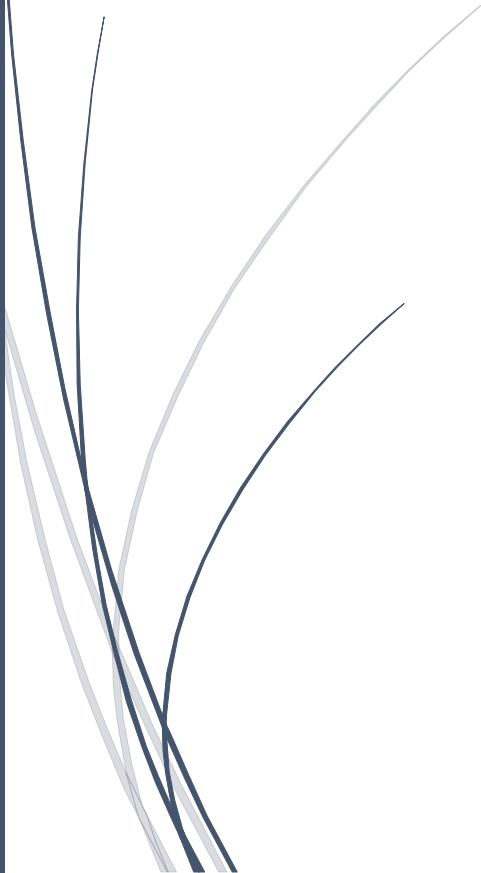


**OLD ORCHARD BEACH  
MAY 2018  
PLANNING BOARD  
MEMO**



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**ITEM 4**

**Proposal:** Ordinance Amendments (Contractor Storage Yard 1): Amendment to Chapter 78 - Zoning, Article VI - Districts, Division 12 – Rural District, Section 78-963 – Conditional Uses; Amendment to Chapter 78, Article VII – Conditional Uses, Division 2 - Conditions, Section 18-1278 – Contractor Storage Yard 1.

**Action:** Public Hearing; Discussion; Vote on Recommendation

**Applicant:** Town of Old Orchard Beach

**Location:** Portion of Rural District: Parcels of land with road frontage along Portland Ave between the Ross Rd/Portland Ave Intersection and the Old Orchard Beach/Scarborough Town Boundary.

**ORDINANCE AMENDMENTS**

**Project Status**

*Introduction* February

*Review Draft/Public Comment* April

*Public Hearing* May

*Recommendation to Council*

\*NOTE: This item does not include amendments associated with the frack tank- this will be a separate item to be considered at a future meeting

At the April meeting, the PB made a few changes to the first draft of proposed Contractor Storage Yard 1 (CSY1) language and scheduled a public hearing to be held at the May meeting. Public hearing notice was mailed to all property owners with frontage on Portland Ave, between the Ross/Portland Ave intersection and OOB/Scarborough town line, and to owners of property that abut the properties with frontage along Portland Ave. Although the proposed amendments do not allow CSY1 on those properties that abut properties with frontage along Portland Ave, we felt additional notice was necessary.

At the May meeting the PB will have an opportunity to hear public comment. During the hearing, anyone speaking should identify their name and home address- this will help us know if they were included in the notification mentioned above. Also, the PB can choose to vote on a recommendation. Remember, the PB provides a recommendation on whether the Council should approve or deny zoning amendments- the Council has authority to adopt. If the PB chooses to vote on a recommendation, the recommendation should be either: 1. Approve/Deny amendment language as written or 2. Approve/Deny amendment language with changes to the language. The PB also has the option to postpone a May. This is a good option if the PB feels more time is needed to consider public comment, etc. or if language changes are proposed.

The following is from a Fact Sheet prepared to assist with understanding the proposed ordinance amendments:

**1. If the Ordinance Amendments are adopted where will Contractor Storage Yard 1 be allowed?**

- Lots with road frontage along Portland Ave., between the Ross Rd./Portland Ave. intersection and the OOB/Scarborough town line, that have an owner occupied residence and 1 acre or more in lot area

**2. Which local ordinances will a Contractor Storage Yard 1 need to meet?**

- Contractor Storage Yard 1 Conditional Use standards (these are the proposed ordinance amendments)
- Conditional Uses Ordinance
- Rural District performance standards
- Parking, Driveway, Off-Street Loading performance standards
- Sign performance standards
- Landscaping and buffering performance standards
- Erosion and Sedimentation Control performance standards
- Noise Ordinance

**3. What are some of the requirements a Contractor Storage Yard 1 (CSY1) must meet?**

- An owner occupied residence must be maintained on the same lot as the CSY1
- CSY1 lot must be a minimum of 1 acre

- CSY1 driveway entrances must be a minimum of 50' from adjacent property boundaries
- Outdoor storage and parking of vehicles and equipment must be set back 50' from front property line and 25' from side and rear property lines
- CSY1 parking and storage areas must be visually blocked from the street and abutting properties
- CSY1 will not result in significant hazards to pedestrian and vehicular traffic
- CSY1 will not cause water pollution or contamination of any water supply
- CSY1 will not create unhealthful conditions or nuisances because of odors, vibrations, smoke, dust, glare, noise, hours of operation
- CSY1 will not adversely affect value of adjacent property
- A site plan must be prepared showing storage areas, parking, structures, loading and unloading areas, buffering, and exterior lighting plan

#### **4. How does the proposed Contractor Storage Yard 1 “(C) Other Review Criteria” work?**

- The Other Review Criteria language is proposed because fitting a CSY1 proposal in one common criteria set will not provide adequate regulation. The type of CSY1 may vary as well as its potential impacts abutting properties. The Other Review Criteria will allow the PB to customize their review to fit the proposal in a manner that the other standards may not allow. For example, the Planning Board could require a more extensive buffer than what is typically required “so as to prevent adverse impacts to adjacent property.”

