



OLD ORCHARD BEACH  
PLANNING BOARD  
March 2018 MEMO

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## *Regular Business*

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**ITEM 1**

**Proposal:** Subdivision Amendment: Amend Subdivision Plan David Deshaies Ross Road to create 1 lot  
**Action:** Discussion; Ruling  
**Owner:** David Deshaies  
**Location:** Ross Road., MBL: 105-2-16

<u>Deshaies Subdivision Amendment</u>	<u>Project Status</u>
<i>Sketch Plan</i>	Not Required
<i>Application Complete</i>	Not Required
<i>Preliminary Plan</i>	Not Required
<i>Site Walk</i>	Not Required
<i>Public Hearing</i>	Not Required
<i>Ruling</i>	Pending

The primary outstanding issue appears to be the minimum lot size. At the PB’s February meeting, the Board determined this proposal did not meet the lot size square footage requirements so the application was tabled. For our March meeting the applicant submitted a request to waive the public water or sewer standard allowing for one lot (3-2) to be reduced to 60,000 sq. ft. requirement through use of Subdivision Ordinance Sec. 74-34 (b). To grant a waiver request the PB must find:

1. Due to special circumstances of a particular plan, the provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare; or
2. Is inappropriate because of inadequate or lack of connecting facilities adjacent or in proximity to the proposed subdivision.

The applicant argues public water and sewer should be waived allowing for lot 3-2 to be reduced to 60,000 sq. ft. because:

1. It is demonstrated that the 60,333 sq. ft. lot (3-2) can accommodate private water and sewer with no impact to public health, safety and general welfare as shown by soils tests and septic design prepared by a certified professional and the likelihood of a healthful water supply as stated by a certified professional.
2. Due to the lack of connecting facilities adjacent or in the proximity of the proposal, connection is inappropriate because the cost would prevent development of the lots. The closest existing public water is 1,300 ft. from the proposed roadway entrance. Public sewer is 1.1 miles away. Estimated cost to extend water is \$200,000.

The applicant concludes public water or sewer should not be required for lot 3-2 because it is demonstrated private water and sewer will not negatively impact public health, safety and general welfare and, due to lack of connecting facilities adjacent to or in proximity of the proposal, connection is not possible because costs will prevent development of the proposal. Because public water or sewer is not required the 75,000 sq. ft. standard does not need to be applied to this project.

Other outstanding issues:

- Site distance. The PWD signed off on site distance as proposed. PB member Marc Guimont does not feel the site distance is adequate.
- Lot width. 200’ - how is this applied? See January comments.
- Abutter concerns regarding use of the Deshaies lot (e.g., number of dwellings).

**RECOMMENDATIONS:**

If the PB grants the waiver request and is comfortable that the proposal meets all other applicable standards, the proposed subdivision amendment can be approved. Although, staff recommends the PB vote at the April meeting so we can wrap up the details. If the PB feels the proposal does not grant the waiver the proposal cannot be approved. We expect the applicant will seek relief through application to the ZBA if this happens; therefore, we recommend the PB table final ruling until the ZBA provides a ruling.

Also, the PB should discuss other outstanding issues and determine if they remain or if the applicant has acceptably addressed.

## **BACKGROUND (FEBRUARY):**

The proposed amendment is to divide a single lot into two lots. The single lot associated with this proposal is part of a 3 lot subdivision approved during 2002. This lot was created as an estate lot and retained by the original subdivider (Deshaies) but was not developed. The owner is now proposing to divide the estate lot into two lots, each for single-family use.

At the January meeting, the PB decided to table any decision on this proposal. The primary outstanding issue is the interpretation of what 'lots with public water or sewer' means as it relates to which minimum lot size is required. The minimum lot size in the Rural District (RD) for lots without public water or sewer is 75,000 sq. ft. Lots with public water or sewer have a 40,000 sq. ft. minimum lot size. As proposed, the subdivision lots meet the 40,000 minimum lot size but do not meet the 75,000. Public water infrastructure is proposed to be installed within the proposed private way but there will be no extension of the water lines to public water source. The proposed lots have the ability to connect to public water but will not make the actual connection.

So this leaves us with the question- what is meant by 'lots with public water or sewer'? Does the lot need to have the physical connection and be serviced by public water or sewer upon creation of the lot or does the lot need to have the ability to be served by water or sewer but the physical connection does not need to be made at the time of establishing the lot? The former requires 75,000, the later requires 40,000. I could not find guidance or helpful language in our subdivision and zoning ordinances to assist with an interpretation.

It's my interpretation that as long as you have the infrastructure installed and the ability to connect than you can take advantage of the reduced lot size (40,000). Because the meaning of 'lots with public water or sewer' is, in my opinion, open to several interpretations, I believe it is possible that ambiguous language can be read to favor a land owner as it does not run counter to common law. Some PB members feel that in order to use the reduced lot size the connection must be made so public water or sewer is immediately available. Having the ability to connect without the physical connection is not enough to allow a reduced lot size. I can support this interpretation too. But because of the ambiguity it's my opinion that interpretation can be in favor of the land owner unless it's counter to law from a judicial decision. If the PB feels the physical connection must be made which will result in a 75,000 sq. ft minimum lot size, the applicant will need to consider other options. One of these options is a waiver request.

It's possible that a waiver request may be granted through use of Subdivision Ordinance Sec. 74-34 (b). One approach, which I'll use as an example, is to request a waiver of the standard that causes the lot size to be 75,000- the requirement of public water or sewer. The applicants argument could be due to the lack of public water or sewer infrastructure adjacent to or in proximity of the subdivision, water or sewer cannot be connected to either lot because of the excessive costs; Subdivision ordinance standard Sec. 74-277 (c) allows the PB to permit individual wells if service to each lot by a public water system is not feasible; Suitable private water and sewer can be installed. To have a shot at success, the applicant will need to prove: 1. Due to special circumstances, connecting water or sewer is inappropriate because of the lack of connecting facilities adjacent to or in proximity of the proposed lots; and 2. The requirement of water or sewer is not requisite in the interest of public health, safety or general welfare. The applicant will need to use the argument and prove that special circumstances associated with the proposal exist (e.g., excessive costs) and these special circumstances prevent you lot division for one new single-family residential use and the use of public water or sewer for a single residential lot is not essential in the interest of public health, safety or general welfare because documentation shows use of private water and sewer will not adversely impact public health, safety or general welfare. 74-34 includes another type of waiver described in "a", but this may be even more difficult to justify due to the language in it- "nullifying the intent and purpose of the zoning ordinance. 74-34 "b" does not include this language.

The town received several abutter comments associated with the private way proposal. The subdivision amendment does not have a public hearing but we believe the PB should consider abutters concerns when reviewing the amendment proposal. Abutter letters and the applicant's response to their concerns are included in your packet. Abutter comments related to the subdivision amendment include:

- Drying out well
- Contaminating well
- Stormwater drainage
- Buffer along shared property line

- Expectation that the Deshaies lot use would be for 1 single-family.

Finally, the question of lot width was discussed at the January meeting. It appeared the PB was ok with this matter (no objection was raised at the conclusion of this item) but we just want to be sure. See background January for further info.

**RECOMMENDATIONS (FEBRUARY):**

The PB should first determine what ‘lots with public water or sewer’ means as it relates to which minimum lot size is required. If the PB feels the lots must be physically connected to water or sewer upon establishment of the lot then 75,000 applies and the plan as proposed could not move forward unless the applicant is granted a waiver. If the PB feels the lots must have the infrastructure so they have the ability to connect but do not need the physical connection upon establishment of the lot then the proposal could move forward.

There are other options that may work. One includes creating condominium unit sites. Why this might work is because this does not create typical lots such as those that are now proposed. What it would create is something that looks like two lots but has shared common elements so it would essentially be one lot. A condo unit site proposal could use the same boundary lines as shown on the plan but they would not be formal property lines as we think of in the traditional sense, it will be more of a condo unit line- e.g., limited common element line. Each lot would be a condo unit site and each home a condo unit. A condo association will need to be created.

**BACKGROUND (JANUARY):**

Early last year, the owner’s representative (CES) began discussions with staff regarding what they could do with this lot. The focus was some kind of residential subdivision. At that time, approx. half of the estate lot was zoned Industrial (ID) and the other half Rural District (RD). Because of the ID zone and the shape of the lot, residential development proved to be difficult. The best option appeared to be the one that is now before the PB but to do this a zoning amendment to change the ID to RD was necessary. A zoning amendment to remove the ID and change the lots’ district so it is entirely within the RD was proposed and approved during 2017.

Now that the zoning district has been amended, the proposal could continue to the next step which includes creating lots that meet applicable RD standards for single-family lots. One of these standards, 200’ of frontage/lot, requires the creation of a private way. A private way application is submitted separately and discussed in this memo (Item 7). Although a private way is submitted separately it is a critical part of the subdivision amendment proposal because the private way must be approved to secure frontage which is necessary for the creation of a legal lot.

A majority of issues that came up have been addressed during the initial planning of this proposal. One question that remains is the 200’ lot width standard. Portions of the lots appear to have 200’ of lot width but each lot does not have 200’ width along the full length. This made me curious to see how this was applied in the RD for other lots (except those in cluster subdivisions). I found that lot width varied. Some had 200’ + throughout, some had 200’ through a portion along the road frontage then narrowed (like this proposal), some were less than 200’ throughout. Also, estate lots appear to not meet this standard because of the 50 foot access strip.

So, how is this 200’ applied? Must it be throughout the entire length of the lot? I don’t have clear guidance on this. The lots associated with the proposal do appear to have 200’ but do not throughout the lot length. If it should be throughout the proposal should secure ZBA approval before the PB provides a ruling.

**RECOMMENDATIONS:**

The proposal is well done. One question that should be resolved is lot width. Also, because the creation of lots is tied to frontage which is associated with the private way proposal, a ruling on the subdivision amendment should be held at the same time as the private way. Because the private way is under review and will continue to be after January there is no reason for the PB to take formal action on this proposal now. Although, if the PB feels the width matter will require ZBA approval before the PB rules on the amendment the PB should state this.

**ITEM 2**

**Proposal:** Private Way Application  
**Action:** Discussion; Ruling  
**Owner:** David Deshaies  
**Location:** Ross Road., MBL: 105-2-16

**ROSS ROAD PRIVATE WAY** **Project Status**

<i>Application Complete</i>	Completed in January
<i>Site Walk</i>	Completed in February
<i>Public Hearing</i>	Completed in February
<i>Final Ruling</i>	Pending

At the February meeting, the Planning Board held a Site Walk and conducted a Public Hearing for this project. The Planning Board decided to table the proposal while waiting for more information on the Subdivision Amendment as the Subdivision Amendment is contingent on approval of the Private Way and vice versa.

To recap from February, Planning Staff felt that all items required for the Private Way were submitted. Staff did recommend adding one condition to the project about the number of dwelling units that could be served by the Private Way. Pending any concerns with the Subdivision Amendment, Planning Staff recommends approval of the Private Way.

*Recommended Motion: I will make a motion to approve the Private Way application owned by David Deshaies and located off of Ross Road, MBL 105-2-16 with the following condition: The Private ROW is intended to provide access to a maximum of 2 dwelling units.*

**BACKGROUND (FEBRUARY):**

At the January meeting, the PB voted the Application Complete and scheduled a Site Walk and Public Hearing for February. The purpose of the February meeting is to hold the site walk, listen to comments from the public and making a ruling on the proposal. Staff received two letters from the public on this proposal which have been included in your packet and are discussed below.

At the January meeting, Planning Staff discussed any potential changes the PB might like to on the Draft Declaration of Maintenance of a Private Way in lieu of the Portland Ave Private Way proposal. The PB decided the only change would be to change the title to "Maintenance Agreement." The agreement has been included in your packet.

