (DRC) and the PB.

First, I'd like to thank Mr. Naim for making this significant investment at two important locations in town. Also, I thank Mr. Naim again and Weger Architects for their careful consideration of building design. I think both projects are fantastic and look forward to working with all involved throughout the permitting process and completion of construction. Below are a few comments and questions:

- The submitted packet is quite complete. The one piece that is lacking, which is important for PB review purposes, is the site plan. According to the Architects, the plan will be prepared in time for the November meetings.
- Building constructed 1910, Demo 1994.
- Because the proposed buildings are within the DD1 Zone, zoning standards are quite lenient for non-residential uses. For example, there are no setback and off-street parking requirements.
- Design standards for new construction in the DD1 state, in part, that “all buildings should be a minimum of two stories.” This standard (78-686 (b) (2)) further states “If market conditions cannot justify multiple stories, the owner is encouraged to either: a. Construct but not finish off the second floor; or b. Construct with adequate loadbearing walls and truss roof construction to enable addition of additional floors when market conditions can justify additional floors.” Currently, the proposal is 1 story. Has the owner considered the above-mentioned design standard to either include a second floor or design or construct a building that will enable future vertical expansion?
- Please document how the stormwater management system will work.
- Regarding the building that is proposed to be attached to adjacent buildings (Lot 36)- does the owner have permission from the abutting property owners to attach the buildings? How will the design allow for adequate fire protection if one or both of the existing buildings does not have adequate fire protection built into the common wall?
- Where will loading/unloading vehicles park?
- Does either property have any easements of ROW’s?
- In addition to the PB, DRC has jurisdiction over this project. As you may know, DRC review of a proposal is primarily associated with aesthetics and how building design fits within a particular setting. The DRC is an advisory Committee that provides a recommendation to the PB. Upon receiving the recommendation, the PB provides the final decision. The DRC use Design Review Criteria (78-686, attached to this memo) to rule on a proposal. Due to the location and importance of building design, I believe DRC consideration and their recommendation is a critical part of town review of this proposal. DRC began review on 6 October and it was well received. DRC will hold a site visit on 17 October and continue consideration at their November meeting.

Summary:

1. Submission of a site plan
2. Vehicle loading/unloading location
3. Permission to attach to existing buildings (Lot 36)
4. Fire protection
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6. Explanation of stormwater management
7. Existence of any easements or ROW’s on both properties
8. Building aesthetics and consideration of how design fits into the Old Orchard Street area

RECOMMENDATIONS: I recommend the applicant address my above-mentioned comments and the PB schedule a site walk on 6 November.

(December 2014 Meeting Comments)

The town has received the complete submission, including plans. This allows the PB to schedule a second public hearing and final review (site walk already complete), both of which I recommend for our 8 January meeting. Tonight, the PB’s primary action is to schedule the

public hearing and final review. Below are my comments concerning the most recent submission.

- We received no written or oral abutter comments
- Building constructed 1900, Demo 1994.
- Construction time frame- approx. beginning, ending, how long?
- How will sidewalk remain open so pedestrians, snow removal, etc. can safely use? Coordinate with Public Works (PW).
- Fire Chief highly recommends that the building has a sprinkler system.
- Fire rated construction for protection of adjacent buildings and proposed building.
- Gap between buildings- construct or install something that prevent or limits access to these areas. For the gaps facing Old Orchard St., this could be a wall matching building facades (something attractive). Gaps towards rear could be a locked gate with limited access.
- How will proposed building be constructed in those areas where there is limited access due to existing buildings?
- How will adjacent buildings be protected during construction of proposed building?
- How will adjacent and proposed building exterior be able to be maintained at those locations where they are very close?
- Sidewalk work and improvements. On both town and owners property? Applicant mentions ADA improvements- where will these improvements be located? Coordinate with PW.
- Where will deliveries to the building be made (front and/or rear) and where will delivery trucks park?
- Site Plan Review Criteria #7 and #9 applicant response. These two criteria are associated with abutter impacts. Does the PB feel the response to the criteria and submissions successfully address abutter concerns (at least those the PB has authority over per ordinance)?
- Post construction maintenance plan for dry well?
- Deed, Easement, ROW Comments (further information attached to PB's memo).
The deed included with the most recent submission is not the most recent as it does not show the transfer from Fortune Shehebar/Nina Deck to Sunshine OOB. The most recent deed is attached to the PB memo and although the language is similar to the former deed, I found that I must perform more deed research.