#### **5. Who would be responsible for local review of a Contractor Storage Yard 1 proposal?**

- A CSY1 proposal will require a Conditional Use Permit which is reviewed by the Planning Board. This permitting process includes site walks and public hearings which provides an opportunity for abutting property owners to review and comment
- Permit review by Code Enforcement if any structures, plumbing or electrical work is proposed
- Business License review by Town Council

We’ve heard and received a number of comments associated with this proposal regarding spot zoning, ordinance consistency with the comprehensive plan, changing the district/area to commercial, and impacts to property values. A few comments on each:

First, regarding spot zoning, it has been stated the present proposals and existing uses would require an illegal spot zone. A case cited to support this opinion is *Vella v. Town of Camden*. Regarding the claim associated with spot zoning in this case, “the plaintiffs contend, as they did before the trial court, that certain amendments to the Town’s zoning ordinance are invalid because (1) they are inconsistent with the Town’s comprehensive plan and constitute illegal spot zoning.” The case was decided in favor of the Town of Camden- “The record does not support the assertion of the plaintiffs that the legislative body of the Town did not consider whether the amendments enacted by it were consistent with and in basic harmony with the Town’s comprehensive plan.” It’s important to note that spot zoning is a neutral term encompassing both legal and illegal land use controls. The fact that a zoning amendment benefits only a particular property or is adopted at the request of a particular property owner for that owner’s benefit is not determinative of whether it is an illegal spot zoning. Note the statement “spot zoning is a neutral term.” This is important because it’s not derogatory or favorable- it’s simply neutral. Also, the proposed ordinance amendments do not pertain to a single parcel of land or single individual.

Second, regarding the comp plan (which also relates to the question of spot zoning), it has been stated such uses and necessary amendments to allow those uses would be plainly inconsistent with the vision set forth for the Rural District in the Town’s comprehensive plan. I agree that the Rural District’s intent includes preserving the open, rural Character of Old Orchard Beach. Although, the PB should know the Rural District also states “certain commercial activities, and mineral extraction may be developed if it’s in a manner sensitive to the objectives of these areas.” These objectives include:

- Preservation of aesthetic rural character
- Noise regulations for commercial and industrial uses

- New construction to follow “good neighbor” performance and design standards. “Good Neighbor” standards include: protection of adjacent residential neighborhoods, regulation of scale, type of use, impact on visual & natural environment, landscaping, fencing, buffering, screening of parking and dumpsters, access to site, hours of operation, waste disposal, nuisances of noise and outdoor lighting.

Again, I agree the intent of the Rural District includes preservation of rural character; although, it does appear the comp plan allows certain commercial activities as long as they are developed in a manner sensitive to the objectives of these area which includes preservation of the aesthetic rural character and new construction that follows “good neighbor” standards. The proposed ordinance amendments include “good neighbor” standards. Also, existing ordinances that would apply to a proposed CSY1 include “good neighbor” standards.

Third, regarding the proposed amendments are changing the district classification to commercial, it could be argued this has already been done. Current ordinances allow the following uses in the same area (since at least 2001): limited commercial freight businesses, auto service and repair facilities, mineral extraction operations, animal husbandry for commercial purposes, private schools, public and private utility facilities, veterinary hospitals, and contractor storage yard 2. All of these uses could be classified as commercial uses. If the district was strictly limited to residential uses, I would agree this area is changing to a commercial zone. But, commercial uses are already permissible. Also, the zoning district is still the Rural District. What is changing is allowing a new land use to be permitted as a Conditional Use in a portion of the Rural District. The Rural District will remain the Rural District.

Fourth, impacts to property values. This is a common question when proposing zoning changes and a tough one to provide a reliable answer. The reason is a definitive answer can only be found after the change takes place and sales data is collected for that specific area. A common way to make this determination is to compare the property value before the zoning change to the property value, based on a sale, after the change. And the sample needs to be larger than one property. Studies can be found that show positive and negative impacts but it’s hard to apply these to this case considering things such as commercial uses are already permissible in this area. The zoning change itself should not impact current land and building values or taxes- it is tied more to the use after it comes into existence.

**RECOMMENDATIONS:**

Regarding the next steps, the PB has a few options:

1. Vote on a recommendation with the language as it is currently proposed
2. Vote on a recommendation that includes changes to the language. Note- changes may require another public hearing
3. Postpone vote

If the PB feels prepared to provide a recommendation, we recommend the PB make one of the following motions:

Language as written: Motion to recommend the Council approve/deny the Contractor Storage Yard 1 Ordinance Amendments, Amendment to Chapter 78 - Zoning, Article VI - Districts, Division 12 – Rural District, Section 78-963 – Conditional Uses; Amendment to Chapter 78, Article VII – Conditional Uses, Division 2 - Conditions, Section 18-1278 – Contractor Storage Yard 1, to allow Contractor Storage Yard 1 as a Conditional Use for Parcels of land with road frontage along Portland Ave between the Ross Rd/Portland Ave Intersection and the Old Orchard Beach/Scarborough Town Boundary.

OR...

Changes to language: Motion to recommend the Council approve/deny the Contractor Storage Yard 1 Ordinance Amendments, (INSERT NEW LANGUAGE)...Amendment to Chapter 78 - Zoning, Article VI - Districts, Division 12 – Rural District, Section 78-963 – Conditional Uses; Amendment to Chapter 78, Article VII – Conditional Uses, Division 2 - Conditions, Section 18-1278 – Contractor Storage Yard 1, to allow Contractor Storage Yard 1 as a Conditional Use for Parcels of land with road frontage along Portland Ave between the Ross Rd/Portland Ave Intersection and the Old Orchard Beach/Scarborough Town Boundary.