Planning Staff also discussed the need for a condition regarding the potential for more than 2 dwelling units which would trigger subdivision review. Note, Private Ways serving 3 or more dwelling units have different requirements which include meeting a different ordinance standard. The PB asked that a condition be added to the proposal: The Private ROW is intended to provide access to a maximum of 2 dwelling units. This condition has been added to the 11x17 plan that is in your packet.

There were comments received from WP at the January meeting and Planning Staff received an updated plan and performance guarantee worksheet that addresses all of the comments. This has been included in your packet for February. One question stemming from the WP memo was that the Performance Guarantee section of the ordinance (74-67) says that a note has to be added to Private Way plans stating "all roads in this subdivision shall meet private ways to be maintained by the Developer or the abutters (delete one)" WP pointed out that this could be misconstrued listing "abutters" on the plan because there are two abutting lots that are part of the original subdivision. Planning Staff left the decision up to the PB about whether or not to change this and the PB decided to change it to say "all roads in this subdivision shall remain private ways to be maintained by the 2 lot owners served by this private way." This note has been added to the 11x17 plan that is in your packet.

One comment was received from the DPW Director about this project:

- Ensure Storm water does not drain to abutters properties. Line of Site Clearing is complete and road exiting to Ross Rd is at least the same elevation.

The Applicant provided a response to this comment:



Mon 1/29/2018 9:39 AM

Chip Haskell <chaskell@ces-maine.com>

RE: Ross Road Private Way\_Comments from Staff

To Megan McLaughlin

Cc Jeffrey Hinderliter

You replied to this message on 1/29/2018 9:53 AM.

Hi Megan,

Thanks for the information. There is currently a natural drainage swale running through the property. I can't say that there will be no stormwater draining to abutters property. What I can say is that there will be no increase in stormwater volume draining to abutters property. The reason is that there is currently stormwater draining that direction, and the development of the private way will not change the amount of stormwater getting to that point. Per my memo and discussions with Joe, I believe he was in agreement, but please let me know if this is an issue. If it is, I'm not sure there is a way to prevent any water from draining the way it does currently.

Thanks again,

Alfred C. Haskell, P.E. ♦ Project Engineer  
P 207.989.4824 | F 207.989.4881 | C 207.991.0756

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From: Megan McLaughlin [<mailto:mmclaughlin@oobmaine.com>]  
Sent: Monday, January 29, 2018 9:26 AM  
To: Chip Haskell <[chaskell@ces-maine.com](mailto:chaskell@ces-maine.com)>  
Cc: Jeffrey Hinderliter <[jhinderliter@oobmaine.com](mailto:jhinderliter@oobmaine.com)>  
Subject: Ross Road Private Way\_Comments from Staff

Hi Chip,

We had a Development Review meeting last week with Staff and we received one comment from Public Works regarding the proposal for the Private Way off of Ross Road:

*"Ensure Storm water does not drain to abutters properties. Line of Site clearing is complete and road exiting to Ross Rd is at least the same elevation."*

Thank you,  
Megan

Megan McLaughlin  
Associate Planner  
Town of Old Orchard Beach  
207-937-5636  
[mmclaughlin@oobmaine.com](mailto:mmclaughlin@oobmaine.com)

And the DPW Director provided a response on 2/1/18:



Thu 2/1/2018 10:03 AM

Joseph Cooper

CES

To Megan McLaughlin

After speaking with Chip and Shawn I am all set with the private way on Ross Road

Joe

Sent from my iPhone

The Applicant has also provided a response memo to each of the Abutter letters which has been included in your February packets.

**RECOMMENDATIONS:**

Barring any potential issues with the subdivision amendment, Planning Staff feels that all items required for the Private Way have been submitted.



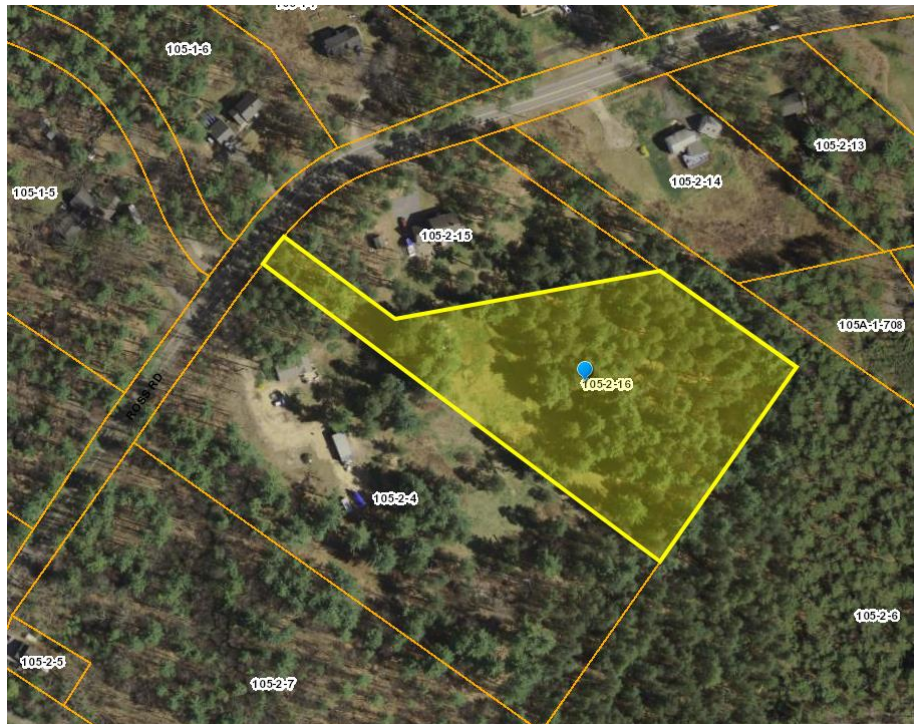
*Recommended Motion: I will make a motion to approve the Private Way application owned by David Deshaies and located off of Ross Road, MBL 105-2-16 with the following condition: The Private ROW is intended to provide access to a maximum of 2 dwelling units.*

## **BACKGROUND (JANUARY):**

This proposal is for the establishment of a Private Way to serve two lots on Ross Road. In your packet for January are the following items:

- Private Way Application and Supporting Materials
- Draft Declaration of Maintenance of Private Way
- Responses to the 12 CU Standards – *Please note, while reviewing the Private Way Application for Portland Ave we realized that this does not have to be reviewed by the PB as a CU so these responses are not necessary.*
- Stormwater Management Narrative
- Private Way Plan Dated 1/3/18
- Wright Pierce Comments Dated 1/4/18

The property was originally part of a 3-lot subdivision that was approved in 2002. The Applicant is also proposing an amendment to that subdivision plan to split lot #3 (105-2-16), which is currently a vacant lot, into two separate lots which are planned to be served by this Private Way.



The Private Way is proposed to be a gravel road, 550 feet long, 16 feet wide with a hammerhead turnaround provided at the end. The dimensions for this were provided by the DPW Director. The Private Way will consist of underground electric, cable and telephone conduits from the existing utility pole on Ross Road. Each dwelling unit will have a septic system. Wells are proposed for each of the homes. The nearest hydrant is 1,260 feet away at the end of Patoine Place. As part of the most recently approved subdivision, Eastern Trail Estates a hydrant will be constructed at the end of Mary's Way which is ~800 feet away from the Private Way. The Fire Department has indicated that a typical fire pumper carries 1,000 feet of water supply hose so distances greater than that are concerning. Unfortunately, public water does not exist on Ross Road and it would cost over \$200,000 to bring it to this private way to serve two homes which would be cost prohibitive. Should a public water supply be available in the future on Ross Road, the Applicant has shown a potential connection on the plan.



The Applicant received approval from the DPW Director for Stormwater Drainage, Sight Distance and the Turnaround:

### Sight Distance –

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**From:** Joseph Cooper  
**Sent:** Thursday, November 30, 2017 10:40 AM  
**To:** Jeffrey Hinderliter; Megan McLaughlin  
**Cc:** Stephanie A. Hubbard  
**Subject:** David Deshais - Ross Road

Hi,

I met with Shawn from CES on Ross Road today. I think the site distance issue is resolved by having the Private Road raised to allow for improved sight distance. They have agreed to bring the road up and maintain that elevation 50' in on the private way.

Thanks

Joseph Cooper  
Public Works Director  
103 Smith Wheel Road  
Old Orchard Beach, Maine 04064  
(207) 934-2250

### Stormwater & Hammerhead Turnaround –

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**From:** Joseph Cooper  
**Sent:** Tuesday, December 19, 2017 12:51 PM  
**To:** 'Chip Haskell'  
**Cc:** Jeffrey Hinderliter  
**Subject:** RE: Deshaies subdivision hammer-head

Hi,

Im OK with this.

Thanks  
Joe Cooper

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**From:** Chip Haskell [<mailto:chaskell@ces-maine.com>]  
**Sent:** Tuesday, December 19, 2017 12:50 PM  
**To:** Joseph Cooper <[jcooper@oobmaine.com](mailto:jcooper@oobmaine.com)>  
**Cc:** Jeffrey Hinderliter <[jhinderliter@oobmaine.com](mailto:jhinderliter@oobmaine.com)>  
**Subject:** Deshaies subdivision hammer-head

Hi Joe,

One other item I need to run by you is the dimensions of the hammer head for the Deshaies Private Way. I couldn't find an actual dimensional standard in the ordinance so I've modified the design a bit to be similar to a recently approved plan on Portland Ave given to us by Jeffrey Hinderliter. I have designed for it to be sufficient for a 40' bus type vehicle. I've attached a copy of our latest Private Way Plan showing the hammer head for you to reference. Please let me know if this meets your requirements. If we do not need to design for that large of a vehicle that would be welcome information too.

Additionally, in our narratives I've stated that we have obtained your verbal approval for sight distance and stormwater, and understand a written confirmation is forthcoming. Is that agreeable to you?

Let me know if you have any questions.

Thanks again,

Alfred C. Haskell, P.E. ♦ Project Engineer  
P 207.989.4824 | F 207.989.4881 | C 207.991.0756

**CES**<sub>INC</sub>

Engineers ♦ Environmental Scientists ♦ Surveyors  
465 South Main Street, P.O. Box 639., Brewer, Maine 04412 | [www.ces-maine.com](http://www.ces-maine.com)

A Declaration of Maintenance of a Private Way has been included in your packet. Given the discussion we recently had regarding the Portland Ave Private Way, should this be altered in any way? For example, should the title be changed to say "Maintenance Agreement?" The situation here is a little bit different because there are no existing homes to be served by this proposed road. However, maintenance issues could arise down the road so it is something to take into consideration.

Also with the Portland Ave Private Way, Staff and the PB had concerns about the potential for Paradise Park to utilize the Private Way or for the adjacent homeowner to have a driveway located off the Private Way. Planning Staff recommended a condition be added to the Portland Ave Private Way that the Private ROW is intended to provide access to a maximum of 2 dwelling units. The reason we would recommend that same condition in this case as well is because the design standards section of the ordinance (78-1414) says that 3 or more dwelling units served requires subdivision review so it would not hurt to add this as a condition.

**Several comments were received from Wright Pierce on this proposal and have been described below:**

General Plan Comments:

1. The private way plan does not include any boundary related information (metes/bounds) to define the ROW. This would be recommended to establish the exact location and direction of the ROW. Based on taped measurements, the ROW appears to meet the 50-foot width required by the Town ordinance.

*This information was added to the most recent Private Way plan submitted by the Applicant that Planning Staff has copies of.*

2. A "Private Way Note" is included on the plan noting the private way is to be maintained by the abutters. We would recommend clarifying the term abutter, as the roadway appears to abut two existing residential units (Lot 1 and Lot 2) which appear to be existing lots with access off Ross Road.

