TO: **Old Orchard Beach Planning Board**
FROM: **Planning Staff**
SUBJECT: **February Planning Board Meeting Summary**
DATE: **9 February 2017**

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

ITEM 1
Proposal: **Determination of parcels inclusion with 2004 Campground Registration**
Action: **Discussion; Decision**
Owner: **Paradise Acquisitions LLC**
Location: **60 Portland Ave, MBL: 205-1-32; 50 Adelaide Rd, MBL: 106-2-2 (portion of)**

Following-up on PB request to discuss with the Assessing Department, we spoke to Assessor Bill DiDonato concerning how their records view the Tousignant to Paradise Park land transfer and the pistol-shaped lot (MBL 205-1-32). As a result of this discussion we have more confidence that the area associated with the Tousignant to Paradise Park land transfer was part of the 2004 Campground Registration Application approval because this area was merged with the Paradise Park Campground lot (MBL 106-2-2) before the 2004 Campground Registration; therefore, already included within the Campground. Regarding the pistol-shaped lot, we did not find any more clarity to assist the PB with their determination as to if it was/was not part of the 2004 Campground Registration Application approval. Further information for each is briefly discussed below.

Regarding the Tousignant to Paradise Park land transfer, a portion of Tousignant land was transferred to Paradise Park during October 2002 (Note- the deed was included within the 2004 Campground Registration Application). This land was merged with the Paradise Park MBL 106-2-2 so it became part of 106-2-2 before the 2004 Campground Registration process. There are questions regarding where the property boundary line dividing Tousignant and Paradise Park exists as a result of the 2002 transfer. Attached (Tousignant to Paradise Park Base Survey Map 2002) is a formal survey plan prepared for Tousignant during 2002. The diagonal blue boundary line that runs almost due north is the line created as a result of the 2002 land transfer that separates the Tousignant and Paradise Park lots. To verify this line, we plotted the metes and bounds description in the Tousignant to Paradise Park October 2002 deed and found it matches this line. So, it appears quite clearly that the area to the left of the diagonal blue boundary line is Paradise Park and to the right is Tousignant. And it is our opinion the area transferred to Paradise Park as shown on the attached plan is part of the approved Paradise Park Campground. One question is why was the land transfer not shown on the "Boundary Survey" included with the 2004 Registration Application, especially since the area was merged before 2004. We do not know the answer but Paradise Park stated they included the October 2002 deed in the Registration Application to show that it was part of the campground.

Regarding the pistol-shaped lot (205-1-32), this lot has remained a lot separate from the main Paradise Park Campground lot (106-2-2) since Paradise Park acquired it during 1997. Unlike the Tousignant transfer, this area was not merged into 106-2-2. Although, the pistol-shaped lot and 106-2-2 do have the same ownership and tax bills are mailed to the same address. Based on our research we could not find an answer as to why this lot was not merged with 106-2-2. Also, we could not determine if this lot was or was not included with the approved 2004 Campground Registration. The only information we have to show that it was included is the "Boundary Survey" that was part of the Paradise Park's 2004 Application. But what concerns us is that it was clearly a separate lot before, at the time of and after the 2004 Campground Registration. So, why was the MBL not identified on the application? Why was this deed not included with the application (like the Tousignant to Paradise Park deed)? Why was the Vision property card not included with the application? But we are left with

the question-why would Paradise Park show this area on the Boundary Survey if they did not want to include it as part of their campground and why would Paradise Park exclude this lot from future use as a Campground?

So, it comes to the PB's determination as to whether they believe, with all the information that has been provided, that the area associated with the Tousignant to Paradise Park October 2002 Deed and the pistol-shaped lot (205-1-32) was included with Paradise Park's 2004 Campground Registration Application and approved by the PB. It does appear the Tousignant to Paradise Park area was included with the 2004 Campground Registration Application and approved by the PB. Regarding the pistol shaped lot, it's difficult to say with certainty the lot was or was not included and approved. But, it does not make sense why Paradise Park would not include this lot as part of their Campground Registration Application. Nonetheless, it comes down to what the PB feels the Board approved during 2004. One important note- The land adjacent to the pistol-shaped lot acquired by Paradise Park during 2016 has been merged with the pistol-shaped lot. If the PB determines the pistol-shaped lot was approved to be part of the Campground, the area recently merged must be excluded as this was clearly not part of the 2004 Campground Registration Application. This should be specifically included in the decision through language such as …includes the land area as shown on…and excludes a land transfer identified…