**BACKGROUND (APRIL):**

Contractor Storage Yard 1 (CSY1) zoning change. Your April packet includes ordinance amendments that will allow a CSY1 as a Conditional Use within a specific area along Portland Ave and new standards that are specific to establishment of a CSY1. Although brief, the standards do have a fair amount of thought behind them. Conditional Use's do not have many standards when it comes to specific plan details, so, I added scaled site plan requirements that I hope will provide the most important details in regards to the sites function, potential impacts, etc. of a CSY1. The "Minimum Development Standards" create a baseline that all CSY1 must meet- the intent is to consider the sites function, potential impacts to abutters and address the "good neighbor" criteria called for in the comp plan. One of the more interesting sets of standards is the "Other Review Criteria" which is my attempt to provide standards that allow the PB to apply conditions that are more site and development specific. I don't like to use subjective ordinance language but it seemed appropriate here because it falls under Condition Use. We'll be interested in your comments on the language.

Public Private Utility Facility (Frack Tank). This is no longer part of the zoning amendment consideration. The applicant intends to submit a Condition Use permit to establish the frack tank as a public/private utility facility. I expect the CU permit will be submitted for the May meeting and we'll provide more comment at that time. One of the primary arguments continues to be is does it meet the public/private utility facility definition. An abutter who objects to this proposal through his attorney (Mr. Libby) has argued that it does not meet the definition (you received this in your March packet and have a new letter in your April packet attached to the CSY1 ordinance change). I asked Ms. MacDonald's attorney to provide an argument why they feel it does meet the definition. Again, we expect the PB will see this as a Conditional Use application at the May meeting.

**RECOMMENDATIONS (APRIL):**

Staff recommends the PB discuss the Contractor Storage Yard 1 amendments, make any language suggestions or changes, and schedule a public hearing to be held on 10 May.

**BACKGROUND (MARCH):**

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 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 (MARCH):**

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): Amendment to Chapter 18 - Businesses, Article XI - Medical Marijuana Registered Dispensary or Medical Marijuana Production Facility Amendments, title; Amendment to Chapter 18 - Businesses, Article XI - Medical Marijuana Registered Dispensary or Medical Marijuana Production Facility, Division 1 - Generally, Section 18-601 – Definitions; Amendment to Chapter 18 - Businesses, Article XI - Medical Marijuana Registered Dispensary or Medical Marijuana Production Facility, Division 1 - Generally, Section 18-604 – Prohibition on Medical Marijuana Storefronts; Amendment to Chapter 78 - Zoning, Article I – In General, Section 78-1 – Definitions; Amendment to Chapter 78 - Zoning, Article VII – Conditional Uses, Division 2 - Conditions, Section 78-1277 – Medical Marijuana.

**Action:** Public Hearing; Discussion; Vote on Recommendation

**Applicant:** Town of Old Orchard Beach

**Location:** Town Wide

**ORDINANCE AMENDMENTS**

**Project Status**

<i>Introduction</i>	March
<i>Review Draft/Public Comment</i>	April
<i>Public Hearing</i>	May
<i>Recommendation to Council</i>	

At the April meeting, the PB decided to move forward with the proposed Medical Marijuana Storefront ordinance amendments as written. As you may recall, the proposed amendments define Medical Marijuana Storefronts and prohibit the use town-wide. The amendments add language to Chapter 18 (Businesses) and Chapter 78 (Zoning).

Also at the April meeting, Peter and Tom Mourmouras discussed their position with the PB. They argue:

To put a prohibition on a "medical marijuana storefront" would completely contradict the ordinance already established by the Town of Old Orchard Beach. The "medical marijuana storefront" land use that we are proposing operates almost identically to a "Registered Dispensary", with the key difference being that Registered Dispensaries have unlimited patients and product, while Registered Caregivers are limited to 5 patients and the product produced for those patients. These two land uses would have identical security requirements and performance standards.

At the meeting the Mourmouras’ submitted ordinance language they prepared that they would like to see move forward (info from Mourmouras’ included in this month’s packet). Highlights of this language:

- Identify Medical Marijuana Caregiver Storefronts (MMCS) as a defined land use (Ch. 18)
- MMCS will require a business license
- MMCS will be a conditional use that is allowed only in the DD2
- Only 1 MMCS will be permissible
- MMCS must meet most of the Medical Marijuana Ordinance performance standards (78-1277 (d)) including a new #9 (note- as written this will apply to the other medical marijuana uses). Excluded are the following performance standards: Medical Marijuana Production Facility Limit, Security, Odorous Air Contaminants
- Performance standard “proximity location to other uses” adds public beach

At this month’s meeting the PB will hold a public hearing and may vote on a recommendation to approve, approve with language changes or deny. Also, action can be postponed if the PB feels further consideration is needed before a final version is voted on. Although the PB’s review process is similar to the CSY1 ordinance amendments discussed in the previous agenda item, there are some differences. Most importantly, the PB is working on this amendment at the request of the Council due to the moratorium. The moratorium’s language limits what the PB can do. This means the PB will have a difficult time proposing language that does not follow the intent of what’s stated in the moratorium language. For example, if the PB feels Medical Marijuana Storefronts should be allowed in a few zoning districts, members will have to ask themselves if they feel the changes meet the moratorium’s intent. Please read the “Key Points & PB Responsibilities” (below) for further information.

One final note, the PB has jurisdiction over ordinance amendment recommendations associated with Ch. 78, Zoning. The PB does not have jurisdiction over amendments to Ch. 18, Businesses. PB's consideration includes both Ch.78 and 18 so the Board is aware that both ordinances should be adopted together in order to ensure proper administration. Although, when voting on a recommendation it should be limited to the Ch. 78 amendments.

