

Group: I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

David Walker: Thank you very much. So tonight's meeting is just a public hearing on conditional use: adult marijuana store. Applicant is Theory of Wellness of Maine 4 LLC, and the location is 11 Ocean Park Road, MBL: 210-10-2; Zoning in the GB1 district.

Anybody that wishes to speak, please approach the podium, say – state your name, your address. All right. And please only talk about the conditional use application that's in front of us. We've beat – all the ordinance material to death that has been already been public heard, there's been public hearings on that. And as many of you know, this has been a three-year process and we're really just now looking at a conditional use application from the applicant.

So with that, keep that in mind, and I appreciate any comments that you might have.

Patrick Mourmouras: *[Inaudible]* [00:01:37].

David Walker: Thank you very much. Great.

Patrick Mourmouras: *[Inaudible]* [00:01:43].

David Walker: Yeah.

Patrick Mourmouras: *[Inaudible]* [00:01:46].

Robin Dube: Yeah, thank you.

Patrick Mourmouras: Good afternoon, Patrick Mourmouras, 11 Ocean Park Road.

David Walker: Good afternoon, Patrick.

Patrick Mourmouras: Before I start, I want to preface everything we are about to say with the fact that we are not here to tell you what to do. You told us to wait our turn and speak at the appropriate time during a public hearing. We waited patiently and respectfully over the last seven months for this opportunity to supplement the record with these extra documents that now give you the full picture and the whole story regarding 11 Ocean Park Road.

In our submission to the record tonight, you will find a copy of our lease, our lease extensions from September 10, 2022 and January 26, 2023. The first page of Theory Wellness's lease, which has highlighted, a copy of the eviction dismissal from February 16, 2024, a copy of our rent cheque for 11 Ocean Park Road through February 28, 2025, a letter submitted to the town council from Theory Wellness's CEO dated 6/3/2024 and pages from the Maine Municipal Association's manual for planning boards.

In that planning board manual, under chapter 2, the decision making process, it details possession and legal standing for proposed projects. It reads, “The Maine Supreme Court has ruled that the applicant must be a person who has some right, title, or interest in the property. This could include a property deed, lease, written option, or contract to purchase the property. However, whether those documents and interests are sufficient for the purposes of conferring standing, to apply for a permit, to conduct a particular use will depend on the language of the documented interest. The document must give the applicant a legally cognizant expectation of having the power to use the property in the ways that would be authorized by the permit if approved.”

What all that means is that the document the applicant provides has to detail a legally understandable route to possession of the building they are applying for. We agree with the town attorney that Theory Wellness has submitted a valid contingency lease to the planning board. However, the wording and details of that lease option need to prove to this board that the applicant has possession or entitlement to possession of the property to receive an approval.

The planning board received a letter from Attorney Saucier with his thoughts around legal standing and possession issue with this proposed project at 11 Ocean Park Road. While he did correctly identify that the building is currently leased by someone other than the applicant, he did not address both parts of the contingency of Theory’s contingency lease. He claims that the contingency is fully met when Theory receives all necessary approvals to operate the business.

In other words, the attorney is telling you, the planning board, that if you, the planning board, if you, the planning board, to give them approval for this project, Theory’s contingency is met and they automatically get the lease and will have possession. However, the contingency also states, “That this lease is specifically contingent upon the termination of the existing lease for the property.”

Also the possession date section of their lease was conveniently left out of his letter. This section states, “The possession date is the date landlord delivers possession of the lease premises to tenant free of all other occupants rights there too. The possession date will occur when the existing tenant has vacated the property.” I would like to read that last part one more time. The possession date will occur when the existing tenant has vacated the property.

Attorney Saucier also states that the lease and rent commences, “Within seven days of theories applicable permits.” The actual rent commencement date section reads, tenant shall give landlord written notice within seven days of tenant’s receipt of the permits. Upon this notification, and if the existing tenant has vacated the premises, the contingency period ends and the possession date shall occur and rent will commence. This is the contingency that Theory Wellness needs to show has been met or will be met.

Finally, Attorney Saucier references a title dispute and his reasoning for potentially allowing this project to continue. There is no dispute in front of you. Theory is not claiming that they have possession or will receive possession with a planning board approval. The first page of Theory's contingency lease is extremely clear and that it acknowledges our possession of the building and that their possession does not occur until we leave the premises with a terminated lease or an eviction.

Presented to you is our master lease to 11 Ocean Park Road, two extensions to that master lease from 2022 to 2024, and 2024 and eviction dismissal from the York County Superior Court and a rent cheque that prepays our rent through February 2025.

As you will see in our lease and our lease extensions, our right to the exclusive use of 11 Ocean Park Road runs through 2029 and is not tied to any contingency around the marijuana licensing process. To make this extremely clear, we have possession of the building and Theory has no way of getting possession of that building.

Thank you for allowing us the opportunity to supplement the record on this matter. We understand that this is a complicated process, but it is clear that one tenant has exclusive possession of 11 Ocean Park Road and that tenant is not Theory Wellness. Thank you.

David Walker: Thank you, Patrick.

Robin Dube: Thank you.

David Walker: Thank you.

Tom Mourmouras: Good evening. Tom Mourmouras, 11 Ocean Park Road. Per the guidance from MMA's planning board manual, "The board should reject an application if it determines that the applicant does not have standing to apply. The burden of proof is on the applicant to present written evidence sufficient to satisfy the board."

In the town's ordinance for adult use marijuana, one of the performance standards that the applicant is required to provide an approval from this board is, "Sufficient documentation demonstrating possession or entitlement to possession of the proposed licensed premises of the adult use marijuana business."