*The Performance Guarantee Section of our Ordinance (Sec. 74-67) that pertains to Private Ways says: "where the subdivision roads are to remain private ways, the following words shall appear on the linen copy of the final subdivision plan:*

*'All roads in this subdivision shall remain private ways to be maintained by the developer or the abutters (delete 1) and shall not be accepted or maintained by the Town until such roads are brought into conformance with the Street Design and Construction Standards contained in these regulations.'*

*Wright Pierce pointed out a good point that the term "abutters" could be misconstrued in this instance as there are two "abutting lots" to this proposed lot split. However, it is required by ordinance to list either Abutters or Developer and to include this note on the plan. While this private way is only intended to serve two lots and does not by itself trigger subdivision review, it is considered part of a larger subdivision which triggers the need for this note. Planning Staff is leaving the decision up to the PB as to whether or not the board would like this to continue to say Abutters or if the board would like it to be changed to say "lot owners" or something that is clearer but is not necessarily spelled out in the ordinance."*

3. Typical Roadway Section: Sec 78-1414(b) – Construction Standards requires a roadway subbase to be a minimum 15-inches. A revised plan submitted on 1/2/18 modified the gravel depth, however the rev 2 plan (submitted via email on 1/3/18) references a 12-inch subbase gravel depth.

*Planning Staff noticed on the original Private Way plan that the subbase depth was only 12 inches instead of the minimum requirement of 15 inches. Staff asked for the Applicant to update the plan, when the Applicant sent the updated plan, the topo was turned off, we asked for that layer to be turned back on and when it was it reverted back to the old plan by mistake. This has been added to the most recent Private Way plan submitted by the Applicant that Planning Staff has copies of.*

4. Compliance with Construction Standards: Inspection and Certification (Sec 78-1414(d)). Town/owner may want to consider adding a note to the plan for reference.

*This information was added to the most recent Private Way plan submitted by the Applicant that Planning Staff has copies of.*

5. Review and confirmation of adequate sight distance from the Private Way is recommended. The plans reference a sight distance to the north of 250-feet. As part of my review, I was unable to determine the speed limit along this portion of Ross Road, which will aid in determining the minimum sight distance requirements.

*The DPW Director and Applicants Engineer visited the site and DPW signed off on the sight distance.*

6. It is unclear whether the construction of the roadway will include a water main at this time or if the location is shown for reference and future installation/connection.

*Planning Staff recommended to the Applicant that they show a potential future connection if public water becomes available on Ross Road and that what was shown on the plan. The waterline note on the plan has been updated to clarify that it is not proposed to be installed.*

7. The Towns Private Way application requests “Drainage Calculations and Stormwater Management plan” requirements. Drainage calculations were not included in the application package provided. An erosion and sedimentation control plan was submitted.

*Under the construction standards section of our ordinance, it says that a Private Way serving 3 or more dwelling units “must comply with requirements of the town subdivision review standards in chapter 74.” We suspect the reason the Private Way application requests “drainage calculations and stormwater management plan” is to cover the private ways that intend to serve 3 or more lots, not 2 lots. Planning Staff does not feel that drainage calculations are required for a private way serving 2 lots. The stormwater requirements for a private way serving two lots say “approval of director of public works.” Staff recommended to the Applicant that they take a look at the Towns stormwater ordinance, Chapter 71. Chapter 71 references MDEPs Chapter 500 which requires an Erosion and Sedimentation Control plan which has been submitted.*

8. A 15-inch culvert is proposed to be installed at approximately station 1+75
  - a. It is recommended invert and outlet locations be referenced on the plan view to confirm proposed direction of culvert flow and what is considered the upgradient ditch line.
  - b. We would recommend additional details and information be provided denoting how the discharge of water from the roadway and ditch lines will flow and whether the development of the roadway will increase stormwater volumes offsite. The culvert/low point in the roadway appears to discharge to the property line of developed Lot 1. Based on the topography noted on the plans, this area appears to be relatively flat.

*This information was added to the most recent Private Way plan submitted by the Applicant that Planning Staff has copies of, flow direction arrows have also been shown on the updated plan. Drainage calculations have not been provided because the Applicant received approval for the stormwater implications of this development by the Public Works Director.*

9. The southern side of the roadway does not show a ditch line in plan view and appear to tie in with existing grades. The typical roadway section detail references a defined ditch line, which may or may not be applicable. If the applicant is proposing a ditch line for conveyance of runoff, driveway culverts may be applicable.

*This information was added to the most recent Private Way plan submitted by the Applicant that Planning Staff has copies of. The ditch is no longer on the plan for the southern side of the road.*

10. Roads: The quantity is based on a 550 LF quantity, which does not appear to include the cost of the hammerhead construction.

*This will be updated in the performance worksheet to include the cost of the hammerhead.*

11. Paving: It is recommended this line item be clarified, and details noted (is this base gravel material installation). *The reason this line item is like this is because the Applicant intended on including a paved apron which is not required by ordinance. It will be removed from the guarantee.*

12. Storm drain piping: Plans reference a length of 32 feet.

*The Performance Guarantee will be updated to reflect the 32 feet.*

In order to be sure the Private Way proposal meets the ordinance requirements, a summary of the required items is listed below:

**Sec. 78-1411 – (APPROVAL REQUIREMENTS)** *“The Planning Board may approve the use of private ways to provide access to lots, existing or proposed, provided that the conditions of this division are met.”*

- The Plan that has been provided appears to meet the conditions of the Private Way Ordinance.

**Sec. 78-1412 – (PLAN SUBMISSION)** “A plan showing the private way for one lot shall be prepared by a registered land surveyor licensed to practice in the state. A plan showing the private way for two or more lots shall be prepared by a registered land surveyor and professional engineer licensed to practice in the state. The plan shall be drawn in permanent ink on permanent transparency material and shall be sealed by the surveyor and/or engineer preparing the plan. The plan shall be labeled “Plan of a Private Way” and shall provide an approval block for the signatures of the planning board, the date of approval, and the words, “Private Way, Approved by the town Planning Board.” The plan shall show information sufficient to establish on the ground the exact location, direction, width, and length of the private way. In addition, a street plan, profile and cross section shall be submitted for each private way serving two or more lots. The plan shall also contain a note which shall read, “The Town of Old Orchard Beach shall not be responsible for maintenance, repair, plowing, or similar services for the private way shown on this plan.” The original plan shall be recorded in the county registry of deeds within 60 days of approval by the planning board. If the plan is not recorded within this period, the approval of the planning board shall be void.”

- Because the subdivision is proposed to serve “two or more” lots it has been prepared by both a registered Land Surveyor and a Professional Engineer. It is labeled plan of a Private Way and has an approval block with an area for signatures. The street plan, profile and cross section have been submitted. The note regarding Town responsibilities is located on the plan under “Right of Way Note: The Town of Old Orchard Beach shall not be responsible for maintenance, repair, plowing, or similar services for the Private Way shown on this plan to be known as Haylie’s Way.”

**Sec. 78-1413 – (MAINTENANCE AGREEMENT)** “If the private way provides access to two or more lots, a maintenance agreement shall be prepared. This agreement shall specify the rights and responsibilities of each lot owner with respect to the maintenance, repair and plowing of the private way. This agreement shall be approved by the planning board and shall be recorded in the county registry of deeds within 60 days of approval by the planning board.”

- The Draft Declaration of Maintenance of a Private Way that was submitted states that “the owner, or owners, of Lot #3-1 ...as shown on the Plan shall jointly and severally be responsible for ½ of the necessary cost of maintaining, repairing and plowing of the private way shown on the plan” and “the owner, or owners, of Proposed lot #3-2 ...as shown on the Plan shall jointly and severally be responsible for ½ of the necessary cost of maintaining, repairing and plowing the private way shown on the plan.”
  - In lieu of the PB discussions regarding the Maintenance Agreement for the Portland Ave Private Way, there may be some changes the PB wishes to see made to the Draft Declaration of Maintenance of a Private Way. For example, should it be titled “Maintenance Agreement?”

**Sec. 78-1414 – (DESIGN STANDARDS)**

(a) *Width of right-of-way.* The right-of-way of private ways created after September 19, 1989 shall have a minimum width of 50 feet. The right-of-way of a private way described in a deed or plan recorded in the county registry of deeds prior to September 19, 1989 shall have the width described in such deed or plan, but not less than the minimum roadway width required by subsection (b) of this section.

- The ROW as shown on the plan is 50 Feet.

(b) *Construction standards.* The construction of private ways shall meet the following minimum standards:

	Number of Dwelling Units Served		
	1	2	3 or more
Nonresidential use: minimum roadway width	16 feet	16 feet	

Residential use: minimum roadway width	12 feet	16 feet	Must comply with requirements of the town subdivision review standards in <a href="#">chapter 74</a>
Minimum subbase (heavy road gravel)	12 inches	15 inches	
Wearing surface (fine gravel)	2 inches	2 inches	
Maximum length of dead end	None	None	
Maximum grade	10%	8%	
Minimum grade	0.5%	0.5%	
Turnaround at dead end	Hammer head, T or cul-de-sac	Hammer head, T or cul-de-sac	
Stormwater drainage	Approval of director of public works		

- The proposed Private Way meets each of these standards.

(c) *Compliance with construction standards.* The applicant for a building permit for a lot to be served by a private way shall be responsible for bringing the entire private way, from the nearest public way up to and including that portion of the private way which abuts the applicant's lot, into compliance with the standards of subsection (b) of this section, notwithstanding that other lots served by the private way may already have been built upon.

(d) *Inspection and certification.* Private ways serving two or more lots shall be inspected under the direction of a registered professional engineer. Prior to the issuance of building permits for lots served by a private way, the engineer shall certify to the code enforcement officer that the private way has been constructed in accordance with this section.

- These two items will be handled at the Building Permit phase of the project.

**Sec. 78-1415. - Fees.**

A review fee which shall be determined by the town council shall be paid by the applicant at the time of filing the application and plan for a private way.

- The Review fees have been paid for the project.

## **RECOMMENDATIONS (JANUARY):**

At the January meeting, the Planning Board should make a determination of completeness and schedule a site walk and public hearing. Planning Staff recommends that you rule the application as complete and schedule the site walk for February 1<sup>st</sup> and Public Hearing for February 8<sup>th</sup>.

We discussed a few items in our memo that you may want to take into consideration at this meeting:

*Planning Staff is leaving it up to the PB as to whether or not you would like this to continue to say Abutters or if you would like it to be changed to say "lot owners" or something that is more clear that is not necessarily spelled out in the ordinance. – 74-67 OF ORDINANCE*

- Are there any changes the board would like to see made to the Draft Declaration of Maintenance of a Private Way that has been submitted?
- Would you like to have that condition added that the Private ROW is intended to provide access to a maximum of 2 dwelling units?
- Sec. 74-67 of the Ordinance for Performance Guarantees says "Where the subdivision roads are to remain private ways, the following words shall appear on the linen copy of the final subdivision plan:  
  
"All roads in this subdivision shall remain private ways to be maintained by the **developer** or the **abutters** (delete 1) and shall not be accepted or maintained by the Town until such roads are brought into conformance with the Street Design and Construction Standards contained in these regulations."  
  
Please note, Planning Staff has a recent plan that addresses all of the comments raised in this memo. The plan can be provided to the board at the meeting or can be reviewed by the board in February.

Wright Pierce mentioned that using abutters in this instance could potentially be misconstrued. Is this something that the PB would like to see changed to say "lot owners" or something that is clearer?