**RECOMMENDATIONS:**

Moving forward, the PB has several options.

1. Recommend the Council approve or deny the Chapter 78 ordinance amendments as proposed.  
**Motion:** "Motion to recommend the Council approve/deny amendments to Chapter 78 - Zoning, Article I – In General, Section 78-1 – Definitions; Amendment to Chapter 78 - Zoning, Article VII – Conditional Uses, Division 2 - Conditions, Section 78-1277 – Medical Marijuana."
2. Recommend the Council approve the Chapter 78 ordinance amendments with changes to the language. These changes will need to be identified.  
**Motion:** "Motion to recommend the Council approve/deny amendments (INSERT NEW LANGUAGE) to Chapter 78 - Zoning, Article I – In General, Section 78-1 – Definitions; Amendment to Chapter 78 - Zoning, Article VII – Conditional Uses, Division 2 - Conditions, Section 78-1277 – Medical Marijuana."
3. If the PB determines the language as proposed is not acceptable and a town-wide prohibition is not appropriate, the PB could recommend the Council not approve the language and send back to the PB to be more inclusive by allowing appropriately regulated Medical Marijuana Storefronts to exist in limited areas.  
**Motion:** "Motion to recommend the Council deny amendments to Chapter 78 - Zoning, Article I – In General, Section 78-1 – Definitions; Amendment to Chapter 78 - Zoning, Article VII – Conditional Uses, Division 2 - Conditions, Section 78-1277 – Medical Marijuana. We further recommend the Council take appropriate steps to send back to the PB to create an ordinance that allows appropriately regulated Medical Marijuana Storefronts to exist in limited areas."
4. Postpone a vote and continue to work on amendment language.  
**Motion:** Motion is not necessary.

Remember, 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.

**BACKGROUND (APRIL):**

At the March meeting the Planning Board requested that Planning Staff create an ordinance that defines Medical Marijuana Storefront and prohibits them. In your April packets are draft ordinance amendments that Staff believes support the PB's request and the intent of the moratorium.

The amendments are simple- they define medical marijuana storefronts and prohibit the use town-wide. The amendments will change/add language to Chapter 18 (Businesses) and Chapter 78 (Zoning). Note- the PB only has jurisdiction over the changes to Chapter 78. The Council has sole jurisdiction over Chapter 18 amendments; although, the PB can offer comment.

**RECOMMENDATIONS (APRIL):**

Staff recommends the PB discuss the amendments, make any language changes, and schedule a public hearing to be held on 10 May.

**BACKGROUND (MARCH):**

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; Reschedule Site Walk and Public Hearing  
**Owner:** Zaremba Group  
**Location:** 19 Heath St., MBL: 309-9-33, DD2

**19 HEATH STREET**

**Project Status**

Application Complete	Completed in March
Site Walk	Held in April, Recommend Rescheduling for June
Public Hearing	Held in April, Recommend Rescheduling for June
Final Ruling	Recommend Scheduling for June

At the April meeting the Planning Board held a Site Walk, Conducted a Public Hearing and received a request to table this proposal.

You received Wright Pierce comments dated 3/15 in your packets at the April meeting. The Applicant responded to those on 4/10 and where it was past the April deadline, they have been included in your May packets. The Town, Stephanie with Wright Pierce, and the Applicant met to discuss the Wright Pierce comments and some concerns that Staff had and we have received an updated plan that has also been included in your May packets. Stephanie provided comments on the most recent plan set which are included in your packet. There were a few final thoughts.

- A condition should be added to the plan: *“The Applicant shall continue to work with the Town on the final crosswalk location at the Saco Ave, Heath Street and Fort Hill intersection.”*
- An updated performance worksheet needs to be submitted for the site work that is separate from the sidewalk construction.
- Another condition should be added to the plan: *“A notification to the Town shall be provided when the MaineDEP issues a No Action Assurance letter for the project.”*

Planning Staff is still waiting for a cost estimate from the Applicant to establish an Escrow Account for the installation of sidewalks/crosswalks at the intersection of Fort Hill, Heath and Saco. We have also requested a Maintenance Agreement and Easement from the Applicant for construction/maintenance purposes and for public access of the sidewalk. Planning Staff also discussed the possibility of a Transfer of Ownership with the Applicant. We are still waiting for their thoughts on this.

One item of importance to point out is that within 30 days of a Public Hearing or within 60 days after designating an application a complete application, the PB shall either approve, approve with conditions, or deny the application. Because we held the Public Hearing in April and the PB determined the application complete in March, we have reached this deadline. The ordinance allows for 2 30-day extensions to amend the application prior to a ruling. Planning Staff recommended the Applicant submit something in writing to apply for this extension and the PB grant the extension.

**RECOMMENDATIONS (MAY):**

Planning Staff recommends the PB reschedule the Site Walk that was held in March now that the building has been staked out and the site is fully accessible. We also recommend rescheduling the Public Hearing to listen to comments pertaining to items seen at the Site Walk and schedule a final ruling on the project.

There are two conditions that Planning Staff recommends be added to the plan as discussed above. One addresses improvements to the Saco Ave, Heath Street and Fort Hill intersection and the other addresses the No Action Assurance letter from DEP.

Planning Staff is also waiting on an updated performance worksheet for the site work so that an escrow account can be established for that construction. We are also waiting for a Maintenance Agreement/Easement for construction and maintenance purposes and for public access of the sidewalk.

Lastly, we received one abutter comment that was included in your packets about the chain-link fence in the back of the property. The board may wish to discuss a barrier in this area to help alleviate the abutters concerns.