I found a deed that precedes both the submitted deed and most recent deed. This deed, dated 11 February 1980 (attached), includes language that is not within the two most recent deeds. This language includes provisions that may or may not impact the proposed building location because it identifies a number of ROW's which the subject property may still share or hold in common with adjacent properties. I highlighted the language within the 1980 deed that is not included in the two most recent deeds. My questions:

1. Why was this additional language excluded from the two most recent deeds?
 2. Are the ROW's mentioned in the 1980 deed still shared with adjacent properties?
 3. If these ROW's still exist, will the proposed building location need to be changed so that it can accommodate the ROW's?
- Plan C2 comments:
 1. Proposed contours and finished grades show? Will contours not change? Estimated amount of cut and fill?

2. Access for maintenance to both adjacent buildings and proposed building?
 3. All work on public property must be coordinated with the appropriate town department such as PW, Wastewater and Police.
 4. Sewer line- using existing or installing new? If using existing, has it been inspected?
 5. Water line- please contact Maine Water as the PB wants to ensure they approve of the work associated with the water system.
 6. How will vehicle and pedestrian traffic be managed during construction?
 7. Please be sure bricks that are removed or damaged are replaced as-is or as acceptable to town officials.
 8. Note 15 states Test Pit required at drywell location. Note further this is states required before completion of stormwater design. Based upon BH2M's submission, it appears this has been complete. Has this been done and is it included in the stormwater design?
 9. Paved sidewalk adjacent to Sheehan building "repair as needed." What is "as needed"- will it be replaced or repaired?
 10. Egress from Sheehan property side door is approx. 2' wide- enough?
 11. Windows on adjacent Mosseri and Lily building- are any egress windows? If so, is there enough clear area so the windows can be used for egress?
- Public Works Director, Bill Robertson, comments:
 1. It appears that a new sewer line and a new water line will be installed for each building all the way to the sewer and water mains in Old Orchard Street. If this is the case, they will need a Road Opening Permit for each building and a pavement bond for each building. They will need to have an excavator contractor licensed by the Department of Public Works.
If they're using existing sewer and water services they will need to excavate the services so that a determination can be made as to the integrity of each existing service.
 2. The construction entrance detail for each building should be tapered both up and down the sidewalk at a 1 to 12 grade for handicap access. These ramps should also be able to handle the weight of a pickup with plow and sander because these sidewalks are plowed by that equipment. The DPW will "NOT" be responsible for any plow damage to the ramps.
 3. The construction entrance detail within the street area a 24" ramp should be removable by the owner or contractor prior to any snow event so that the street can be properly plowed.
 4. A drainage maintenance plan and schedule needs to be incorporated with any approval by the Planning Board for the dry wells. How will they be maintained, access to them etc.
 - Attachments to PB memo:
 1. Air Photos (1987)
 2. Plan from assessors old plan book (1929)
 3. Deed (1980)
 4. Deed (2014 – most recent)

RECOMMENDATIONS: I recommend the applicant address the above-mentioned comments and questions and the PB schedule a public hearing and final review for 8 January.

ITEM 5

Proposal: Subdivision and Conditional Use: Establish 26 free-standing condominiums (“The Turn at Dunegrass”)
Action: Discussion
Owner: Review Town Attorneys Opinion, Moving Forward
Location: Wild Dunes Way, Adjacent to Dunegrass Section C, MBL: 105A-1-200

(From October 2014 Meeting)

As you may recall, the PB began consideration of this proposal during this summer as a sketch plan proposal to develop 26 individual condo units within the Dunegrass development on land adjacent to Section C. It was decided we need input from the town attorney concerning several questions before the proposal moves forward. Questions were sent to the town attorney and we received a reply (letter within your packets this month).

At our meeting this evening, the town attorney will be present to discuss and explain his comments within the letter. You’re welcome to ask our attorney any questions. It is my hope, this discussion will provide the information I need to review the proposal and advise the applicant so the project can move forward. Please feel free to forward any additional comments you have as a result of this discussion. I expect the project will proceed as follows:

- 1st, the PB will discuss the town attorney letter at the meeting on 9 October.
- 2nd, upon completion of the discussion, I will review the proposed sketch plan, attorney comments, PB comments, etc. and prepare a comprehensive list of outstanding issues, questions, recommendations, zoning analysis, etc. for the applicant. It is my intent to have this complete in time for the November PB meeting.
- 3rd, I will submit these comments to the PB and applicant. This should provide the applicant with a better idea as to how to prepare your formal submission.
- 4th, The PB will begin review of the formal proposal.