*Recommended Motion: I will make a motion to determine the application complete to construct a private way to serve two lots located off of Ross Road.*

*Recommended Motion: I will make a motion to schedule a site walk for February 1<sup>st</sup> at 5:00PM and to schedule a public hearing for February 8<sup>th</sup> at 7PM.*

**ITEM 3**

**Proposal:** Subdivision Amendment: Amend “8 Lots at Wild Dunes Way” Subdivision to Add 9<sup>th</sup> Lot  
**Action:** Discussion; Ruling  
**Owner:** Dominator Golf LLC  
**Location:** Wild Dunes Way; MBL: 105A-200 (portion of)

<u>Dominator Subdivision Amendment</u>	<u>Project Status</u>
<i>Sketch Plan</i>	Not Required
<i>Application Complete</i>	Not Required
<i>Preliminary Plan</i>	Not Required
<i>Site Walk</i>	Not Required
<i>Public Hearing</i>	Not Required
<i>Ruling</i>	Pending

This proposal is an amendment to the “8 Lots at Wild Dunes Way” subdivision plan. The 8 Lots at Wild Dunes Way plan created 8 lots for single-family homes along various locations of Wild Dunes Way (see plans). This amendment proposed to add a 9<sup>th</sup> lot for single-family use. Like the formerly approved lots, there is no need for creation of new roads as the driveway will directly connect to Wild Dunes Way. Public water and sewer will serve this lot. Stormwater will be managed by a perimeter drip edge and possibly a small bio-retention basin. Stormwater is still being designed and will require DEP approval. Below are comments for consideration:

- We expect updated Wright-Pierce peer review comments next week. We feel these comments need to be received and the applicant needs an opportunity to address.
- Open space calcs on plan (area being removed, total area remaining). The memo mentions the switch with the Inn but the calcs should be on the plan.
- Regarding unit count and swaps, during the review and approval of the 8 Lots at Wild Dunes Way proposal, questions were raised as to whether the applicant is required to purchase or otherwise obtain the transfer of units, lots, or development rights from other owners of properties within Dunegrass. The Planning Board considers such questions to be matters of private property law, not relevant to the Board’s review of the application and not within the Board’s jurisdiction to decide. The Board therefore expresses no opinion on such questions. Although, the PB and staff are concerned about impacts that unplanned (not part of the original Dunegrass plan) lots may create to the original planning of the development. These impacts include real and measurable issues such as sewer capacity, traffic counts and other matters such as the overall vision of Dunegrass. Typically, PB’s findings ask that applicants show where the units come from so to insure the total amount of units allocated to all of Dunegrass remains at its originally approved amount-589. For example, the 8 Lots at Wild Dunes Way approval showed where these 8 units came from: “8 units to 8 Lots at Wild Dunes Way Subdivision, leaving 0 units originally approved for Section B that can be developed in other locations within the subdivision in the future.” This new proposal indicates the development of lot 9 is in exchanges for the area known as The Inn. Is the PB comfortable with this swap? What was The Inn site planned to be- an Inn? A single unit?
- How will it be known if someone looks at The Inn plan that a unit cannot be established there and that it is now open space? Should the plan that shows “The Inn” lot be amended to recognize this? Also, note 17 and the language below the scale on Sheet 1 does not include language that a unit or units cannot be built. Instead it mentions “the area” and “lot”. I believe both the note and language in the box should state unit or unit site.
- Prior Wright-Pierce comment (5 January- see in packet): Important that developer specify how the new lot will connect to sewer and we do not want that to be through the FM that comes from PS 500 at the Birches. Also developer should clarify the proposed "swap" with the parcel adjacent to the clubhouse. What will that parcel now be and how is this swap formalized and documented so it is clear going forward as additional development is proposed at Dunegrass?
- Building envelope shown- please include front, side and rear setbacks as a new note.
- DEP is requiring an amended site location permit. The applicant is in the process of securing this permit. Should DEP approval be secured before the PB rules on this proposal? This will deal with stormwater so it may be wise that the applicant secures DEP approval before the PB rules on this proposal.
- There are discussions about who is responsible for payment of some fees associated construction inspections and peer review of the previously approved 8 Lots at Wild Dunes Way. Note that this must be resolved before this



amendment is approved because the subdivision ordinance states that no plan shall be approved by the board as long as the subdivider is in default on a previously approved plan. The subdivider, Dominator Golf LLC, is the same for both the 8 Lots at Wild Dunes Way and the amendment before the PB.

**RECOMMENDATIONS:**

Staff feels there are a number of items that need resolution before the PB rules on this proposal. We ask the PB and applicant discuss the comments above and identify what is needed for the next meeting. Since the project can't begin until DEP approval is secured there is some time to resolve any outstanding issues.

**ITEM 4**

**Proposal:** Ordinance Amendments: Consideration of zoning ordinance amendments associated with contractor businesses in the Rural District  
**Action:** Discussion; Schedule Public Hearing  
**Owner:** Debbie Macdonald  
**Location:** RD Zoning District

**ORDINANCE AMENDMENTS**                      **Project Status**

<i>Introduction</i>	February
<i>Review Draft/Public Comment</i>	April
<i>Public Hearing</i>	
<i>Final Ruling/Recommendation to Council</i>	

At the February meeting, the PB decided to pursue consideration of zoning ordinance amendments in attempt to address concerns associated with businesses operated by Debbie MacDonald. These businesses include excavation contractor and a type of sewage disposal/storage unit (frack tank) business. Sparing all from the details of our work, we'll get right to the point with where we are for March.

**Sewage Disposal/Storage Unit**

Regarding the sewage disposal/storage unit (identified as a frack tank), our intern found something interesting. "Public and private utility facilities" are allowed as a Conditional Use in the RD. Public/private utility facilities are defined as:

"Facilities for the transmission or distribution of water, gas, sewer, electricity or wire communications, excluding wireless telecommunications facilities."

This leads us to the questions: Can the business use be described as a facility for the transmission or distribution of sewer? Is a frack tank and use associated with it a public/private sewer facility? Is the frack tank and use associated with it a facility used for the transmission or distribution of sewer? We broke down the ordinance definition of Public/private utility facilities into key words (transmission, facility, private sewer, distribution) and searched definitions for each in our ordinances, legal and English dictionaries. Based on our findings it appears the frack tank and its use could be defined as a Public/private utility facility. If this does not work we're still working on a way to see if we can make a zoning amendment work for this. It's a bit more complicated trying to fit this use in the RD without a more comprehensive zoning language change.

To proceed, we need the PB's opinion on whether the use associated with the frack tank can or can't move forward as a Public/private utility facility. We see it as:

- It can: This means the PB is of the opinion that this business can fall under the definition Public/private utility facility and MacDonald's can apply for a Conditional Use permit without the need for zoning amendments. If this is the case the MacDonald's can begin work on their Conditional Use submission. Note that this will be more of an advisor opinion from the PB, not a formal determination. The MacDonald's, through their Conditional Use submission, will still need to prove it fits the definition and meets applicable ordinance standards before it's approved.
- It can't: This means the PB opinion is this business cannot be defined as a Public/private utility facility. Because this is just an opinion the MacDonald's could still apply for a Conditional Use permit and argue they feel the business can be defined as a public/private utility facility; although, it will most likely require cannot zoning amendments. To create zoning amendments, staff will ask the PB many of the same questions we have for the excavation business discussion (see below).

Another option is it can move forward as a Public/private utility facility but we need to create additional ordinance standards that provide more specific regulation. This may be a bit tricky because we would change the standards associated with an already allowed use potentially during the permitting process. The perception: "The use is permitted but we don't like how it's allowed so we're going to change the rules." This does happen, though, typically through use of a moratorium.

## Excavation Business

While preparing to work on ordinance amendments, we found the need for further direction from the PB and as well as more time to create the standards. Creating standards has proven to be a bit more difficult due to the predominate use in the RD is residential and the fact we want to avoid spot zoning. Although one person may operate a contractor business in a manner that respects neighbors, another may not so we should plan for standards that find a balance between appropriate regulations that protect residential properties from detrimental impacts while allowing the business to exist without excessive controls.

Before we create formal ordinance standards, we'd like to get the PB's thoughts on the comments and questions below. Note- the town already has standards that regulate many of these items. Think of standards that may be specific to an excavating contractor business in the RD (e.g., Contractor Storage Yard 2 has specific Conditional Use standards that only apply to this use). Remember, think of all potential businesses that could operate, not just MacDonald's.

- Will the current definition of Contractor Storage Yard 1 definition work?  
*Contractor storage yard 1* means the principal place of business for a building or landscape contractor operating a fleet of three or more construction/commercial vehicles and customarily consisting of offices, display areas, storage yards for building supplies, earth material, construction vehicle storage, and fueling storage facilities not exceeding 10,000 gallons in capacity and used exclusively for the fueling of the vehicles stored on site.
- Should the use be allowed in the RD?
- If it should, where will it be allowed? Should it be allowed in the entire RD? A portion of the RD (e.g., lots abutting Portland Ave from the Ross Rd intersection to Scarborough town line) Note the map from staff submitted this month shows a cluster of non-residential activity along Portland Ave.
- Should it be a Conditional Use? As a permitted use that requires Site Plan Review?
- What should the performance standards address? Especially consider protections for abutting residential property.
- Traffic- amount, vehicle type, time of day, travel routes?
- Access on/off site, to main roads?
- Stormwater- rainfall & runoff, system design, system management?
- Noise- sources, typical dB of sources, time of day, buffering/noise control?
- Air Quality- sources (stationary, mobile, fugitive), problems & effects, control of adverse effects?
- Lighting/illumination- footcandle at property lines, type, cutoffs, location, fixtures?
- On-site material storage- location, buffering, type of material stored?
- Hours of business operation? All activities- trucks starting up in the yard during the morning, activities on-site.
- Buffers- business from roads, business from abutting property, storage yards, parking areas, type of buffers (vegetation, fencing)?
- Hazardous materials- type, storage, protections/containment?
- On-site fueling, fuel storage?
- Vehicle and equipment storage and parking- location, buffering?
- Signs- location, size, illumination?

### **RECOMMENDATIONS:**

First, staff recommends the PB offer an opinion regarding the septic disposal/storage unit (frack tank) business- is it a Public/private utility facility? Does the PB think the business use can be described as a facility for the transmission or distribution of sewer?

Second, staff needs further guidance from the PB before we create standards associated with the excavation business. Most importantly, should it be allowed in the RD; if yes, how should the use be defined (is Contractor storage yard 1 ok?); where should it be allowed; how should it be reviewed (e.g., Conditional Use); what standards should specifically apply to the use

## **BACKGROUND (FEBRUARY):**

Debbie Macdonald and her family's property (169 -173 Portland Ave, 3 properties) received complaints (included in your packets, as well as the town's initial response from Manager Larry Mead) regarding the operation of excavating, wood and other material processing, and a type of sewage disposal/storage unit business. The complaints allege operation of these businesses is violating OOB ordinances. As part of our attempts to address this we are looking at a few options, one is amending zoning ordinance language to allow these uses to legally exist. Our thought's...

Regarding the excavation business and possibly the wood/materials processing, Contractor Storage Yard 1 will be a new use allowed in the Rural District (RD). Establishment of this use will require PB approval as a conditional use or site plan review proposal. Use defined as:

Contractor storage yard 1 means the principal place of business for a building or landscape contractor operating a fleet of three or more construction/commercial vehicles and customarily consisting of offices, display areas, storage yards for building supplies, earth material, construction vehicle storage, and fueling storage facilities not exceeding 10,000 gallons in capacity and used exclusively for the fueling of the vehicles stored on site.

The above definition is already included in the town's zoning ordinance. It may need to be changed so that it includes a retail sales component, need more clarification, etc.

Performance standards. In addition to current performance standards applicable to nonresidential uses (e.g., buffers, parking), there may be specific standards that only apply to Contractor Storage Yard 1 such as hours of operation, minimum lot size, etc.