*Recommended Motion: I will make a motion to grant a 30 day extension to allow the Applicant to amend the application prior to a ruling.*

*Recommended Motion: I will make a motion to schedule a site walk for May 3<sup>rd</sup> at 5:30PM and to schedule a public hearing for items pertaining to the site walk for May 10<sup>th</sup> at 7:00PM.*

**BACKGROUND (APRIL):**

At the March meeting, the Planning Board determined this application complete and scheduled a Site Walk and Public Hearing for April. The purpose of the April meetings are to hold the Site Walk and conduct the Public Hearing. Due to the snowstorm delay in March, there were several updates/materials received between the time the memo was produced and the meeting. These included responses to our memo and Wright Pierce comments dated 2/1 and 2/8, an updated plan-set to reflect required changes as well as a Performance Guarantee worksheet. You received these materials electronically and/or on your desk at the March meeting.

Wright Pierce reviewed the plan changes from the comments in February and provided another memo dated 3/15 which is the only item that has been included in your packets this month for Dollar General. As of 4/4/18, Planning Staff has not received a response from the Applicant on the most recent set of WP comments.

The Town Manager asked that the Applicant address the crossing area at the corner of Saco, Heath and Fort Hill. DPW also mentioned that they have sewer line repairs slated for that area and it would be good to coordinate those with the improvements made to the intersection. In their most recent submission, the Applicant indicated they will coordinate with DPW once a decision has been made. Town Staff would like to see a design of the intersection prepared by the Applicant. Planning Staff spoke with Department Heads at the Development Review meeting and they agreed that the preparation of this plan could be something that is added as a Condition of Approval to the project. An example condition could be “*No permits shall be issued for this project aside from a demolition permit until a plan is submitted and approved by Town Staff that addresses crosswalks and sidewalks in the area of Saco Avenue, Heath Street and Fort Hill Ave.*” If the PB is not comfortable with adding this as a condition, the board could request that this plan be submitted for the May meeting.

**RECOMMENDATIONS (APRIL):**

The purpose of the April meeting is to hold the Site Walk and Public Hearing, consider public comment and schedule a final ruling for May. The only two outstanding items at this point, aside from discussion at the Public Hearing, are responses to Wright Pierce comments and a plan for the intersection.

**BACKGROUND (MARCH):**

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 pourous 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: 10 Lot Residential Subdivision (Red Oak Phase III)  
**Action:** Determination of Completeness, Schedule Public Hearing, Schedule Final Plan Review  
**Owner:** Mark & Claire Bureau  
**Location:** End of Red Oak Dr.

<b>RED OAK</b>	<b>Project Status</b>
Sketch Plan	Completed in January
Preliminary Plan	Submitted in July, Revised in November, Revised in March
Application Complete	Recommended for May
Site Walk	To be Held in May
Public Hearing	Recommend Scheduling for June
Preliminary Plan Vote	Recommend Scheduling for June/July
Final Review	Pending

At the April meeting, the Planning Board decided to hold off on Determining the Application complete until clarification about the deed associated with Lot #7 was submitted. The Applicant submitted a letter from an Attorney which has been included in your May packets.

This situation seems similar to one that occurred with another project the Planning Board recently approved. That situation was a little different because there was a dispute between two parties over a deed. However, when we consulted our Town Attorney, his response was: “as you know an applicant must have sufficient ‘right, title or interest’ in the property that will give the person a ‘legally cognizable expectation’ of having the power to use the property in the ways that would be authorized by any approval. The Planning Board has **no authority**, however, to resolve title disputes or **to interpret** or enforce **a private deed covenant** as part of its decision on an application.” The Town Attorney recommended a condition be added to the plan and a part of that condition stood out to Staff as one that could potentially apply to this situation as well: “*Should it be determined by a final, non-appealable court judgment that the applicant does not have the legal right to use the land as proposed in the application, this approval shall no longer have any force or effect.*” We could alter the language about a “*final, non-appealable court judgement.*”

A few items were discussed at the April Planning Board meeting including:

- Addition of a potential condition that the subdivision cannot go over 15 lots without triggering the requirement for a second means of egress. This would eliminate the possibility of future development associated with Lot #10.
- Include a note on the plan that the stormwater ponds shall be maintained by the HOA in perpetuity.
- Recommendation that a fence be placed around the pond due to a concern of standing water.
- Potential addition of street lighting on the opposite side of the street from the sidewalk. How will this work? Is there already existing street lighting in the first 2 phases of the development?

Planning Staff also held a meeting with the Applicant and Wright Pierce to go over some concerns with the plans. We discussed a few items and are waiting for a subsequent response from Wright Pierce on the materials.

- Recommendation that a Condition of Approval be added to the plan “*Should the Applicant petition the Town to accept the road, the Applicant shall provide as-built documentation of the existing 750 feet of roadway and the Town shall review for conformance with Town Standards.*”
- Planning Staff had concerns over the requirement for Codes Staff to review stormwater for individual lots. Staff recommended the Applicant show stormwater stubs on each of the lots as well as conceptual grading and drainage plans for each of the lots. Wright Pierce also recommended that calculations be provided noting the stormwater BMPs and drainage lines have been sized to accommodate runoff from individual lots.
- There were some FEMA implications that were discussed with the Applicant. The Applicant indicated that they expect to receive a LOMA back by June/July. In case it is not received prior to a Planning Board decision, the Applicant will submit a plan showing the building envelope for Lot #1 with the current floodplain and a separate plan showing the building envelope after the LOMA.



- We are still waiting for the Applicant to address WP concerns that included: changing the drainage structure table, details on silt sacks, sediment forebay details, and calculations on the culvert at Jones Brook.
- There were also a few minor items including updating test pits and the performance guarantee worksheet.