RECOMMENDATIONS: For this meeting, I recommend the PB listen to the town attorney’s comments on his letter, ask questions (if any) and forward any additional comments to me.

(December 2014 Meeting)

I recommend the PB table. At this time, this proposal is being prepared by the engineer and reviewed by staff. I expect we will see this during January.

ITEM 6

Proposal: Sawgrass Subdivision Amendment: Approved 40 unit condo project modified into a 22 unit single family house lot project
Action: Discussion, Schedule Site Walk and Public Hearing
Owner: Sawgrass LLC
Location: Wild Dunes Way (Dunegrass Sections J & L) Map 105A, Lot 1

(2013 BACKGROUND - 11 April Meeting):

- This proposal amends another amended plan which was last approved (with conditions) by the PB during November 2008.
- The November 2008 proposal amended portions of Dunegrass Sections J and L (and modifies unit numbers in Section M) in order to develop Sawgrass Condominiums: a five phase – 40 unit condominium project. One 8-unit building will be constructed in each of

the five phases. The Plan is included within your packet. The owner at that time was Suncor LLC.

- The November 2008 conditions of approval were:
- 1. **The final site plan (to be signed by the Planning Board) will include:**
 - a. There shall be 5 iron survey markers to be set at the angular points of the property line between the development area and the golf course.
 - b. The lighting shall be shown on the plan and in detail to agree with Section 78-1026 of the ordinance (full cutoff light fixtures).
- 2. **Prior to the commencement of construction**, the cost of the site work for the phase(s) to be constructed shall be approved by the Town's inspection engineer; a Performance Assurance for the cost of the site work shall be established; and 2% of the construction costs shall be put in an escrow account to pay for the necessary engineering inspections.
- 3. **Prior to the issuance of building permits**, the Condo Association Documents shall be reviewed and accepted as satisfactory by the Town's Legal Counsel. They shall also be recorded in the York County Registry of Deeds, and a copy of the recorded document submitted to the Town Planner.
- 4. **Prior to Planning Board Signatures**, the site plan shall be submitted in digital format for the Town GIS mapping system. Contact the Town Planning staff for the detailed submission requirements.
- The new, 2013 proposed subdivision amendments include a complete redesign of the 2008 proposal. Instead of 5 buildings with 8 units in each, the amendment now proposes 22 individual homes on their own parcel of land. The unit count, impervious surface will be reduced and the overall concept changes.
- During 1987/1988, Dunegrass was approved as 18 separate sections (Sections A – R) with a total of 589 dwelling units and a golf course. The Dunegrass development has evolved since the original 1987/1988 approval through various amendments. It is somewhat unique in the way it was approved by both the town and DEP so it is allowed to change overtime and adjust to market conditions. These changes have varied from minor to major revisions.
- I believe the primary question the PB should consider is if this 2013 change is minor enough to rule on this evening or is the change is major enough to warrant a more detailed review and additional meetings (e.g., site walk, public hearing). If the PB feels the change is minor, is their enough information to allow proper review? If the PB feels it is a major change, I believe the PB should indicate what additional material they need to provide a proper review and what meeting(s) will be held (e.g., site walk, public hearing, etc.).
- Stormwater/drainage management- The applicant provides a written response to the subdivision criteria but we don't have a plan or report; therefore, it is difficult to determine where the water is going and what systems will be in place to handle the flow. As I understand the 2008 proposal was to pipe stormwater across Long Cove Drive which would lead to an open drainage ditch along Wild Dunes Way and eventually draining into a pond by Hole 5. I believe the open drainage ditch along Wild Dunes Way no longer exists. If the 2013 proposal is to use the same method of stormwater drainage, this could be an issue- especially for the properties located at the Glen Eagle section.
- Note- the notice of decision in the applicant's packet is only for the 2008 amendment preliminary plan. This is not the final notice.
- Submission of home owner's association documents?
- The applicant should check with the Fire Department (Chief John Glass 934-4911), Police (Chief Dana Kelley 937-5805 Sewer Treatment (Chris White 934-4416), Public

Works (Bill Robertson 934-2250) and Biddeford/Saco Water Department (Tom Carr) to be sure the proposal is ok with them. Note- I submitted the application packet to Public Works.