Regarding the sewage disposal/storage unit, we're still working on a way to see if we can make a zoning amendment work for this. It's a bit more complicated trying to find a way to fit this use in the RD without a more comprehensive zoning district change. Reasons include the potential impacts and that uses such as these may be more appropriate in an industrial district. Although, if you think about it, will a use such as this present any more impact when compared to an agriculture use (which is permissible in the RD). In your packet is a letter from Debbie MacDonald identifying the service provided.

The question of "Spot Zoning" is something to consider as part of our review. Spot zoning has been defined as the process of singling out a property for a use classification totally different from the surrounding area for the benefit of the property owner to the detriment of other owners. To determine whether a proposed amendment creates a spot zone, the following should be considered:

- Size of area associated with the amendment. Is it just a small parcel, neighborhood, entire zoning district?
- Use classification and development of adjacent property
- Relation of amendment to existing zoning patterns and objectives
- History of the amendment
- Benefits or detriments to the owner, adjacent owners, neighborhood, town
- Is the proposed change pursuant to and consistent with the comp plan

When deciding if a proposed amendment constitutes spot zoning the PB should apply the comments above to the facts of the specific proposal.

To sum up, the excavation and wood/material processing business would be allowed as a Contractor Storage Yard 1 use and require PB conditional use or site plan review approval to establish the use. Existing and possibly new performance standards will apply. The definition may need to be amended to include other uses, provide clarity, etc. The sewage disposal/storage unit is a bit trickier and needs more thought. I intend to visit Blow Brothers to get a better understanding of how this use operates.

Moving forward to our next meetings, we'll be working on:

- Consideration and incorporating PB thoughts (see below)
- Research RD District and existing uses

- Research the comp plan. Maine law (30A § 4352) requires that a zoning ordinance be pursuant to and consistent with a comp plan adopted by the municipality's legislative body. Provisions in a zoning ordinance should be supported by info in our comp plan demonstrating why the uses should be allowed in a particular area.
- Spot Zoning
- Other zoning options
- Develop standards and present at the next meeting

At this point, we're looking for guidance on this before a formal proposal is submitted. We need your thoughts on:

- The approach to the excavation business.
- How should we handle the sewage disposal/storage use
- Should the Contractor Storage Yard 1 definition be amended?
- What standards should apply? Should we create new standards specific to these businesses?
- Spot Zoning?
- Claims made in violation letters and how this may impact PB's review.

**ITEM 5**

**Proposal: Ordinance Amendments: Medical Marijuana Storefronts**

**Action: Discussion**

**Applicant: Town of Old Orchard Beach**

**ORDINANCE AMENDMENTS**

**Project Status**

*Introduction*

March

*Review Draft/Public Comment*

Scheduled April

*Public Hearing*

*Final Ruling/Recommendation to Council*

On 6 February 2018, the Council enacted a moratorium on Medical Marijuana Storefronts (MMS). The moratorium defines MMS as “as an establishment which resembles a retail storefront in terms of signage, hours of operation and accessibility to patrons, and which is operated by one or more Primary Caregivers as defined by 22 M.R.S.A. § 2422(8-A), Medical Marijuana Caregivers as defined in the Zoning Ordinance, or any other individuals or entities for the sale, distribution or administration of medical marijuana and medical marijuana products to Qualifying Patients as defined by 22 M.R.S.A. § 2422(9) or any other individuals.” The moratorium was enacted in response to concerns associated with initiatives to establish MMS’s in Old Orchard Beach. Below are comments concerning key points and Planning Board (PB) responsibilities, current medical marijuana language, discussion points, and next steps.

Important note- this moratorium and the regulations we create are only associated with medical marijuana activities, specifically, retail medical marijuana activities such as MMS. We are not working on recreational medical marijuana activities- the Council already enacted an ordinance that prohibits such activities.

**KEY POINTS & PB RESPONSIBILITIES**

Moratorium key points and PB responsibilities include the following:

- Took effect on 6 Feb. and continues to remain in-effect for 61 days. The Council can extend, repeal or modify the expiration date.
- The Council determined “unregulated development of the retail sale of medical marijuana raises a number of concerns related to public safety and welfare, including, but not limited to, potential adverse effects on neighborhoods, and potential adverse effects on the Town’s tourism industry.”
- And the “Town’s existing ordinances are inadequate to prevent the potential for serious public harm from the establishment and operation of retail medical marijuana activities.”
- During the moratorium, the “Town will work on developing appropriate land use regulations concerning retail medical marijuana activities.”
- During the time the moratorium is in-effect “no official, officer, board, body, agency, agent or employee of the Town of Old Orchard Beach shall accept, process or act upon any application, including but not limited to a building permit, certificate of occupancy, site plan review, conditional use, or any other approval, relating to the establishment of a medical marijuana storefront.”
- Because any changes will include amendments to Chapter 78, the PB is responsible for developing appropriate land use regulations concerning retail medical marijuana activities including MMS’s.
- The PB’s scope has limits due to the moratorium language. Interpretation of this language shows the Council determined our current ordinances do not adequately regulate retail medical marijuana activities and task us with developing regulations that addresses concerns related to public safety and welfare which include, but are not limited to potential adverse effects on neighborhoods and the town’s tourism industry.
- The town currently regulates medical marijuana (see below) but these regulations do not include retail medical marijuana uses such as MMS.
- The PB will create ordinances and hold a public hearing and provide a recommendation to Council. The PB can hold a workshop to hear from others who have an interest in this.
- Although the Council can extend the moratorium expiration date the PB should consider this a priority so we may complete our work as soon as possible. Due to the meeting dates and actions required by ordinance (public hearings, etc.) we’ll need at least one 60 day extension.

## CURRENT MEDICAL MARIJUANA ORDINANCES

During 2015, the Town adopted ordinance regulations related to Medical Marijuana Production Facilities and Medical Marijuana Registered Dispensaries. The purpose of the regulations is to create local zoning controls to regulate medical marijuana as a land use; restrict where growing and processing operations are allowed; require a PB approval process; implement performance standards for growing/processing operations and dispensaries; and, establish a business licensing requirement to monitor ongoing consistency with the Maine Medical Use of Marijuana Program. Highlights of the adopted ordinance regulations include:

- Chapter 78 amendments:
  - 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. Allowing Medical Marijuana Production Facilities as a conditional use within the Industrial District (ID).
  - C. Prohibiting Medical Marijuana Registered Dispensaries in the ID
  - D. Approval process identifying applicable review standards, application requirements, extended distance for abutter notifications, site walks, and public hearings.
  - E. 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.
  - F. 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) these Medical Marijuana uses.
  - G. 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 (e.g., day care, schools, town parks, church).
- Chapter 18 (Business Licenses) amendments:
  - 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.

Note Definitions:

*Medical Marijuana Production Facility:* A facility used for cultivating, processing, and/or storing medical marijuana by one or more medical marijuana caregiver(s) at a location which is not the medical marijuana caregiver's primary year-round residence or their patient's primary year-round residence. This shall be considered a commercial use.

*Medical Marijuana Registered Dispensary:* A not-for-profit entity registered pursuant to state law that acquires, possesses, cultivates, manufactures, delivers, transfers, transports, sells, supplies or dispenses marijuana, paraphernalia or related supplies and educational materials to qualifying patients and the primary caregivers of those patients. Note that a dispensary may be either a single facility, or it may be divided into two separate but related facilities where growing is done at only one of the facilities. This shall be considered a commercial use.

## DISCUSSION POINTS

As mentioned above, the PB is tasked with developing regulations that addresses concerns related to public safety and welfare which include, but are not limited to potential adverse effects on neighborhoods and the town's tourism industry. Current ordinances regulate Medical Marijuana Production Facilities and Registered Dispensaries but do not regulate



retail medical marijuana activities such as Medical Marijuana Storefronts. In order to change this language and develop standards that follow the Council's direction we offer a few discussion points:

- Should retail medical marijuana activities such as MMS be allowed? If so, in what districts?
- If allowed, maybe a use such as MMS could fit within our current medical marijuana ordinances so the same performance standards (e.g., odor, distance to incompatible uses) apply.
- Does the "retail" component make MMS different from our current allowed medical marijuana uses that it just won't fit in the current ordinances?
- If allowed, what regulations should apply?
- Should they be allowed but with limited numbers (e.g., only 2 allowed in the district)? Allowed but not in the entire district?
- Should there be design guidelines? Operation guidelines?
- How should MMS be licensed and/or permitted? Who should be responsible for reviewing and approving? Should it be a conditional use?
- Should there be specific performance standards, setbacks, lot size, noise, etc. requirements for each use?
- Your concerns about retail

## **NEXT STEPS**

At the PB's March meeting, staff requests the Board discuss and provide guidance to assist us with development of ordinance standards. We are working under a moratorium which means our consideration has time limits. Moratorium expiration can be extended but we should ensure our work is complete within a reasonable amount of time. Proposed schedule:

- March: PB discuss and provide guidance to staff
- April: PB discuss draft ordinance, ask for public comment, offer recommendations
- May: PB finalize ordinance, schedule a public hearing
- June: PB hold a public hearing and provide recommendation to Council

**ITEM 6**

**Proposal:** Site Plan Review: Demo existing building and construct new 7,225 sq. ft. retail building including associated parking, sidewalks and other site improvements  
**Action:** Discussion; Determination of Completeness; Schedule Site Walk; Schedule Public Hearing  
**Owner:** Zaremba Group  
**Location:** 19 Heath St., MBL: 309-9-33, DD2

**19 HEATH STREET**

**Project Status**

<i>Application Complete</i>	Recommended for March or April
<i>Site Walk</i>	Recommended for April
<i>Public Hearing</i>	Recommended for April or May
<i>Final Ruling</i>	N/A

The Planning Board saw this proposal back in January as a Sketch Plan. It is to demolish the existing building and associated features and construct a 7,225 square-foot Dollar General with 30 parking spaces. The proposed project is located in the DD2 Zone and also triggers review by the Design Review Committee (DRC). The DRC is expected to review the proposal at their March meeting.

Planning Staff received comments from Staff and Wright Pierce on the proposal. Two Wright Pierce memos have been included in your packet dated 2/8/18 and 2/21/18. Also included in your packets for March is a plan-set and the Plenary Site Plan application and supporting materials.

One item that is missing are the responses to the 9 Site Plan Review Criteria which are required for the project:

- (1) The proposed project conforms to all standards of the zoning district and meets or exceeds performance standards specified in this article and article VIII of this chapter.
- (2) The proposed project has received all required zoning board of appeals and/or design review permits as specified in division 2 of article II and article V of this chapter, if applicable, and has or will receive all applicable federal and state permits.
- (3) The proposed project will not have an adverse impact upon the quality of surficial or groundwater resources.
- (4) The project provides adequate stormwater management facilities to produce no additional peak runoff from the site during a 25-year storm event or any other event so required by the planning board, and will not have an undue impact on municipal stormwater facilities or downstream properties.
- (5) The proposed project will not have an adverse on-site and off-site impact upon existing vehicular and pedestrian circulation systems within the community or neighborhood.
- (6) The proposed project will not have an adverse impact upon environmental quality, critical wildlife habitats, marine resources, important cultural resources, or visual quality of the neighborhood, surrounding environs, or the community.
- (7) The proposed project will not produce noise, odors, dust, debris, glare, solar obstruction or other nuisances that will adversely impact the quality of life, character, or the stability of property values of surrounding parcels.
- (8) The proposed project will not have a negative fiscal impact on municipal government.
- (9) The proposed project will not have an adverse impact upon surrounding property values.

Two Comments were received from Town Staff on the proposal:

- **Town Manager:** Address the crossing area at the corner of Saco, Heath and Fort Hill. A landing is needed for pedestrians and will this will require cooperation of the Owner to use a portion of their land. It would make sense to have a Maintenance Easement Agreement with the Town to protect both parties.

- **DPW:** Replacement of the Sewer Line in the area of the newly proposed Sidewalk. Coordination is going to be required by the Developer and the Town for this replacement.