Town Attorney Comments (1.20.2017)

I thought I would send a brief follow-up email to briefly summarize our discussion. I have also attached my first email on this subject, and my subsequent email is below. (**Note**- Phil's first email and his subsequent email are attached to this memo)

The Planning Board has the jurisdiction under the Ordinance to review an application for a proposed campground expansion for more than five sites under the Campground Overlay District and site plan review standards. Section 78-1227(c),(e). The Board originally reviewed applications for registered campground status and reviewed the existing campgrounds for compliance before designating the registered campgrounds that were included in the overlay district. The town planner and code enforcement officer only have the authority to approve applications for up to five additional sites in registered campgrounds.

The first question before the Planning Board when reviewing an application for an expansion of a campground is determine whether the land where the proposed expansion would occur is was included in the plan submitted in 2004 and thus part of a registered campground. As I have noted previously, this is a fact determination and not a zoning determination - the burden is on the applicant who must submit evidence that the project is within the permitted boundaries. Reading the ordinance as a whole, the controlling document is the site plan that would have been submitted in 2004 as part of an application for registered campground status; to the extent there is any ambiguity the Board can review deeds and tax maps associated with the property.

If the Board determines that the land is part of a registered campground then they should apply the performance standards in Section 78-1229 and the site plan review standards in Article IV of the Ordinance.

If the proposed expansion is determined to be located in an area outside of the boundaries of a registered campground, any application must comply with the requirements of the underlying zone. An applicant could also seek an amendment to the Zoning Ordinance from the Town Council.

December 2016 Memo

This proposal is back to the PB not as a zoning amendment or campground development proposal but for a decision by the PB concerning whether two areas were included with the approved Paradise Park 2004 Campground Registration Application. These two areas are: 1. A pistol-shaped parcel; and 2. The land area associated with the Tousignant to Paradise Acquisition, LLC 2002 deed. The PB last considered this (August 2016) as part of a zoning amendment proposal and decided to remove from the agenda because:

1. We need to determine, beyond a reasonable doubt, which lots were part of the PP's 2004 registration. Based on the information in the hard copy files it appears one of the lots (205-1-32) was part of the 2004 campground registration. This is actually why the question came up. Staff spoke about this in the Paradise Park Campground Overlay Public and PB comments memo

2. If one or more lots are part of the registered campground then it appears the proposal can move forward without any zoning amendment. Lots that are registered appear to be able to move forward with a Site Plan Review application.

3. If the lot or lots were not included with the 2004 registration, then the base zoning districts (R1 and GB1) need to go through the zoning amendment process if PP wishes to establish campground uses. Amending the CO as a zoning district appears to do nothing as the CO was not intended to be a district. As our town attorney states, it should not have been shown on the zoning map.

Basically, only the lot or lots included in the 2004 campground registration can move forward with a campground proposal without zoning amendments. Any lot or lots not included in the 2004 registration need an amendment to the base zoning district (R1 and possibly GB1) to allow campgrounds as a use before a campground can be proposed. It appears the PB can't provide a recommendation anyway because the CO as a zoning district does not exist.

After the August meeting, staff continued to research and could not definitively conclude if the lots in question were or were not included with PP's 2004 Campground Registration. So, we consulted our town attorney for more direction and received the following response:

As I noted in my August 10th email, the purpose of the overlay district was to allow existing campgrounds to "expand"—*i.e.* add more sites or more facilities--but only within the boundaries established by the April 1, 2004 registration. A registrant seeking existing campground status had to provide an existing conditions site plan consisting of either an aerial photograph accompanied by a site plan showing the boundaries of the property or a property survey. Section 78-1226. Whether or not a property is registered campground for purposes of Section 78-1226 is ultimately a decision for the Planning Board to make as part of a proposed expansion.