- I believe the applicant submitted plans to the town's engineer for peer review. I have not received a response from the town engineer as of 4 April.
- Will the proposal include new fire hydrants and street lights? I see none on the plan.
- How will the future residents dispose of solid waste?
- Water/sewer/road design, specs, plans?
- I know there have been concerns about water supply and pressure in Dunegrass and I believe there are two separate systems, one partially owned by Dunegrass and the other entirely under the control of Biddeford and Saco WD. Which water source will be used- where is the water coming from? Note that for the 2008 40-unit approval it was determined the project will not cause a burden on water supply. Biddeford Saco Water Co. has confirmed available capacity for this project in a letter dated 9/6/2007.
- Consider shared driveways?
- Snow plowing/disposal/storage method and location?
- DEP permitting status?
- Please provide a dwelling unit count update as a plan note. Please include where units are coming from and/or remaining in sections J and L.
- Proposed sidewalk- ADA accessible? The sidewalk is within the right-of-way. If the town accepted Wild Dunes Way, will the town be responsible for maintain the sidewalk? I'll check with Public Works.
- Currently there's an Island View Avenue in OOB- will this be an issue the proposed road name "Island Drive?" I recommend the applicant check with Police and Fire.
- Bill Robertson, PW Director comments:

1. Where is the design for the Sewer system, Drainage system and water utilities?

2. The Conservation Commission is already proposing a trail along the southerly side of Wild Dunes Way for a connection from Veterans Memorial Park to the Eastern Trail, therefore is this sidewalk necessary. The proposed trail I believe will be 6 feet or so wide and be constructed of reclaim material. In fact it's already in place in this section and merely needs to be regarded and rolled.

3. I don't particularly care for the short distance between Long Cove Drive and Ponte Vedra Drive on Wild Dunes Way, and that may be the site distance but no one travels at 25mph. Perhaps the developer could eliminate this entrance make Ponte Vedra Drive a cul-de-sac with a partial cul-de-sac to the west and expand lot #17 back to get the required area.

- Overall, I believe this plan is better than the 2008 proposal and will be a better fit with the surrounding development. Even though the 2013 proposal is scaled down from the 2008 approval, my primary concern is if we have enough information to properly evaluate this proposal.

(2013 BACKGROUND- 9 May Meeting):

- At the April PB meeting, the Board determined more information was needed in order to properly review the plans. The Board requested a full set of plans, scheduled a site walk and public hearing.

- The May submission includes a cover letter addressing comments from the April meeting, abbreviated stormwater management report and a set of plans.
- I believe the water supply issue is resolved because the supply is not part of the Dunegrass Community Association (DCA) water system.
- I have not received the HOA docs. Does the PB feel they need to review these before issuing a decision?
- Did the applicant check with Police and Fire about the Island Drive street name?
- The PW Director suggested eliminating the Ponte Vedra Dr. access to Wild Dunes Way. This has not be done- is this a concern to the PB?
- PW Director, Bill Robertson, offers the following:
 - I have not received comments from Bill- I know he's busy with construction projects. I expect his main concerns will be the Ponte Vedra Dr. access and stormwater drainage. He may recommend that the roads in the Sawgrass Subdivision remain private.*
- I have not received a letter from Biddeford/Saco Water- what is the status of this?
- Stephanie Hubbard received her first set of plans on 30 April. I expect she will provide comments by the 9 May meeting. Will her suggestions require plan changes?
- Status of DEP permitting?
- As I understand, the DCA documents require structures to be located at least 10' from unit site lines (side and front) and there is a 25' no clearing (vegetation larger than 4" in diameter) for the rear lot line. Looking at Sheet 1, it appears most of these structures do not conform to these restrictions.
- Stormwater- this seems to be the primary issue associated with this proposal. Based on the new submission, it appears the method of drainage is similar to what was approved in 2008. I have concerns about this because I can see a potential impact to the Glen Eagle development. Also, the ditches appear to be filled along Wild Dunes Way, so how will the water travel? Is the drainage pipe (on and off site) that will carry drainage appropriately sized? As I understand, drainage will travel to Basin 5- what systems are in place to insure the water can appropriately travel there? Also, does the developer have ownership rights to allow drainage in the basin? Are there other entity's that need to give permission in order for the developer to use the drainage basin?
- Stormwater- Gary Salamacha, acting on behalf of the Glen Eagle Board of Directors offered these comments:

I guess the big question is, if the water dumps onto Glen Eagle, where is the waterway to channel the water to the pond on Fairway 5, which is how it was planned to go.