Several Comments were received from Wright Pierce on the proposal:

*Missing Items –*

- Showing the location of snow storage on the plans.
- The photometric plan that was submitted did not include property lines or parcel information other than the building.

*Wright Pierce General Recommendations –*

- Recommend installing a guardrail with fencing for protection of the sidewalk along the western corner of the building for both pedestrian and vehicle traffic along Fort Hill Ave.
- Calculate Sight Distance and note it on the plans.
- Discussion of sewer main repairs and coordination with DPW.
- The property line of the subject parcel is located within the southern drive aisle of Heath Street.
- Recommend reviewing the crosswalk and pedestrian crossings at the intersection of Heath Street, Fort Hill Ave and Saco Ave with the Town and perhaps DOT (Saco Ave).
- The existing OHE utility pole is proposed to be located in the middle of the proposed sidewalk. A review of this location is recommended.

*Wright Pierce Stormwater Comments –*

- How will Catch Basin 2 be modified to accommodate the new sidewalk? Looking for details on this.
- It appears that the sidewalk on Fort Hill is flush with the road surface, how will the drainage infrastructure work in this area?
- Recommend further review of the existing sidewalk channel on the eastern property boundary. It appears the runoff will overtop the existing curb line to the adjacent property and bypass the structure.
- How is runoff from the southeast corner of the property being managed?
- Review of groundwater depth in the area.
- Clarification of the wet area and drainage culvert behind the existing building.
- Will the petroleum staining/odor on the soils affect stormwater leaving the site?

*Addressed Wright Pierce Comments –*

- This is a redevelopment project, however, it is only disturbing 0.89 acres. The trigger for Chapter 71 is all new development and redevelopment over one acre within the regulated area. This project does not meet that threshold.

Planning Staff recommends the Applicant provide responses to each of these comments.

**Ordinance Requirements:**

(78-1544) Landscaping – A landscaping plan has been provided, the ordinance requires (1) screening parking lots from public streets and (2) buffering them from adjacent properties.

(78-1821) Screening and Buffering – The requirements for *screening* include achieving between 25 to 75% visual obstruction from established viewpoints as specified by the PB. *Buffering* requirements shall achieve between 75-100% year-round visual obstructions as specified by the PB. The recommendation are conifer buffers that are a minimum of 8 feet in height at installation and 6 feet on center. Note the requirement for screening the parking are less than the requirement for buffering them from adjacent properties.

The ordinance is a little vague on the types of street trees and essentially leaves the decision up to the PB on the landscaping plan. One requirement is that street trees are installed in the ROW of the public street. It does say that they could be on private property if the area does not meet conditions to locate them in the ROW, however, there are some conditions associated with this option:

- The center of the tree has to be located no further than 25 feet from the ROW property line.
- The property owner grants the Town a maintenance easement that enables the Town free access in perpetuity for horticultural maintenance purposes.

On the right side looking at the aerial below, one Autumn Brilliance Serviceberry tree is proposed with 12 Hummingbird Summersweet Shrubs behind it. On the left side are 14 Hummingbird Summersweet Shrubs.



The *Autumn Brilliance Serviceberry* grows to 20 to 25 feet high and wide and it is a fast-grower. The *Hummingbird Summersweet* are slow-growing, compact, up to 3-4 feet tall.



On the left side in the aerial below, 4 *Palsade American Hornbeams* are proposed. They grow to be 20 to 30 feet tall and 15 to 20 feet wide. They do not appear to be a yearround buffer.



On the back-side of the site in the aerial below they are proposing 7 *Oregon Green Australian Pine* trees. These grow to be 10-12 feet and 8 to 10 feet wide in 10 years. They can become 20 feet tall with age. There are also 4 of these proposed on the left side of the site in the aerial below. The Ordinance says that a conifer buffer shall be 8 feet when planted. It is unclear from the materials submitted if that is their height when installed.



Several other trees were listed on the plan but Planning Staff did not see them used on the site plan. It does list quantities for them. The plan should be updated to reflect which landscaping materials are going to be used on the site and the associated quantities. Sec.78-1825 of the Ordinance has an effective period for landscaping and says “all designated screening and buffering shall achieve the required degree of visual obstruction within 3 years of installation.”

Sec. 78-1491(c) – Sight Distance. The speed limit on this street is 25MPH so sight distance needs to be 257 feet minimum. Wright Pierce recommends this be shown on the plan in both directions.

Sec. 78-1541 – Parking Lot and Site Circulation Standards. It appears that the project meets these standards. This section says that parking lots located within the DD-2 districts shall, wherever possible, install porous pavement surfaces on all nonhandicap parking spaces, in order to minimize surface runoff into Town drainage systems. The Town has recently completed a Comprehensive Drainage Study and this area of Town was identified as one of the areas that is at capacity. Installing porous pavement at this project would help mitigate some of the impacts of stormwater in this area. Planning Staff is recommending that the Applicant provide a maneuverability diagram of a truck for trash pickup and store deliveries.

Sec. 78-1543 – Snow Removal. All parking lots shall provide a suitable on-site disposal area to accommodate plowed snowfall. Snow disposal areas shall not be located in designated pedestrian walks or pathways. This needs to be shown on the plans provided.

### **RECOMMENDATIONS (MARCH):**

There are a few items that still need to be submitted for this project including:

- Responses to the 9 Site Plan Review Criteria.
- Showing the location of snow storage on the plan.
- An updated Performance Worksheet.
- Updates to the Photometric Plan to show the property line including where Abutting properties are located in relation to the footcandles.
- Plan to replace the sidewalk and make street improvements to Heath Street/Fort Hill Ave/Saco Ave.

There are also a number of items that Planning Staff recommends be discussed and/or submitted including:

- A truck template maneuverability plan and associated delivery times for both trash pickup and store deliveries.
- Is the landscaping plan provided adequate? Should the tree buffer on the lower Heath Street side be coniferous?
- Discussion on Wright Pierce comments including those pertaining to stormwater.
- Discussion on the requirement of porous pavement.

If the Planning Board decides to make a determination of completeness, Planning Staff recommends it be contingent on the Applicant submitting the items listed above. Planning Staff has made the Applicant aware of these items, they are working on them and may have them prepared prior to the meeting next week.

*Recommended Motion: I will make a motion to determine the application complete to construct a 7,225 sq. ft. retail building including associated parking, sidewalks and other site improvements located at 19 Heath Street.*

*Recommended Motion: I will make a motion to schedule a site walk for April 5<sup>th</sup> at 5:30PM and to schedule a public hearing for April 12<sup>th</sup> at 7PM.*

### **BACKGROUND (JANUARY):**

This proposal is for the demolition of the existing building and associated features at 19 Heath Street and the construction of a 7,225 square-foot retail building with 30 parking spaces. The proposed retail use is a Dollar General store. This proposal is in a very preliminary stage and proposals in the early stages like this offer an opportunity for the PB to discuss and provide recommendations to the Applicant on what direction the project should go.





The property is located in the DD2 Zone and requires review by the DRC. A preliminary sketch was brought before the DRC at their December meeting. At that meeting, the DRC had some recommendations for the Applicant including building design elements as well as:

- Placing a fence around the HVAC unit.
  - Locating the HVAC unit in the center of the roof.
- Planting quick growing trees along Fort Hill Ave – they recommended Spruce/Evergreen.
- Constructing the building such that it could, in the future, support a second story.

There are a few items that Planning Staff would like the PB to consider and these are items that the Applicant should be prepared to address in their formal submission.

**Miscellaneous Items:**

1. The previous use of the site was a car repair place. Therefore, there is the potential for contamination. The Applicant indicated at the DRC meeting that they will be completing testing at the site but it is unclear as to what extent this testing will cover.
2. The backside of the site are four homes along Fort Hill Ave. The elevation change in this area is significant. The homes on Fort Hill Ave will essentially be looking down on the roof of the proposed Dollar General. Is the proposed 6’ fence an adequate buffer? Should there be a vegetative buffer instead? A 6’ privacy fence is also proposed on the left side of the property adjacent to the condos on Heath Street. Is this an adequate buffer or should there be a vegetative buffer in this area as well?
3. Placement of the HVAC unit on the roof, the DRC recommended locating this in the center of the roof with a fence around it.
4. Currently, the dumpster is proposed to be located in the back of the building adjacent to the homes along Fort Hill Ave. Is this an adequate location for the dumpster?
5. There have been some conversations between Town Staff and the Applicant regarding repairing/installing a sidewalk along Saco Ave and upgrades to that intersection at the corner.
6. What type of lighting are they proposing to use in the parking lot/on the building. Will this cause any issues for the Abutters?
7. At the Development Review meeting, Staff discussed different aspects of the project including: preserving the trees/vegetative buffer along Fort Hill, reducing light pollution (i.e. installing shoebox lighting that projects down), sidewalk/intersection along Heath and Saco Ave, stormwater retention.
  - a. *Note: This project is less than an acre, therefore, it does not trigger Chapter 71 of our stormwater ordinance, however, stormwater is included under the 9 site plan review criteria and calculations will be required for the 25-year storm event or any other event required by the Planning Board.*



## **Chapter 78 Performance Standards (Art. VIII) Items:**

- 78-1746 – 1827 (landscaping and buffering) includes landscaping and buffering standards primarily for the building. Some of these standards, such as street trees, are also applicable to parking lots.
- 78-1491 – 1495 (access standards for nonresidential uses) includes driveway standards such as dimensions, sitting, dimensions, sight distances, etc.
- 78-1541 – 1544 (parking lot and site circulation) includes parking dimensions and layout, snow removal and landscaping. 1543- need snow removal plan. 1544- remember screening and buffering plan is needed when adjacent to abutting properties Street trees in accordance with 78-1771 -1775 needed along Heath Street and Saco Ave/Fort Hill
- 78-1566 – 1568 (required parking spaces) identifies retail uses as one space per 250 sq. ft net leasable area. The building is proposed to be 7,225 sq. ft. which requires 29 parking spaces. 30 have been proposed.
- 78-1591 – 1596 (off-street loading). 1593(c) wherever possible, driveways or access to loading facilities shall be physically separated from customer parking lots, walkways or driveway entrances. Is this something that can be achieved here? The loading area is proposed to be in the back of the building adjacent to Fort Hill. 1594 landscaping/buffering of these facilities and lighting for security purposes.
- 78-1746 – 1827 (landscaping and buffering) includes landscaping and buffering standards primarily for the building. Some of these standards, such as street trees, are also applicable to parking lots.

## **9 Site Plan Review Criteria Items (78-216(d)):**

The proposal will have to demonstrate compliance with the 9 Site Plan Review Criteria:

- (1) The proposed project conforms to all standards of the zoning district and meets or exceeds performance standards specified in this article and article VIII of this chapter.
- (2) The proposed project has received all required zoning board of appeals and/or design review permits as specified in division 2 of article II and article V of this chapter, if applicable, and has or will receive all applicable federal and state permits.
- (3) The proposed project will not have an adverse impact upon the quality of surficial or groundwater resources.
- (4) The project provides adequate stormwater management facilities to produce no additional peak runoff from the site during a 25-year storm event or any other event so required by the planning board, and will not have an undue impact on municipal stormwater facilities or downstream properties.
- (5) The proposed project will not have an adverse on-site and off-site impact upon existing vehicular and pedestrian circulation systems within the community or neighborhood.
- (6) The proposed project will not have an adverse impact upon environmental quality, critical wildlife habitats, marine resources, important cultural resources, or visual quality of the neighborhood, surrounding environs, or the community.
- (7) The proposed project will not produce noise, odors, dust, debris, glare, solar obstruction or other nuisances that will adversely impact the quality of life, character, or the stability of property values of surrounding parcels.
- (8) The proposed project will not have a negative fiscal impact on municipal government.
- (9) The proposed project will not have an adverse impact upon surrounding property values.