An existing campground that registered in 2004 and now wishes to expand must show that land for any proposed new sites is within the 2004 boundaries. It is the applicant's burden to show that the proposed expansion is in the overlay zone, and must submit proof that the project is within the permitted boundaries. Although it does appear that the "pistol shaped lot" has a dark outline around it suggesting it was included in the boundary, the site plan that accompanied the 2004 application is difficult to read so it may be helpful for the applicant to submit a survey or other evidence to the Planning Board to allow the Board to make a proper determination. You also mentioned that the Town may have provided the aerial photograph required by 78-1226(1)(a)(i) which should also be reviewed.

Regarding the other property associated with the deed - I do not believe that a deed alone is sufficient since Section 78-1226 requires that an application for a registered existing campground had to include a site plan showing the boundaries.

The Planning Board should review the 2004 application and approval, together with any other information the applicant wishes to provide to proof that the proposed expansion is within the 2004 approved boundaries.

The town attorneys last sentence brings us to where we are today- a decision by the PB concerning whether two areas (or one of the two) were or were not included with the approved Paradise Park 2004 Campground Registration.

To follow-up on a comment at the workshop, staff found the two PP expansion plans approved by the PB (2008 and 2014) after the 2004 Campground Registration. Regarding the 2008 plan, it does appear to show the pistol-shaped area and area associated with the Tousignant to Paradise Acquisitions deed as part of the Paradise Park overall campground. The pistol-shaped area has a darker shaded line marking the property boundary which is consistent with and connects to the other identified campground property boundaries. Although, there is a lighter shaded dashed line that appears to show some kind of separation between the pistol-shaped area and the main PP lot. The Tousignant to Paradise area does appear to be included within the main PP lot as the property boundary shown on the town's zoning map does not exist on the 2008 plan. But, why is the Tousignant reference still in the area where the Tousignant lot existed (or exists) on the town's zoning map? Maybe a typo but we're not sure. Regarding the 2014 plan, the Property Overview inset on the signed plan does appear to show both the pistol-shaped area and Tousignant to Paradise lot as part of the main PP lot and campground.

This is a tough one but what it comes down to is does the PB feel that there is enough evidence to show the pistol-shaped area and/or the Tousignant to Paradise Acquisitions area was part of the approved Paradise Park 2004 Campground Registration. Remember, you are not deciding on a development proposal (e.g., campsite expansion, access road construction) at this time. But, if the one or both areas are found to be part of the 2004 Campground Registration, PP has the right to apply for new campground development in these areas.

ITEM 2

Proposal: Major Subdivision and Site Plan Review Amendment: 9-unit residential development
Action: Sketch Plan review
Owner: Tom Gillis
Location: 1-3 Cascade Rd., MBL: 205-16-1, GB1

Tom Gillis, owner of Seaglass Terrace, is proposing to amend the 14 July 2007 Planning Board approval of Seaglass Terrace by converting two of the approved two-family buildings into four single-family buildings. At our February meeting, Mr. Gillis is seeking feedback from the PB to help him prepare the amendment application.

The 2007 approval authorized construction of residential subdivision consisting of nine townhouse condominium units. The nine units were divided into three two-family buildings and three single-family buildings. Highlights of the project include construction/replacement of sidewalks along Cascade Road, public water and sewer, private road with a hammerhead at the SW property line, private collection of solid waste, and a Home Owners Association. Staff inserted the 2007 Findings of Fact in the February Seaglass submission.

The proposed 2017 amendment includes the following primary changes (2017 conceptual plan vs. 2007 recorded plan):

- The approved 2 two-family buildings (units 1 & 3 and 5 & 7) are proposed to become 4 single-family buildings. There is no change to the overall unit count.
- Parking areas for the units associated with the change are adjacent to the subdivision's road.
- Units now have their own condo "lot"
- Slight changes to dimensions and location of single-family buildings (units 2, 4 and 6).
- Length of hammerhead changed.
- Dumpster pad removed

I asked Mr. Gillis to provide an update on the completeness status of the project. Mr. Gillis responded with the following:

- Roads: Base paving complete 100% (final paving to be completed at final stage of development. Final pavement 0%
- Earthwork 70%. Cuts and fills were done, stabilized but more grading is needed as the units are built.
- Sanitary Sewer 100% (four man holes installed.) Sewer connections completed to all units and tied in to main at Cascade Road.
- Water mains 85% (Main line completed and connected at street tested but not energized). All services are run to all Lots.
- Drainage 67% North Swale completed and stabilized, Drainage manhole with grate installed under roadway and headwall completed, per DEP permit. Rear swale to be finalized when back units are constructed. Retaining wall eliminated along wetland as not necessary and confirmed with consulting engineer at time (Woodward and Curren).
- Landscaping 15% complete. Landscaping was completed on units 8&10 only. I would place the sidewalk in this part. It has not been started.
- Underground utilities 5% (new pole was installed by CMP at entrance. I keep in contact with CMP every six months and the work will be completed by them once they get the go ahead they will be on site 4 to 6 days to do the install.
- Also what hasn't been started is final pavement, this is best done last. This would include the curbing portion as well.
- My best guess would be we are about 78% complete with the project.

Below are miscellaneous comments and questions associated with the proposed amendment (in no particular order).

- Road to remain private?
- Need HOA documents.
- DEP Permit-By-Rule approved during 2007. I believe this approval expired. Does the existing completed construction fulfill DEP permitting obligations? Is a new or renewed DEP permit required?
- Buildings 1 and 3 are close to the 25' wetland setback. It's important to ensure the plan clearly shows both buildings meet the setback. Also, this should be clearly noted (perhaps in FOF and a note on the plan) the buildings must not be within the wetland setback.
- Building unit numbers skip #9. Please renumber.
- Unit 10- where are parking spaces?
- Unit 8- clearly show parking spaces.
- Unit 6- identify that parking spaces are for unit 6.
- Parking space dimensions? Most are oriented at 90 degrees which requires 9 x 18 (standard) and 8'6" x 17' 6" (compact).
- Regarding the parking spaces abutting the road, is the road considered part of the parking area and must meet the aisle 24' – 25' width standards? If so the applicant will need to request a waiver as the built road is 20' wide. Sec. 78-1568 allows for parking waivers.
- As you'll see below, FD Chief Dube offers comments/concerns regarding road turning radius, distance road is from building, turnaround, hydrants. Note that during 2007, former FD Chief Glass reviewed the proposal and recommended the hammerhead (which is on the plan) and a hydrant at the entrance (not shown on the plan).
- Retaining walls- included with 2007 approval but per Mr. Gillis comments, Woodard and Curran (town's former consulting engineer) authorized removal.

- Dumpster with enclosure not included in 2017 sketch plan. Will this be on formal plan? If not what is the plan for solid waste?
- Hammerhead length the same in 2017 as approved in 2007- 40' off-center on both sides (80' total)?
- Any issues associated with project that came up after approval and during construction that remain unresolved? We're not aware of any but need to review files.
- What makes this a bit different from other amendments we've reviewed is the project is partially built, which includes most of the infrastructure. So, it may be difficult to change items that physically exist.

Department Comments

FD Chief Ed Dube:
In regard to Seaglass Terrace here are some of the requirements they need to meet by NFPA. Unit-3 and Unit-5 do not meet NFPA 18.2.3.1requirements, and I also need to check on the nearest hydrants locations.

1) All roads would be twenty feet wide under NFPA 18.2.3.
2) Under NFPA 18.2.3.4.4 Dead End, where a fire department access road exceeds 150 feet in length and is also a dead end an appropriate turnaround is required minimum length equals to the length of the longest fire apparatus which would be our tower truck at 48 feet.
3) Under NFPA 18.2.3.4.3 Turning Radius, the road turning radius must be able to accommodate the turning radius of our tower truck at 48 feet long. A handout is attached to this letter with the calculation showing the turning radius for our tower truck.
4) All privately owned hydrants would be maintained under NFPA 18.35 Water Supplies and Fire Hydrants.