Any waterway or piping system would have to be in the public right of way, they can't use our common land or my lots to create a ditch.

The other big question is, the culvert is only 12" between units 5 and 4, and I don't believe a culvert that small will handle all the water anyway.

To get to that culvert between 4&5, the only way to do so as I said.

Is go down the public right of way, and at some point they would also have to cross Glen Eagles common land.

- Stormwater- I see no reference in the Stormwater Report concerning conformance with the town's Post Construction Stormwater Ordinance. This can be a condition of approval but we must insure it is mentioned in the Home Owner's Documents.
- Street Lighting- As discussed at the April meeting, the PMUD District has street lighting standards. The applicant's engineer, Les Berry, sent these comments:

Sheet 5 of the Sawgrass plans show a lighting plan with 0.93 average illuminance which is just below the standard of 1.0 average.

This is 9 light poles for 700+/- feet of road in the Dunegrass project that currently has no light poles. This just strikes me as a big overreach by the land use code.

1. Light pollution - I did not see any specific reference on the OOB ordinance to light pollution except from car lights but 9 lights is overkill. It will be so bright that one could read a book at night as they walked down the street. This in my opinion is creating a nuisance condition.

2. Dunegrass - This project does not have any lights. Why would the Town want to create one bright neighborhood next to all the other neighborhoods.

3. Construction Cost - The cost 9 poles with underground wires for a separate electric service is just unnecessary.

4. Operational Costs - This is a big monthly cost to the Homeowners Association.

5. Environmental Cost - Excess light and energy use just seems to be not in step with current public policy to conserve energy and minimize environmental impacts.

In summary, I live in a small lot subdivision in Gorham that I developed and I begged the planning board to not have light poles. They finally agreed with me and the neighborhood is now complete. That turned out to be an excellent outcome. There is plenty of ambient light for walking with need to get blackout shades so one can sleep at night. Perhaps we can talk about this at the site walk and invite the planning board to do a nighttime driveby.

- I agree with these comments but I have been unable to find something specific that clearly allows the PB to approve the proposal without street lighting in conformance with the PMUD standards. What I did find is the very last sentence in the subdivision ordinance (74-313 c): "Street lighting shall be installed as required by the Planning Board." Seeing "shall" means to me that street lighting is required; although, the PB appears to have flexibility as to how much street lighting is required. I looked through other Dunegrass approvals Findings of Fact and found the developments were required to have streetlights in conformance with the PMUD standards. Note: The most recent submission show conformance with the PMUD street lighting requirements.
- I have not received a landscaping plan but based on the PB's April discussions, this is not an issue to prevent the proposal from moving forward.

(2013 BACKGROUND- 13 JUNE MEETING)