**RECOMMENDATION (JANUARY):** A preliminary review like this allows for the PB to offer recommendations – even if they are not specifically related to complying with an ordinance standard. Staff recommends the PB provide feedback on the proposal, there are no decisions required at this time.

**ITEM 7**

**Proposal:** Major Subdivision: 9 Lot Residential Subdivision (Red Oak Phase III)  
**Action:** Preliminary Plan Review/Determination of Completeness; Schedule Site Walk and Public Hearing  
**Owner:** Mark & Claire Bureau  
**Location:** 141 Portland Ave, MBL: 104-2-2

<b>RED OAK</b>	<b>Project Status</b>
<i>Sketch Plan</i>	Completed in January
<i>Preliminary Plan</i>	Submitted in July, Revised in November, Revised in March
<i>Application Complete</i>	Recommended for March or April
<i>Site Walk</i>	Recommended for April
<i>Public Hearing</i>	Recommended for April or May
<i>Preliminary Plan Vote</i>	Pending
<i>Final Review</i>	Pending

This project was brought before the Planning Board in January of 2017 as a Sketch Plan and was brought back before the Planning Board in July of 2017 as a Preliminary Plan and you last saw the plan in November of 2017 as a Preliminary Plan. It is now back before the Planning Board as an updated Preliminary Plan. It is for a 9-lot subdivision at the end of the existing Red Oak Drive off of Portland Ave with a proposed cul-de-sac at the end. Currently, there are four lots with homes on Red Oak Drive that were approved back in 2004-2005. The last lot was completed in summer of 2016.

There were a number of items discussed in July and November, many of them pertaining to Wright Pierce comments. A number of the Wright Pierce comments pertained to stormwater. The submission materials for March were provided to Wright Pierce for review and comment. The new submission attempts to address the comments.

In your packets for March are:

- Responses to the Wright Pierce/Staff comments from July and November
- An updated Plan Set
- HOA Documents
- Post-Construction Stormwater Management Plan (PCSWMP)

Because this project has gone through a number of iterations, some of the materials such as the responses to the 14 subdivision criteria need to be updated. Planning Staff also recommends that an updated Application be updated to reflect the change from 8 to 9 lots.

Responses to the 14 Subdivision Criteria that were submitted in July of 2017: *Sec. 74-2*. In approving subdivisions within the Town, the Planning Board shall consider the following criteria and before granting approval shall determine the following.

The proposed subdivision:

1. *Will not result in undue water or air pollution*

Response: The project will not create undue water or air pollution during or after construction.

2. *Has sufficient water available for the reasonably foreseeable needs of the subdivision.*

Response: The project will be served by public water and will readily have water available for the foreseeable future.

3. *Will not cause an unreasonable burden on an existing water supply, if one is to be utilized*

Response: The project will be served by public water and will readily have water available for the foreseeable future.

4. *Will not cause unreasonable soil erosion or reduction in the capacity of land to hold water so that a dangerous or unhealthy condition may result.*

Response: The project will be constructed to meet the requirements of the Basic Standards of Chapter 500 of Maine Stormwater Law and will also be constructed in accordance with Chapter 71 of the Town of Old Orchard Beach Land Use Ordinances.

5. *Will not cause unreasonable highway or public road congestion or unsafe condition with respect to use of the highways or public roads, existing or proposed.*

Response: The project will result no unreasonable impacts on the highways or public roadways. According to the ITE manual, 8 additional residential lots results in only 80 total daily trips and 8 peak hour trips, which does not trigger any State traffic permitting requirements. **\*\*This needs to be updated to reflect 9 lots\*\***

6. *Will provide for adequate solid and sewage waste disposal.*

Response: The project will be built to Town of Old Orchard Beach standards and it is anticipated that the Town of Old Orchard Beach curbside pick-up will be available by contract service until such time as the roadway is accepted by the Town of Old Orchard Beach. All solid waste accumulated during construction will be disposed of in a safe and adequate manner by the contractors/owner. Sewage waste generated during construction will be handled by portable toilets. Household sewage will be handled by septic systems to be designed and installed to all local and State requirements.

7. *Will not cause an unreasonable burden on the ability of a municipality to dispose of solid waste and sewage of municipal services if they are to be utilized.*

Response: The project will not burden the ability of the municipality to dispose of solid waste due to its relatively small size and impact to solid waste generation. There will be no impacts to sewer disposal services as the project is served by private septic's.

8. *Will not place an unreasonable burden upon local, municipal or governmental services.*

Response: The project will not unreasonably burden municipal or governmental services due to its relatively small size.

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

Response: The project will not have any adverse effects on the scenic or natural beauty of the area, aesthetics, historic sites or any rare and irreplaceable natural areas. The proposed development will protect the existing Jones Creek by preserving open space within the stream buffer area. The project will be an extension of the existing development which maintains large swaths of wooded areas on relatively secluded lots.

10. *Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan, or any land use plan, if any*

Response: The proposed project has been designed in accordance of all local codes and ordinances.

11. *Owner has adequate financial and technical capacity to meet the standards stated in the ordinance.*

Response: The applicant has successfully constructed a number of previous, successful projects and owns the property free and clear. The project engineer, surveyor and other design professionals have successfully designed and permitted many projects in York County and have over 100 years of combined experience in residential design and permitting.

12. *Whenever situated, in whole or in part, within 250 feet of any pond, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.*

Response: The project does not fall within 250 feet of any pond.

13. *Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.*

Response: The project will be served by public water and will utilize stormwater BMPs which retain, filter and infiltrate stormwater run-off back into the ground. As such, no adverse effects on the quality or quantity of groundwater are anticipated.

14. *Will not unreasonably interfere with access to direct sunlight for solar energy systems.*

Response: The project will not interfere with any solar energy systems by affecting their access to direct sunlight.

There are a few other items that Planning Staff recommends be submitted prior to the board making a determination of completeness including:

- The original plan showed test pit locations on each of the lots, however, Planning Staff did not see these on the updated plan. Where the lot sizes and locations changed, Planning Staff recommends these be shown on the updated Preliminary Plan.
- It appears that a portion of the Bureau lot was split to allow for the full lot sizes and an additional lot, Planning Staff did not see an updated deed in the submission materials.
- Planning Staff received comments from Maine Water about extending water through this area back in November. Maine Water is continuing to review the proposal and will have comments back to the Applicant about the plan. Planning Staff is still waiting on an ability to serve letter from them.
- An updated Performance Guarantee worksheet is needed for the project.
- It is unclear what DEP permits have been secured for the project and if they required a FEMA Letter of Map Amendment (LOMA) for the floodplain area.
- Assessing Staff indicated that a portion of the proposed subdivision is still in a designated tree growth area. It also shows a portion of Lot 7 is on Town property on the Town's GIS. This will have to be clarified.
- One comment received from Wright Pierce in November was associated with stormwater management and that it is only for the roadway and not for future impervious areas associated with individual lots. One recommendation by the Applicant is that a Condition of Approval be added to the project that requires a lot development plan meeting Chapter 500 standards and still maintaining the integrity of design. This decision will be up to the Planning Board.
- There were comments received from Staff in November about whether or not this project is intended to become public or private, it is unclear if this was addressed.

### **RECOMMENDATIONS (MARCH):**

This project is before the Planning Board for a Determination of Completeness and to schedule a Site Walk/Public Hearing. In order to determine the Application Complete, Planning Staff recommends that the application materials including responses to the subdivision criteria be updated to reflect the 9 lots. Planning Staff is still waiting on comments from Wright Pierce and anticipates them to be received prior to the meeting next week.

If the Planning Board decides to make a Determination of Completeness, it should be contingent on receiving updated application materials and the items listed above.

*Recommended Motion: I will make a motion to determine the application complete to construct a 9 lot residential subdivision located at 141 Portland Ave.*

*Recommended Motion: I will make a motion to schedule a site walk for April 5<sup>th</sup> at 5:00PM and to schedule a public hearing for April 12<sup>th</sup> at 7PM.*

### **BACKGROUND (NOVEMBER):**

This project was brought before the Planning Board in January as a Sketch Plan and was back before the PB in July as a Preliminary Plan. Since July, the Applicant has made some changes to the materials after a review by DEP. Some of these changes include:

- Adding the adjacent parcel to the subdivision which added more land to the project area;
- Creation of a 9<sup>th</sup> lot;
- This project is no longer a cluster subdivision, the lots will conform to the space and bulk requirements of the Rural Zone;
- The turn-around has been converted from a hammerhead to a cul-de-sac;
- Some changes were made to the Stormwater Management Plan.

Currently, there are four lots with homes on Red Oak Drive that were approved back in 2004-2005. The last lot was completed in the summer of 2016. There is a five foot sidewalk proposed as part of the new phase and this will be a continuation of the sidewalk from the first and second phases. The project will be served by public water and septic systems.

Originally, the Applicant was applying for a cluster subdivision with eight lots, now they have changed the plans so that it is a subdivision that conforms to the space and bulk requirements of the rural zone and has 9 lots.

The existing riprap pond at the end of the existing Red Oak Drive will be converted into an Underdrained Soil Filter which will treat the existing roadway as well as a portion of the proposed roadway. The remainder of the roadway will be treated by an underdrained soil filter at the end of the proposed development.

### **Comments on the Materials:**

The project is mislabeled as Phase IV and should be labeled as Phase III.

In July, there were several issues that were discussed from the Wright Pierce memo and some by Planning Staff. Some of them have been addressed, but still require further information and others have not been addressed. The last set of comments received from WP were on 6/30/17. Several of these comments have not been addressed. A new set of WP comments are included in your packets with additional outstanding items including:

- Updating Sheet C-100 to reflect the changes from a Cluster Subdivision to a Subdivision that meets space and bulk requirements.
- Providing an ESC plan and details for long-term site protection other than wrapping the site with silt fence.
- Providing a detail section for the proposed gravel access road to the underdrained soil filter at the end of the cul-de-sac.00
- Reviewing the discharge point of the cul-de-sac as it appears to be directed towards the adjacent Seacoast RV property.
- Providing information on the proposed outlet of the underdrained soil filter in the pond construction details.
- Using consistent terminology for the liner in the both of the underdrained soil filters.
- Providing information on how the outlet control structures for both underdrained soil filters will not become buoyant.

A Post-Construction Stormwater Management Plan (PCSMP) was submitted for the project in July for the Planning Board to review but was lacking a few components and Planning Staff had a few comments on the plan:

- Under **Project Contact Information**, it says the responsible party for the maintenance of stormwater BMPs is the Developer Mark Bureau. Does this mean there isn't going to be an HOA for the development and that the Developer will be responsible for all maintenance of the BMPs?
- Under **Project Narrative**, it does not indicate what federal permits are required for the project. For example, a PBR through the DEP is required but is not listed under this section.
- Under **MS4 Identification Plan**, it says this section is not applicable, however, we still need a list of BMPs proposed on the project, regardless if they discharge into the Town's MS4. The PCSWP Guidance Document has an example table that shows how this can be listed.

Staff had questions about whether or not the project is intended to be public or private.

There were comments made by the Fire Chief in July and response comments from the Applicant were not included in the most recent submission materials.

The Town Manager provided a comment to staff: *I would prefer that the road remain a private road. However if it is to become a public road the initial portion of the access road to Portland Avenue needs to be demonstrated to have been built to Town standards.*

*The subdivision should include street lighting with energy efficient luminaires.*

**RECOMMENDATIONS:** Staff does not feel that the application is complete and does not recommend that the PB make a determination of completeness at this meeting or schedule a Site Walk. This meeting should be an opportunity for the board to discuss what items remain outstanding including those associated with the PCSMP, staff comments, and

comments from Wright Pierce. Planning Staff recommends that the Applicant come back with the changes for the December meeting.