**RECOMMENDATIONS (MAY):** The Planning Board should determine if the above mentioned condition regarding the right to use the land as proposed in the application would suffice to address the boards concerns or if the board would like additional information from the Applicant. Planning Staff is also waiting for a number of items from the Applicant as discussed above. The Planning Board can decide to make a determination of completeness and schedule a public hearing for June or the board can wait to make that determination once the final outstanding items have been submitted as discussed above.

*Possible Recommended Motion: I will make a motion to determine the application complete for a 10 lot residential subdivision off of Red Oak Drive.*

*Possible Recommended Motion: I will make a motion to schedule a Public Hearing for June 14<sup>th</sup> at 7:00PM.*

**BACKGROUND (APRIL):**

At the last meeting, the PB decided to hold off until April to schedule the site walk/public hearing and make a determination of completeness on the application. The Applicant has made several revisions to the plan and submitted an updated cover letter that attempts to address Staff comments and Wright Pierce comments. Below is where we stand with those:

- Planning Staff recommended that the Applicant update the application and responses to the subdivision criteria to reflect the change in lot numbers since the sketch plan. *This has been included in the 3/21 submission.*
- Wright Pierce comments dated 3/6 have been responded to in the 3/21 submission. Many of the comments pertained to stormwater. WP is reviewing the 3/21 responses and we expect to have additional comments by the PB meeting.
- Planning Staff recommended that test pit locations be shown on the plan, locations have been included in the 3/21 submission, however, some of them are shown outside of the lot and building envelopes. We will need some clarification on the location of them and whether or not easements would be necessary.
- Planning Staff recommended that an updated deed be included for the Bureau lot. *The Applicant indicated that this has been included in the 3/21 submission.*
- Planning Staff recommended that a Performance Guarantee worksheet quantifying the amount for the Letter of Credit and Escrow be submitted. This has been included in the 3/21 submission, however, there are a number of revisions that will be necessary including updating it to remove “Dunegrass Section B” “Cherry Hills” “Prepared by Jessica Wagner” and old notes at the bottom.
- Planning Staff recommended that the Applicant provide an update on permitting for the project. *This has been included in the 3/21 submission.*
- Assessing Staff indicated that a portion of lot 7 appeared to be on Town property according to the in-house GIS and the project still remained in tree growth. The Applicant has indicated that the boundary survey they had shows the portion of lot 7 is not on Town property. They also indicated that all lots and easements will be removed from tree growth prior to project approval.
- Planning Staff questioned whether or not this project would be intended to be accepted by the Town and it is currently not proposed to be public but will be constructed in accordance with Town Standards. Because the initial 750 feet of roadway was constructed back in the 2004-2005 timeframe and the Town does not have documentation on how it was constructed, we recommend, and the Applicant agrees, that a condition be added to the plan that states “*should the Applicant petition the Town to accept the road, the Applicant shall provide as-built documentation of the existing 750 feet of roadway and the Town shall review for conformance with Town Standards.*”
- To address the Wright Pierce comment about how this project does not include individual lot development, the Applicant has proposed to add a condition that “*no building permit shall be issued until a residential site plan is submitted to the CEO that shows, at a minimum, septic location, lot development, grading, water and power utility service, and stormwater management design that complies with MDEP Chapter 500 standards.*” Planning Staff will need to have a conversation with the Applicant about this because Codes Staff does not typically

review a stormwater management design. Roof driplines are also referenced in the plans which is contradictory if they are not including information on individual lot development.

- The Applicant appears to be achieving their Net Development Density (NDD) by utilizing the Bureau lot, however, this project has been presented as a “9 lot subdivision” and does not appear to include the bureau lot in the plans as “Lot #10.” Planning staff believes the plans and materials should be updated to include this lot as part of the subdivision if it is how they are achieving the density for the project.

#### **RECOMMENDATIONS (APRIL):**

The purpose of the April meeting is to schedule the Site Walk, Public Hearing and make a Determination of Completeness of the project. There are a few items that need to be submitted/addressed as discussed above including:

- WP review of the most recent submission materials and response to their comments.
- Clarification on the locations of test pits.
- Minor revisions needed to the Performance Guarantee worksheet.
- Discussion about the recommended condition concerning Codes Staff reviewing a residential site plan that includes stormwater management.

Aside from these items, the role of the PB for the April meeting is to make a Determination of Completeness, the PB does not have to vote on the Preliminary Plan. That can happen after those items are received/clarified.

Staff does feel that the application is complete, we have received the plan materials, updated Subdivision responses, etc. so we recommend you make that determination and schedule the Site Walk/Public Hearing for May.

*Recommended Motion: I will make a motion to determine the application complete for a 9 lot residential subdivision off of Red Oak Drive.*

*Recommended Motion: I will make a motion to schedule a Site Walk for May 3<sup>rd</sup> at 5:30PM and to schedule a Public Hearing for May 10<sup>th</sup> at 7PM.*

#### **BACKGROUND (MARCH):**

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 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.

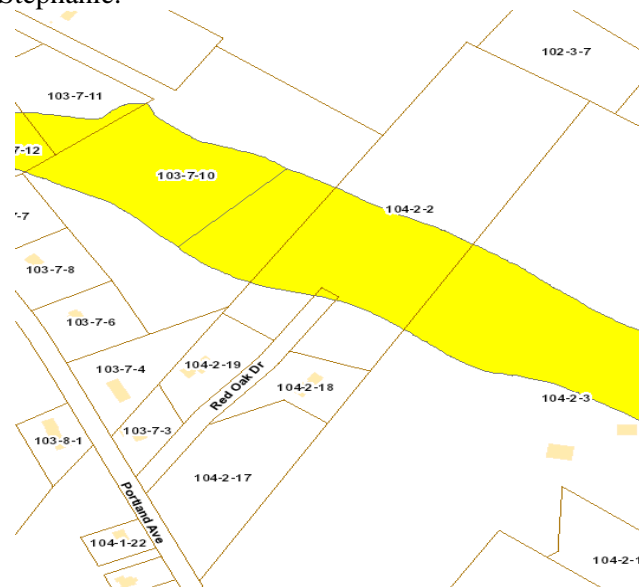
**Additional Town Comments:**

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:** Subdivision/Site Plan Amendment: Amend Atlantic Park Condominium to allow construction of 21 new units, sidewalks, parking, access ways, landscaping, and other misc. improvements.  
**Action:** Public Hearing; Discussion; Consideration of Public Comment  
**Owner:** KAP Atlantic, LLC  
**Location:** 11 Smithwheel Rd., MBL: 210-1-7