- My primary concern at this time is the 8% road grade on Island Drive. Even if the roads are to remain private, I still believe they must meet applicable standards; therefore, a waiver of maximum grade standard (74-309 (m)) is needed for a road with an 8% grade. This road is defined as a “Collector” which has a maximum grade of 6.0%. The PB has the authority to grant waivers (74-34 as long as the PB finds the provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare or is inappropriate because of inadequate or lack of connecting facilities adjacent or in proximity to the proposed subdivision. As long as surface water drainage is properly planned for, I believe the PB can grant this waiver.
- The Home Owner’s Association Documents that I have do not appear to include the following language: A. All stormwater system operations, maintenance and repair shall be the responsibility of the Home Owner’s Association and B. All operations, maintenance, repairs of the streetlights and associated electrical systems shall be the responsibility of the Home Owner’s Association. There were a few HOA documents emailed so I may not have the most recent or maybe I overlooked this language. If the most recent HOA documents do not include this language I recommend they are amended to include the language (see condition).
- The revised plans include site lighting and landscaping (Sheet 5).
- It appears the stormwater management questions/concerns, including conformance with the Post Construction Stormwater Ordinance has been addressed, including the addition of an operations and maintenance plan. Also, the revised plans should address the neighbors’ concerns. There are concerns about short and long term functionality and maintenance of the dry wells (as you may recall, additional dry wells were added to avoid discharge to neighboring properties).
- I believe there are concerns about driveways close to intersections. 78-1466 (e) states that no driveway shall be located within 50 feet of the curblin tangent of an intersecting local street and/or private way. It appears several lots have driveways that do not meet this standard (Lots 11, 12, 16, and 19). 78-1568 (a) (2) of the OOB ordinances provides a waiver provision that allows the PB to waive the standards above-mentioned second bullet as long as the modification will not create unsafe conditions for vehicles or pedestrians.
- The DCA provided comments which they want to be part of the conditions of approval. As I understand, DCA is separate from the zoning standards the PB must follow. Prior decisions from the PB and town staff reflect this. I do believe the PB must carefully consider the DCA’s comments but ultimately, I think it is separate from the PB’s responsibility to ensure a development complies with applicable ordinances. If the DCA’s comments tie directly to a zoning standard that will fall under the PB’s jurisdiction. Otherwise, and as it appears to have been interpreted in the past, compliance with DCA rules and obligations must be worked out between the DCA and the developer. Ideally, the developer and the DCA will work these matters out before town approval or before construction begins.
- There were comments concerning the September 2005 Consent Agreement between the town and the Developer (part of your packet). Not all of the terms of the agreement are directly associated with the Sawgrass proposal (identified as a portion of Section L); although, Section L is specifically identified as part of obligations 21.a and 21.c (page 5 of the 20 September 2005 Consent Agreement). In regards to 21.a, I believe the remaining undeveloped portions of Long Cove Drive do not need to be completed with the development of Section L because the obligation states “prior to the completion of

development of areas Q, M and L.” My interpretation of this is Q, M and L are tied together and because Q and M are undeveloped, by only developing L at this time does not mean Long Cove Drive needs to be completed because Q and M remain undeveloped. Once Q and M are developed, Long Cove Drive must be completed. Regarding 21.c, this appears to apply because the obligations states “at the time of development” and “to each of those areas.” This appears to be different from 21.a because 21.c treats each section separately and states at the time of development, not at the time of completion. Therefore, it appears Section L needs two sources of water.

- The PW Director prefers that Ponta Verde Dr. should not access Wild Dunes Way- and should terminate in a hammerhead or cul-de-sac. The plans have not been changed to reflect the PW comments. Is this a concern to the PB?
- I recommend setbacks be included as a note on the final plan.
- RECOMMENDATIONS: I believe the PB can rule on the revised Sawgrass residential subdivision. Before a decision is made on the subdivision as a whole, I recommend the PB first rule on a waiver of 74-309 (m) to allow a maximum grade of 8% on Island Drive and a waiver of 78-1466 (e) to allow the driveways of Lots 11, 12, 16, and 19 be within 50 feet of the curblin tangent of an intersecting local street and/or private way If you choose to approve I recommend the following conditions:
 1. Construction shall not begin until all applicable Maine Department of Environmental Protection permit application approvals are secured by the applicant and/or property owner. If these MDEP approvals change the plans and written documentation that were submitted and part of the Planning Board approval, those changes shall be presented to the Planning Board.
 2. The Home Owner’s Association documents shall include the following language:
 - A. All stormwater system operations, maintenance and repair shall be the responsibility of the Home Owner’s Association.
 - B. All operations, maintenance, repairs of the streetlights and associated electrical systems shall be the responsibility of the Home Owner’s Association.
 3. Digital plans shall be submitted to the town and to the town’s GIS consultant in accordance with Chapter 78, Sec. 78-215 (4) before any construction begins.

(2014 UPDATE- 9 October Meeting)

During the June 2013 meeting, the PB unanimously voted to table this item without prejudice. The proposal is now brought back to the PB with three changes since the June 2013 meeting 1. Updated application; 2. A letter from the former engineer (BH2M Les Berry) addressing various comments; and 3. A new engineer is involved (VED, Jason A. Vafiades).

I recently met with the new engineer to discuss what I believe is needed to move the proposal forward. I recommended he address and/or submit the following:

1. Address comments from the PB, staff, town engineer, abutters, etc. beginning 9 May 2013 – 13 June 2013. I believe the applicants’ response to this is the Les Berry letter within your packet.
2. Submission of updated Subdivision Amendment Application. This was submitted and in your packet.
3. Submit other application information (e.g., plans, stormwater plan) as recently submitted as part of the 2013 review or as amended after June 2013. This information was not submitted.