*No motion required.*

**BACKGROUND (JULY MEETING):**

This project was brought before the Planning Board in January as a sketch plan. It is for the creation of 8 lots off of Red Oak Drive. Currently, there are four lots with homes on Red Oak Drive that were approved back in 2004-2005. The last lot was completed in the summer of 2016. There is a five foot sidewalk proposed as part of the new phase. This will be a continuation of the sidewalk from the first and second phases. The project will be served by public water and septic systems. It is unclear what type of lighting will be provided in the development.

There were a couple of discussion points that came up during the January meeting:

- There were some issues associated with the pond that was constructed as part of Phase II of the Subdivision. The pond was constructed within 75 feet of the stream, however, the piping associated with the pond was within 25 feet of the stream. It appears from the plans that the existing riprap pond at the end of Red Oak Drive will be converted into an underdrained soil filter which will treat the existing roadway and a portion of the proposed roadway. They are also proposing a bioretention filter at the end of the development.
  - The applicant has indicated that the MDEP Permit by Rule was filed “after the fact” that included restoration of the stream bank (for disturbance within 25’ of the stream) and the site is now “legal” per the permit acceptance and restoration (trees have been planted). The NRPA PBR Application Packet has been included in your Red Oak materials.
- The applicant plans to submit a Letter of Map Amendment (LOMA) for the FEMA regulated area because the stream banks are well established and high. Planning Staff has asked for documentation on this.
  - The Applicant has indicated that it will likely take longer than this project approval for the FEMA adjustment so they are moving forward with the 100-year flood plan “as is” and have designed the lots so that if the line ever does get accepted as a remapped line, they’ll be able to amend the subdivision plan.

A Post-Construction Stormwater Management Plan (PCSMP) has been submitted for the project for the Planning Board to review. Planning Staff has a couple of comments on the plan:

- Under **Project Contact Information**, it says the responsible party for the maintenance of stormwater BMPs is the Developer Mark Bureau. Does this mean there isn’t going to be an HOA for the development and that the Developer will be responsible for all maintenance of the BMPs?
- Under **Project Narrative**, it does not indicate what federal permits are required for the project. For example, a PBR through the DEP is required but is not listed under this section.
- Under **MS4 Identification Plan**, it says this section is not applicable, however, we still need a list of BMPs proposed on the project, regardless if they discharge into the Town’s MS4. The PCSWP Guidance Document has an example table that shows how this can be listed.

It is unclear whether this project is intended to be private or public. In January, the applicant mentioned the project remaining private, however, in the application under solid and sewage waste disposal it indicates: “...until such time as the roadway is accepted by the Town of Old Orchard Beach...”

**DEPARTMENT COMMENTS (JULY):**

FD:

In regards to Red Oak Phase-3 here are some of the requirements they need to meet by NFPA.

- 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.
- 5) 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.
- 6) We need to check on the nearest hydrants locations.

**RECOMMENDATIONS:** Staff recommends that the PB schedule a site walk for August 3<sup>rd</sup> and a public hearing for August 10<sup>th</sup>.

### **BACKGROUND (JANUARY MEETING):**

#### ***Project Background:***

In 2004, the Red Oak development located at 143 Portland Ave was approved as a minor, 3-lot subdivision. In 2005, the applicant came back for an amendment to extend the main road and create one additional lot (Phase 2). The last lot was completed in the summer of 2016.

#### ***Construction Background:***

In early February (2016), Codes staff noticed some severe erosion and sedimentation control issues at the last lot under construction on Red Oak Drive. As a result, the Town had Stephanie from Wright Pierce come out and complete inspections at the site. Inspections were completed in February, March, and May (reports attached). The Town also completed several inspections.

The DEP got involved at the end of July, early August due to the issues onsite, primarily associated with the stream. Audie Arbo at the DEP spoke with Marc Bureau (Owner/Developer) after she discovered that no current permits existed for the work being done on Red Oak Drive. The only permit found was a Permit by Rule for an outfall pipe on Red Oak Drive in 2006. The main issue was that a stream crossing was put in without a Section 10 Permit by Rule (PBR). Work was also done within 25 feet of the stream, which now required an after-the-fact Natural Resources Protection Act Individual permit for activity adjacent to a protected natural resource. In addition, the rip rap in the bed of the stream channel needed to be removed by hand to allow for the natural stream bed to be exposed. Audie also recommended having the engineer hired for the next phase of the project look into whether the road would trigger the need for a Stormwater permit.

In September, Audie met with Marc Bureau's agent and engineer on-site and together they were working on a restoration plan to move the stormwater feature outside of 25 feet from the stream and put in an after the fact permit application for the stream crossing.

#### ***January Update from Audie:***

On January 3, 2017 Audie Arbo at DEP has not received a plan and the enforcement case is still open regarding the project. She has put in another phone call to the agent to ask where the plan and timeline for corrective action is and got an email from the agent stating she will have an after-the-fact Permit By Rule for the crossing and a restoration plan for moving the structures away from the stream very soon.

***Comments were received from Stephanie on December 23<sup>rd</sup>, see attached memo.***

#### ***Additional Town Comments:***

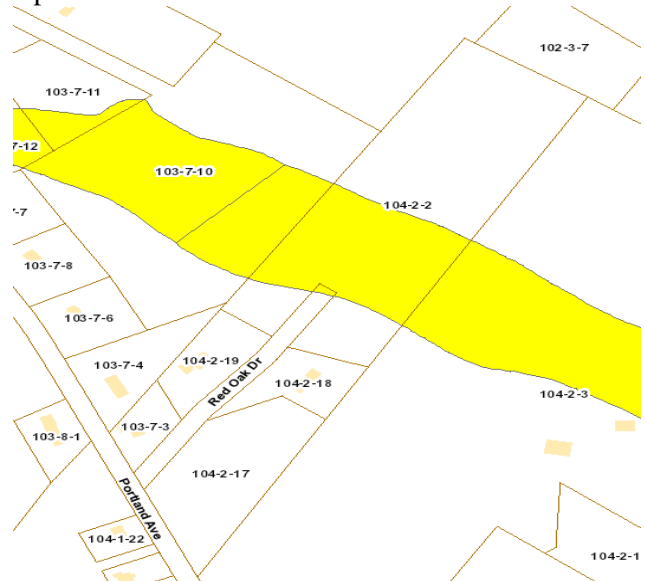
The house adjacent to Lot 9 on the other side of the stream was just completed this past summer. On the approved plans from 2005 it shows this lot as part of Phase II (*see attached plans*). In addition, the parcel number (104-2-2) on the Town's GIS shows that house as part of the same MBL as these 9 additional units. It is unclear on the sketch plan whether this lot is considered part of Phase II as shown on the 2005 approval.





It's unclear whether or not Lot 1 is a buildable lot. A detention pond was constructed this past summer in that area and it's unclear where the building envelope for this new lot is in relation to the pond. It's recommended that this pond be shown on the plan. The building envelope shown to the left of the stream is in the same area as the pond which was located within 25 feet of the stream (*see attached photos*).

FEMA implications – 3 or more of the proposed lots are in the designated FEMA flood zone “A.” This is also addressed in the Wright Pierce memo from Stephanie.



One of the building envelopes for Lot 9 is tucked in the corner of the lot, how could an access drive be put in to get to this building without impacting the stream?

As a heads up this project is over an acre and in the MS4 regulated area so the Town will be looking for the applicant to enter into a Maintenance Agreement and provide a Post-Construction Stormwater Management Plan for the development. They shall also provide the Town with a list of all BMPs proposed on site and designate any of them that could discharge to the Town's MS4 (i.e. Portland Ave).

**DEPARTMENT COMMENTS (JANUARY)**

FD:  
In regards to Red Oak Subdivision Phase-2 and Ross Road Subdivision they must both meet the following.

- NFPA: 18.3 Fire Hydrants
- NFPA: 18.2.3 Fire Department Access Road

- NFPA: 18.2.3.4.4 Dead Ends
- NFPA: 18.2.3.4.3 Turning Radius -The Turning Radius must meet the dimensions of the department Aerial Truck.

Public Works:

- I don't see anything for storm water.
- I would like to see the dimensions of the cul de sac for plowing.
- Would cul de sac be large enough to fit fire apparatus

**ITEM 8**

**Proposal:** Major Subdivision and Site Plan: 40 Unit Condominium Project  
**Action:** Re-Approval Vote  
**Owner:** Church Street LLC  
**Location:** 164 Saco Ave., MBL: 208-1-9, GB1 & R4

<u>Church Street Station</u>	<u>Project Status</u>
<i>Sketch Plan</i>	N/A
<i>Preliminary Plan</i>	N/A
<i>Application Complete</i>	N/A
<i>Site Walk</i>	N/A
<i>Public Hearing</i>	N/A
<i>Preliminary Plan Vote</i>	N/A
<i>Final Review</i>	N/A

On 13 October 2016 the PB unanimously granted conditional approval of a 40-unit condominium project titled “Church Street Station.” Approved subdivisions must be recorded in the registry of deeds within a specific time frame (90 days and can be extended 2x). If the subdivision is not recorded within the time frame it becomes null and void- subdivision ordinance language:

**Sec. 74-234. - Final approval and filing.**

(a) Upon completion of the requirements in subdivision II of this division and this subdivision above the notation to that effect upon the plan, it shall be deemed to have final approval and shall be properly signed by a majority of the members of the planning board and shall be filed by the applicant with the tax assessor. The plan shall then be filed with the county registry of deeds. 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.

As part of pre-development preparation, staff found that the subdivision plan was not recorded. Staff reached out to BH2M and the applicants and found they didn’t have documentation of the recorded plan so we concluded it was not recorded. Because the subdivision plan was not recorded staff determined that the proposal could not move forward until the plan was recorded. Because PB signatures on the approved plan were dated October 2016, we are well beyond the 90 days (and two extensions) recording time frame, and the language in 74-234 (e.g., null and void), staff determined that recording the previously signed plan would not meet our ordinance requirements and, most likely, the registry of deeds requirements. So to resolve this, staff determined the plan will need to be re-approved by the PB. Staff consulted our town attorney on this matter. He replied:

Since the subdivision approval is deemed null and void if not recorded within 90 days of approval, the Board should vote to re-approve the plan before signing it. Thus it should be noticed in the normal course and follow the same procedures, but the Board could simply refer to the prior submissions and vote to approve the subdivision and adopt the prior findings of fact at the same time before signing the plan.

He agrees the plan must be re-approved and continues with “it should be noticed in the normal course and follow the same procedures.” The statement we quoted made us think that subdivision would need to go through the entire review process again, which staff feels is unnecessary because the plan has minor changes and those changes were added to comply with PB conditions (i.e., DEP approval). Our attorney followed with “the Board could simply refer to the prior submissions and vote to approve the subdivision and adopt the prior findings of fact at the same time before signing the plan.” This will not require the PB to go through the entire process again and staff supports this approach.

Regarding the “minor changes” between the new and former plans. Staff believes they are minor because they do not change unit count, building placement, road location, buffers, parking, and other critical parts of the development. The changes resulted from compliance with DEP, which the PB required as part of a condition attached to the 2016 approval: “All applicable Maine DEP permits shall be approved before construction begins.” Changes include:

- Amended wetland impacts. Wetland impacts reduced by 124 sq. ft. See note18.
- 25' setback added to northwest side of stream.
- Snow storage area between units 5 & 6 has a minor location change.

It's staff opinion these changes were already authorized by the PB because they are related to the Findings of Fact which required compliance after the PB signed the plan.

**RECOMMENDATIONS:**

Staff recommends the PB motion to re-approve the Final Plan titled Church Street Station to develop 40 single-family style freestanding condominium units, roads and associated infrastructure located at 164 Saco Ave, MBL 208-1-9. Re-approval includes adoption of the 13 October 2016 Findings of Fact. This project was originally approved on 13 October 2016.