<u>Atlantic Park Amendment</u>	<u>Project Status</u>
<i>Sketch Plan</i>	N/A
<i>Application Complete</i>	N/A
<i>Preliminary Plan</i>	N/A
<i>Site Walk</i>	Scheduled for May
<i>Public Hearing</i>	Scheduled for May
<i>Ruling</i>	Pending

A public hearing, site walk and discussion is scheduled for this month’s meeting. We have not received new material from the applicant so the PB actions should be limited to holding the public hearing and requesting the applicant address abutter comments.

Note about the site walk abutter mailing notice. The notice was mailed to abutters but not to residents within Atlantic Park. The PB typically does not schedule site walks for plan amendments (in fact I can’t recall one) but did so to allow the PB the opportunity to see the site as a group, opposed to individually. If the PB feels another site walk is necessary it can be held on 7 June.

**RECOMMENDATIONS:**

No formal action is required from the PB. The PB may request the applicant address abutter concerns as part of the next submission. Also, the PB should decide if another site walk should be scheduled.

**BACKGROUND (APRIL):**

As stated in the background below (please read), the proposed Atlantic Park amendments are basically a re-approval of a proposal that secured PB approval during 2003. The problem is the 2003 PB approval is not valid because it was not recorded. So, it is really an amendment of the original plan which was approved during 1989. Some of the existing built portions of Atlantic Park was permitted in accordance with the valid and approved 1989 plan, other parts were permitted in accordance with the 2003 plan that does not legally exist. 92 units were and are still are approved because the 1989 approval is the only one that is legally valid. The 2003 proposal reduced the number but is not valid. The 2018 amendment is similar to 2003 and reduces the total unit count to 55. 34 units are constructed. This proposal will add 21 new units. Ultimately, the proposed 2018 amendment will help correct this which should help current property owners as titles will be cleaner.

The Planning Board reviewed this proposal during November 2017 and decided not to make a decision on the proposal until the Applicant addressed the outstanding items listed in the memo. These included:

- Address items in the 2010 Notice of Decision (NOD)
- Address items in the 2010 Wright-Pierce Peer Review memo
- Address comments from Department Heads
- Submit a letter identifying modification, issues, etc.
- Submit 2 full plan sets and any additional info that’s changed (e.g., stormwater)

Planning Staff did not see where the above-mentioned items were addressed in the current submission. The 2010 NOD requested several items that may no longer be applicable (i.e. size of the swimming pool, parking space evaluations, lighting, decks/stairs violating setback, shoreland zoning implications, etc.) but the Applicant should address each of these in their submission materials.

The Wright Pierce memo from 2010 had a number of comments pertaining to stormwater and utilities. We did not see a response to these in the submission materials. Note- Planning Staff is still waiting for updated comments from Wright

Pierce on this current proposal which we feel are critical moving forward. So, it is probably best the applicant wait until we receive updated comments.

New comments that have yet to be addressed include those from Department Heads back in November that are listed in the background information below. These include providing an assessment of the existing sewer infrastructure, the ability of the system to handle the additional units, providing an updated plan pertaining to stormwater and drainage, added traffic at the corner of Smithwheel and Ocean Park road, emergency access connection and a turnaround at Reserve Ave, as well as ensuring the project meets NFPA standards for road widths, trucks and hydrants.

Planning Staff is waiting for a letter from the Applicant identifying what currently exists on the site as well as what is proposed and how these will work together once the amendment is approved. This is directed to roads and utilities- can existing infrastructure support proposed development? The condition of existing infrastructure?

**RECOMMENDATIONS (APRIL):**

Planning Staff recommends the PB use this meeting as an opportunity to discuss the project with the Applicant and that the Applicant come back for the May meeting with the above-mentioned items. A public hearing and site walk is not required but we feel should be scheduled to allow the public an opportunity to speak and the PB to view the site.

**BACKGROUND (NOVEMBER):**

The proposed Atlantic Park amendments is essential a re-approval of a proposal that received approval during 2003 but because the 2003 approval was not recorded, it is not valid. So, it is really an amendment of the original plan which was approved during 1989. To understand this project some background is necessary.

Basically, it appears the 1989 approval is the only Planning Board approval that legally exists. This approval was for a 92 unit condo project (see attached 1989 FOF for description). During 2003 the development owner presented a plan that reduced the number of units to 55 and made a number of other adjustments. The plan was approved by the Planning Board but was not recorded within 90 days of the approval. Because the 2003 plan was not recorded the approval is void. Problem is it appears construction took place after 2003 that was in accordance with the 2003 plan. This should not have happened because the 2003 plan did not legally exist. Another proposal was brought to the Planning Board during 2010 but did not secure final approval.

So where does this leave us? Based on research and subdivision statute and ordinance language, the only plan that legally exists is the 1989. Due to all that has happened since 1989 (the 2003 voided plan, zoning changes, etc.) we have informed those that are interested in resurrecting Atlantic Park that, in our opinion, before additional units are constructed a plan needs to be prepared and presented to the Planning Board. Below is a bit more info regarding project history as well as additional info that is pertinent to the PB's review which was not included with the applicants submission (attached separately).