Under NFPA 18.2.3.2.1 Access to Building, a fire department access road shall extend to within 50 feet of at least one exterior door that can be open from the outside which provides access to the interior of the building. If this not done an approved automatic sprinkler system shall be installed. Under NFPA 18.2.3.2.1.1 where a one or two family dwelling is protected with an approved automatic sprinkler system installed in accordance with NFPA 13D, the distance in 18.2.3.2.1 shall be permitted to be increased to 150 feet.

OTHER BUSINESS

1. Discussion: Appeals from Restrictions on Nonconforming Uses (78-180).

78-180 allows a nonconforming use of land or a nonconforming use of a structure to be enlarged, increased, extended, moved, reconstructed, structurally altered, converted to another nonconforming use, or resumed after cessation for a period of more than two years but less ten years upon approval by the PB as a Conditional Use.

As you can probably see, this standard provides a lot of flexibility in regards to what someone can do with a nonconforming use after the use ceases for more than 2 years. In fact, this standard allows you to change the nonconforming use into another nonconforming use so it can be said that all uses, even those that are not permissible by ordinance, are in fact permissible if you have a nonconforming use and you cease the use for more than 2 years. A proposal for conversion, resumption, expansion, etc. does require PB consideration but it gives the PB rather broad standards for review which are wide open for interpretation- this makes it difficult for the PB and applicant.

A standard such as 78-180 does have some positives but its current language leaves the town open to potentially undesirable uses which could create considerable impacts. The language could be tightened up while still allowing reasonable leniency for conversions, expansions, etc. of nonconforming uses of land and structures. Points to consider:

- The town already has standards in place that deal with nonconforming use of land (78-177) and structures (78-179). The standard we're considering allows an owner of a nonconforming use or structure to essentially "waive" the standards in 78-177 and 179 as long as the PB finds a proposal is acceptable. Really, one of the primary differences is 78-180 allows the nonconforming use of land and structure standards to be extended to 10 years.
- Reduce the 10 years to a shorter time-frame. This may be applicable only for resuming and converting nonconforming uses if the PB feels proposals that enlarge, increase, extend, move, reconstruct, structurally alter nonconforming uses can have a more lenient time frame.
- Delete or amend the "converted to another nonconforming use" language. This language pretty much smacks the principles of zoning in the face as it could be interpreted to allow any use to be established on a property that has a nonconforming use, even if the use is specifically prohibited.
- Tighter PB review standards? Adding something such as "…will have no greater adverse impact according to the criteria listed in…" then add criteria. Also, maybe some types of development will not need PB review or even be exempt. For example, 1 & 2 family residential use will typically not have the same impact a hotel, apartment building or nonresidential use.
- Perhaps we take the language within the nonconforming standard and create individual requirements for each. For example, change of nonconforming use, resumption of nonconforming use, expansion, etc. could have their own individual standards.
- Remember, we are only dealing with the nonconforming use of land or structure. This does not include how a structure meets setbacks, height requirements (that's nonconforming structure) or if a lot meets the minimum lot area requirements (that's nonconforming lot). This standard only regulates how the property or structure is used.
- When you dive into this you'll see it's really not as easy as it seems as there are a number of matters, scenarios, etc. to consider. On the other hand, it could be quite easy- delete 78-180 all together and allow 177 and 179 to regulate nonconforming uses of land and structures and if someone needs relief, apply to ZBA.

Below is 78-180 which is the primary standard we are considering. Following is 78-176, 177 and 179 which should be used as part of our consideration (Also in your packet).

Sec. 78-180. - Appeals from restrictions on nonconforming uses.
Notwithstanding sections 78-177(1) through (3) and 78-179(b) through (d), a nonconforming use of land or a nonconforming use of a structure may be enlarged, increased, extended, moved to another portion of the lot or parcel, reconstructed, structurally altered, resumed after cessation for a period of more than two years, but less than ten years, or converted to another nonconforming use on the lot which it occupied on the effective date of the ordinance from which this chapter derives or amendment of this chapter, upon approval of the planning board as conditional use pursuant to article VII of this chapter. The planning board may not approve any such enlargement, increase, extension, movement, construction, alteration, resumption or conversion, unless it finds that the impact and effects of this enlargement, expansion, extension, resumption or conversion to another nonconforming use on existing uses in the neighborhood will not be substantially different from or greater than the impact and effects of the nonconforming use before the proposed enlargement, expansion, resumption or conversion to another nonconforming use.