Although the proposal received considerable review last year and it appeared to be near conclusion, I believe the proposal still needs further review after this evenings meeting,

especially in regards to various comments that I believe are unanswered and/or not reflected on plans including, but not limited to, submission of the waiver requests, home owner's association document changes and plan amendments. There are still decisions the PB need to make before they rule on the proposal (such as the waiver requests) and I believe we do not have all of the information to help us make these decisions. I recommend the applicant submit a plan set and waiver requests to me before the next formal submission to the PB. This will allow me to look at the complete application and advise the PB and applicant as to what I believe are outstanding issues. Also, the PB may want to hold another public hearing and site walk. As I recall, there was considerable abutter interest in this proposal last year and abutters may want another opportunity to speak.

RECOMMENDATIONS: I recommend the applicant: 1. Submit a full set of the most recent plans; 2. Submit waiver requests as identified in my above-mentioned "background" comments from the 2013 meetings; and 3. Thoroughly review comments between 9 May 2013 and 13 June 2013 meetings to ensure they've been properly addressed. This includes the current engineer evaluation of the former engineers' comments and plans to see if the current engineer agrees and supports the statements and plans from the former engineer. If the PB would like to schedule a public hearing and site walk, these meeting can be held during November (6 Nov. for the site walk and 13 Nov. for the public hearing).

(December 2014 Meeting)

ITEM 7

Proposal: Conditional Use: Appeals from Restrictions on Nonconforming Uses to allow an Accessory Dwelling Unit
Action: Owner presentation; Discussion; Schedule Site Walk; Schedule Public Hearing; Schedule Final Review
Owner: Thomas Smith III
Location: 183 Temple Ave., MBL: 211-2-22

DESIGN REVIEW CERTIFICATES

ITEM 8

Proposal: Remove existing motel and replace with new motel on same footprint
Action: Decision on Certificate of Appropriateness recommendation
Owner: Samco Inc.
Location: 2 Harrisburg St., MBL: 306-4-6, DD-2

RECOMMENDATIONS: At their 1 December meeting, the DRC recommended that the PB issue a Design Review Certificate. The PB already conditionally approved so there is no need for further PB action.

ITEM 9

Proposal: Remove existing building and construct three-story mixed use building
Action: Decision on Certificate of Appropriateness recommendation
Owner: Judd Sher
Location: 55 East Grand Ave., MBL: 305-5-4, DD-2

RECOMMENDATIONS: At their 1 December meeting, the DRC recommended that the PB issue a Design Review Certificate. I recommend the PB approve the Design Review certificate as recommended by the DRC.

ITEM 10

Proposal: Remove existing building and construct three-story apartment building
Action: Decision on Certificate of Appropriateness recommendation

Owner: Atlantic Ocean Suites II LLC
Location: Dube St., MBL: 305-1-3, DD-2

RECOMMENDATIONS: At their 1 December meeting, the DRC determined more information was required and tabled this item. I recommend the PB table until the DRC provides a recommendation.

Further Information sent to the applicant:

As you know, the Design Review Committee (DRC) Tabled their decision on the Atlantic Suites II proposal. The DRC agreed that further information was needed to allow for a proper review which will hopefully provide a favourable decision. Comments below and documents attached identify the info requested.

- Roof shingle materials? Type/Manufacturer? Colour? Include cut sheet
- Trim materials? Type/Manufacturer? Colour? Include cut sheet
- Window materials? Type/Manufacturer? Design (e.g., 6 over 6)? Colour? Include cut sheet
- Door materials? Type/Manufacturer? Design? Colour? Include cut sheet
- Exterior lighting design (e.g., recessed can)? Bulb type and wattage (e.g., LED, 100W)? Include cut sheet
- Railing materials? Colour? Include cut sheet
- Exterior lighting to be show on plans
- Exterior mechanicals to be shown on plans (if proposed to be on building exterior)
- Photos showing property and building as it exists today.
- Photo simulations showing property and building upon completion of construction; including views that show adjacent properties, view from Dube Street, and views from East Grand Ave as you'd see it when traveling North and South. The DRC believes this is important so to allow them see how the proposed building Mass and Scale fits in with the surrounding properties/buildings.
- Design Standards DD1&DD2 2014 Attachment. These standards are very important because the Design Review Committee use them to rule on a proposal. I recommend you provide written responses to each by explaining how your proposal meets the requirements. Also, be sure to use these standards when designing your proposal.