**Brief History**

- Originally approved in 1989 as a 92 unit condo project. A Finding of Fact was issued.
- Amended in 2003. The primary amendments were reducing the condo unit number to 55 and amending the DEP stormwater application. A Finding of Fact was issued.
- Interestingly, it appears the 2003 amendments, although approved by the Planning Board (FOF issued), are void because the mylar was never recorded. If this is so, the only valid, legal approval is the original, 1989 one. An important note is construction continued (including permits issued) after 2003 in accordance with the 2003 amendments.
- Amendments were brought before the Planning Board in 2007 and 2010 but there is no record of PB approval of these amendments.
- During consideration of the 2010 amendments, it appears that several issues were found- some associated with past matters some exclusive to the 2010 proposal. Staff and the town's engineer mentioned several issues that needed resolution before the PB could approve the 2010 amendments. Based upon little to no information in the towns' records, it appears the applicant decided not to move forward after receiving staff and engineer comments. Although the 2010 proposal was conditionally determined complete, there is no record of its approval.

- Since 2010, there appears to be no PB action; although, there has been interest in regards to moving the project forward.

#### Summary of Additional Info

- 1989 FOF. This is the original approval and, in my opinion, the only legal approval.
- 2003 FOF. This is the only formal written findings I found associated with the PB's approval of the 2003 amendments. It is important to note that although the PB formally approved the 2003 amendments, it was not recorded; therefore, we believe the approval is not legally in-effect. Applicable Subdivision Ordinance standard (adopted 1986):

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.

- 2003 DEP Approval. This document is DEP's approves changes to the stormwater management system (relocation of the detention pond). The document includes DEP's conditions. Documentation after 2003 questions if this approval expired (see attachments dated 2010). Is this approval still valid?
- 2010 BH2M ltr. This letter was drafted by BH2M and included as part of the 2010 amendment submissions. There is some interesting info in this letter including mention of whether the 2003 approval is valid. This is a good summary and we recommend that the applicant provide a similar letter describing proposed modifications, issues as well as any updates (e.g., work done after the date of the letter, DEP permitting status, etc.).
- 2010 NOD. This Notice of Decision is a determination from the town that the 2010 amendment application is complete as well as identifying what needs to be done for full approval. The NOD does not formally approve the 2010 amendments. No further PB approval-related action was found after this- the 2010 amendments were not formally approved. The NOD identifies outstanding matters which we believe have not been resolved. The applicant should address these items.
- 2010 WP Peer Review. The 2 August 2010 peer review memo identifies items that needed resolution. We do not know if these items remain unresolved- we need further comment from the applicant's engineer. If they require plan adjustments, stormwater plan changes, etc., this info must be submitted for peer review.

So, this is a bit complicated. It is our opinion the original 1989 approval is the only approval that is legally in-effect. A proposal was approved in 2003 but the signed plan was not recorded which made the approval invalid. During 2010 a proposal was submitted that was essentially the same as the one submitted during 2003. The 2010 proposal did not secure final approval. The 2017 proposal appears to reflect the 2010 proposal, which is similar to what was approved during 2003. What complicates this more is construction activity moved forward in accordance with the 2003 proposal.

The good news is the 2017 proposal seeks to remedy a situation that remained unresolved for years. Unfortunately, construction did proceed in accordance with a plan that is not legally valid, but, that 2003 plan did receive full PB approval. The PB can't reverse construction that has taken place, especially that which is associated with occupied buildings. But the PB can request some improvements to items that exist such as surface pavement, sidewalks etc., approve the new updated construction and above all make an invalid project valid. Why and how this happened we have no answers and can only speculate.

#### DEPARTMENT COMMENTS

##### Town Manager

My comments with respect to the proposed amendment to the Atlantic Park subdivision:

1. The applicant should provide an assessment of the existing sewer infrastructure and the ability for the system to handle the additional units.
2. The applicant should provide an updated plan pertaining to storm water and drainage.
3. I am concerned with the added traffic at the entrance on Smithwheel Road. The Dunkin Donuts facility was not a reality when this subdivision was approved many years ago. There should be an assessment of the implications to this area and consideration of whether a second access should be provided through Reserve Avenue (with only right turns permitted exiting on to Ocean Park Road towards I-195).
4. There is currently an emergency access connection at Reserve Avenue. Is this grass based access sufficient to sustain heavy fire equipment?

#### Public Works

I have concerns about the drainage profile for this area. There is a single outfall and large amount of impervious area. We could have water quality issues with a small retention basin. Also the rate of flow could cause a wash out. Both of these could impact the water quality and ultimately our MS-4 Permit. It is his issue but enforcement on our end could be time consuming and difficult.

The load rating on the Emergency access is important because of the 65,000 pound fire apparatus.

Turning Radius in the Park could also be an issue for Fire Apparatus

Impact on our sewer system needs to be accessed by Stephanie. It could hurt future development up stream of this. (Side note we need some type of impact fee for this type of development for increasing sewer pipe size downstream of this area)

#### Fire/Ambulance

In regard to Atlantic Park Condominium 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 18.2.3.4.3 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.
- 3) All privately owned hydrants would be maintained under NFPA 18.35 Water Supplies and Fire Hydrants. They may need to some Hydrants.
- 4) 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.

#### **RECOMMENDATIONS (NOVEMBER):**

Staff supports this proposal but believes there are outstanding matters that must be resolved. We recommend the applicant do the following:

- Address items in the 2010 Notice of Decision
- Address items in the 2010 Wright-Pierce Peer Review memo
- Address above-mentioned Department comments
- Submit a letter identifying modification, issues, etc.
- Submit 2 full plan sets and any additional info that's changed (e.g., stormwater)