Sec. 78-176. - Continuation of nonconformance.
Any lawful use of buildings, structures, premises, or parts thereof existing at the effective date of the ordinance from which this chapter derives or amendment of this chapter and made nonconforming by this chapter or any amendment thereto may be continued although such use does not conform with this chapter or amendment thereto, subject to this division.
(Ord. of 9-18-2001, § 4.3.1)

Sec. 78-177. - Nonconforming use of land.
Continuance of nonconforming use of land shall be subject to the following:

(1) No such nonconforming use shall be enlarged or increased or extended to occupy a greater area of land than that occupied at the effective date of the ordinance from which this chapter derives or amendment of this chapter.

(2) No such nonconforming use shall be moved in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of the ordinance from which this chapter derives or amendment of this chapter.

(3) If any such nonconforming use of land ceases for any reason for a period of more than two years, any subsequent use of such land shall conform to the regulations specified by this chapter for the district in which such land is located

Sec. 78-179. - Nonconforming uses of structures.

(a) *Generally.* No existing structure devoted to a nonconforming use shall be enlarged, extended, constructed, moved or structurally altered except in changing the use of the structure to a conforming use.

(b) *Extension of nonconforming use.* Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the effective date of the ordinance from which this chapter derives or amendment of this chapter, but no such use shall be extended to occupy any land outside such building.

(c) *Superseded by permitted use.* If a nonconforming use of a structure or premises is superseded by a permitted use for a period of one year, the nonconforming use shall not be thereafter resumed.

(d) *Cessation of use.* If any such nonconforming use of a structure ceases for any reason for a period of more than two years, any subsequent use of such structure shall conform to the regulations specified by this chapter for the district in which such structure is located.

2. Discussion: Planning Board approval expiration for Subdivision, Site Plan and Conditional Use

As you may know, we've found that our subdivision, site plan and conditional use ordinances project approval expiration standards may be lacking. For example, our CU standards do not have a project approval expiration date which basically means a CU project approved by the PB can pretty much run indefinitely before construction begins. Another example is subdivision which has project expiration standards but they're tied to plan recording (74-234 a) and a rather odd one that appears to be tied to phased development (74-234 b)

Common project expiration standards are one year to begin construction and two years to substantially complete construction. This requires solid, clear definitions of begin construction and substantially complete construction. Our site plan ordinance includes standards similar to the above but the key language, project commencement and substantially completed, is not defined. "Substantial Start" is defined ("completion of 30 percent of a permitted structure or use measured as a percentage of estimated total cost") but that language is not used.

Note that we state “project approval expiration” and by this we mean after the project received full PB approval. This does not include approval during certain phases of the application process (e.g., preliminary plan approval).

SUBDIVISION:

74-234: (a) Any subdivision plan not so filed or recorded within 90 days of the date upon which such plan is approved and signed by the planning board as provided in this subsection shall become null and void, unless the particular circumstances of the applicant warrant the planning board to grant an extension which shall not exceed two additional periods of 90 days.

(b) At the time the planning board grants final plan approval, it may permit the plan to be divided into two or more sections subject to any conditions the planning board deems necessary in order to ensure the orderly development of the plan. The applicant may file a section of the approved plan with the tax assessor and the registry of deeds if such section constitutes at least ten percent of the total number of lots contained in the approved plan. In these circumstances, plan approval of the remaining sections of the plan shall remain in effect for three years or a period of time mutually agreed to by the municipal officers, the planning board and the subdivider.

SITE PLAN:

78-219: Site plan approval and all the legal rights, privileges, and duties thereof shall expire if project construction has not commenced within one year of the approval date and if the project is not substantially completed within two years of the approval date. The town planner and code enforcement officer may grant up to a one-year extension on administrative approvals, and similarly the planning board may grant a one-year extension on plenary site plan review approvals if compelling evidence is presented that additional time is required to meet federal, state, or local permit requirements or in reaction to market changes.

CONDITIONAL USE:

N/A

3. Comprehensive Plan Discussion

Documents in February packet