Theory's conditional use application to this planning board included their contingency lease and a comment that the existing tenant was in the process of being evicted. The town planner deemed their application complete as Theory had a potential avenue to taking possession of the building through the eviction process. On February 16, 2024, four days after the application was deemed complete, the eviction was dismissed without prejudice in the York County Superior Court. This means that we have validation from the court that we have the exclusive right to 11 Ocean Park Road through February of 2029.

Up until this public hearing tonight, your town planner and town attorney have not let this document into the record citing that it had to be done at this public hearing. The burden of proof for possession or entitlement to possession is entirely on the applicant, Theory Wellness, unless they can provide you with a written document showing that we no longer have possession of 11 Ocean Park Road. This planning board has to deny this application due to possession issues.

There are two paths forward depending on your vote on this project. If the application is approved and ADB appeal will be filed within 30 days of your vote, challenging this board's decision to approve a project that cannot actually be completed due to possession issues. The defense of this lawsuit will be funded by the taxpayers of Old Orchard Beach. The planning board should have a 100% certainty that Theory has possession of 11 Ocean Park Road before spending taxpayer money defending that decision.

If this project is denied, Theory will have an opportunity to appeal that decision with the courts. However, they will most likely not appeal as they do not have possession or any path to possession of the building at 11 Ocean Park Road. We know this, because they submitted a letter to the town council last month begging for two more licenses to be given and two years for them to find another property other than the one they applied for. They will not waste their money on an appeal for a building they will never have. On the off chance that they do appeal, we have the right to intervene in that appeal on behalf of the town, as we have a vested interest in that property as the lease holders. What that means is that we will fund the defense of that appeal, not the taxpayers, and the judge will be the one determining if Theory has presented enough evidence around possession to move forward with the process. This removes all of the pressure around this decision from the planning board and lessens the taxpayer's financial liability. It's a win-win for the town.

Finally, I have presented this board with questions tonight that the applicant should be able to answer in order to receive an approval. There are also questions for staff to answer around this process if the project is approved.

So some questions for the applicant. Is there currently an existing tenant at 11 Ocean Park Road? An eviction is referenced in your application, what was the result of that eviction? Do you currently have possession of 11 Ocean Park Road? If you do not currently have possession, what is your plan to obtain possession of 11 Ocean Park Road from that existing tenant? If you were given approval for this project, are you able to pull building permits and conduct the work you were approved for? If you were given approval for this project, does your lease at 11 Ocean Park Road commence? And do you take possession at that time? Finally, if you were given approval for this project, when do you expect to take possession of 11 Ocean Park Road and begin operations?

Now, a couple of staff questions. If this project is approved, how long does Theory Wellness have before they have to apply to the town council for a license? Does Theory Wellness need to have pulled building permits and received a certificate of occupancy before applying to the town council for a license? Finally, I, Tom Mourmouras, am

legally entitled to submit an administrative site plan with my landlord to tear down 11 Ocean Park Road and rebuild a two-story, 1,700 square foot tax office on the same footprint as the existing building. If I submit that site plan to the town planner tomorrow, how would he handle that knowing that the planning board is voting on a project tied to that building that requires it to be under a 1,000 square feet?

In conclusion, the applicant has to answer these questions and provide you with written proof that would sufficiently demonstrate their possession or entitlement to possession at 11 Ocean Park Road.

Possession is black and white. They either have the building or they don't. This planning board has to have a 100% certainty that Theory has the ability to take possession of the property and complete the project they have applied for. If you have any doubt, this application must be denied and sent to the courts for a decision to be paid for on the private businesses dime, not the taxpayers.

Thank you for your time tonight.

David Walker: Thank you, Tom. Anyone else? By the way, I failed to mention that the start time for this public hearing was 6:02. I apologize for that. Anyone else?

Matt Warner: Hi, all.

David Walker: Good evening.

Matt Warner: Good evening. My name is Matt Warner. I'm a Lawyer at the firm, Preti, Flaherty. I'm representing Exit 710, the other applicant, some of those folks just spoke. I will be brief and try not to repeat what's already been said. But I do want to start with the point that you've already heard, which is that, to get a conditional use permit under the ordinance Theory does have to prove that it's entitled to possession of this property at 11 Ocean Park Road. The obvious and simple problem with that is that my guys have that property locked up until 2029 as you can see from the items submitted into the record today.

The town lawyer to give you a memo with analysis around contingent leases and how those are generally accepted under precedent in Maine's Supreme Judicial Court, that's true. But in every single case that you'll find where a court addresses contingent leases, the contingency is the applicant is going to get the permit or the tenant will get the permit. The contingency is never in those cases, the current tenant will be evicted or the current tenant's lease will expire five years down the road. This is just a different, simply a different case. And given that, even if Theory does get a conditional use permit from this board, it still won't be able to satisfy the contingency in its lease and still won't be entitled to possession of that property. That's a big distinction.

So looking five years down the road to 2029, which is the earliest that Exit 710 or the current tenant could lose possession of this property, that's well beyond the life of any

license Theory could get from this proceeding, which would be 180 days, after which it would expire if they hadn't started operating the business, which they obviously couldn't do given the 2029 timeframe ends.

So given that, I think one is a matter of law Theory simply can't show that it's entitled to possession of this property at any point in time when it would be able to actually operate the business and seek a permit for it. And two, just as a matter of policy, it really makes no sense to give someone a conditional use permit for a property that – where they'll never be able to run the business they're seeking the permit for, which is the whole reason you have to show entitlement to possession in the first place.

So I am going to leave it there with those points. And I thank you very much for your time.

David Walker: All right. Thank you very much. Appreciate it. Anyone else? Going once, going twice. All right. And I will close this public hearing at 6:16. And thank you all for your participation. Have a good evening.