

OLD ORCHARD BEACH PLANNING BOARD

Public Hearing and Regular Meeting

November 10, 2016 7:00 PM

Town Council Chambers

Call to Order at 7:03 pm	Call to Order
<b>Pledge to the Flag</b>	
<p><b>Roll Call:</b> Chair Mark Koenigs, Vice Chair Linda Mailhot, Win Winch, Eber Weinstein, Ryan Kelly and Robin Dube. <b>Absent:</b> Mike Fortunato. <b>Staff:</b> Jeffrey Hinderliter, Planner; Megan McLaughlin; Assistant Planner.</p>	
<p><b><u>Public Hearing</u></b>  <b><u>ITEM 1</u></b>  <b>Proposal: Conditional Use and Shoreland Nonconforming Structure</b>  <b>Expansion/Relocation/Replacement:</b>  <b>Replace and expand single-family dwelling with the Residential Activity Shoreland Zone.</b>  <b>Owner: Ron Sabin</b>  <b>Location: 129 West Grand Ave., MBL: 319-12-5, R3 &amp; RA</b></p> <p>Opened the public hearing at 7:04 pm.</p> <p><b>Dick McDonald from 11 Reggio Avenue.</b> He is concerned with the parking and the height of building. His main concern is the parking. They used to have a lot more parking previously and a lot of the parking has been eliminated on Seaside Avenue. Mr. McDonald asked if the town had an ordinance in regards to the number of parking spaces based on the number of bedrooms in a house? Parking under the house is also another concern of his.</p> <p><b>Steve Stella from 18 Pavia Avenue.</b> The applicant's backyard abuts his property. Has concerns with the Conditional Uses:</p> <ul style="list-style-type: none"> <li>• Item #3 off street parking will be a problem.</li> <li>• Item #6 Nuisances to other properties: With a 3 level house going up, he will not have any sunlight in his backyard and that area is a marshland and his yard is constantly wet throughout the whole summer. His property will be less enjoyable for his family.</li> <li>• Item #7 Waste Disposal. On 4-5 occasions, the sewage has backed up onto his property and the town has to come and blow out the sewer lines.</li> <li>• Item #10. It would be nice to have a fence put in to isolate the yards so that there are no questions on where the boundaries are marked.</li> </ul> <p>Mr. Stella would like for someone to explain the 30% volume increase.</p> <p><b>Kevin Murphy from 9 Reggio Avenue.</b> Concerns with parking issues, sewer issues on West Grand Avenue and Reggio and water issues. Storm drains were never dug out and cleaned up or re-piped. There will be a problem with drainage issues. Concerned about the first responders going in because there is not enough room for them to go thru. Also concerned about conduction, convection and radiation being too close to neighbors. There will be a problem with drainage issues. This building will restrict light. He also has concerns about renters. The lot size in comparison to the building is small.</p> <p>Closed the public hearing at 7:27 pm.</p>	<p><b><u>ITEM 1</u></b></p>

<p><b>APPROVAL OF MINUTES: 10/6/16; 10/13/16</b></p> <p>Win Winch made a motion to approve the October 6, 2016 meeting minutes, seconded by Ryan Kelly.</p> <p>Robin Dube made a motion to approve the October 13, 2016 meeting minutes with one correction noted by the Chair that on page 7 of 10, it should read O &amp; M Plan. seconded by Linda Mailhot</p>	<p><b>MOTION VOTE (5-0)</b></p> <p><b>MOTION VOTE (5-0)</b></p>
<p><b>Regular Business</b>  <b>ITEM 2</b>  <b>Proposal: Conditional Use and Shoreland Nonconforming Structure</b>  <b>Expansion/Relocation/Replacement:</b>  <b>Replace and expand single-family dwelling with the Residential Activity Shoreland Zone.</b>  <b>Action: Site Walk Update; Final Ruling</b>  <b>Owner: Ron Sabin</b>  <b>Location: 129 West Grand Ave., MBL: 319-12-5, R3 &amp; RA</b></p> <p>Planner Jeffrey Hinderliter stated that a number of issues discussed at the site walk are associated with the 12 Conditional Use Standards. However the big part of this proposal is because it is actually in the RA (Residential Activity) District, which is a Shoreland Zoning District. The Town of Old Orchard Beach is one of the only municipalities in Maine that has a Shoreland Zoning designation that is based on the highest annual tide. Not only is this in a Shoreland Zone, it is also a non-conforming structure. Since Shoreland zoning is based on an elevation, there is actually water where you do not see water everyday but you would see it during a flood. That area that you do not see water, is still a regulated waterway. Whenever a structure is within 100 ft. of that resource it means that it is non-conforming in terms of the setback. Therefore there are certain limitations on what you can do. Limitations include the amount you are able to expand in floor area and volume. This proposal would be more than a 30% expansion. The Planning Board by ordinance is only allowed to grant expansions up to 30% so this proposal went to the Zoning Board of Appeals in September. The Zoning Board of Appeals granted a Miscellaneous Appeal and allowed Mr. Sabin to expand beyond 30%. So he can come back to the Planning Board and apply for more than the 30% expansion. Code staff questioned whether the Planning Board has the authority to act on these proposals because the Planning Board is not a Shoreland Zoning Official as designated by the State of Maine. The Town Attorney said that the Planning Board can in fact act on this. Another thing is questions about the actual appeal, what allowed Mr. Sabin to go beyond the 30%. All of the questions are related to what our ordinances state. One of the standards of our ordinances states that the ZBA has to notify the Commissioner of the Department of Environmental Protection at least 20 days before a decision is made by the ZBA and that did not happen. And because of this can the Planning Board even act on this if this provision wasn't followed. The Town Attorney stated that if any Municipal Official or staff grants a decision, the Planning Board must live with the decision unless they decide to appeal that decision to supreme court. Last Thursday Planner Hinderliter received the Notice of Decision from the ZBA. He noticed that the ZBA decided on a type of appeal that he did not think was a legal appeal under Shoreland Zoning and brought this to the attention of the Planning Board and they wanted him to further look into this. The Town Attorney stated that the Planning Board cannot rule on this proposal because the ZBA used the incorrect appeal to make a ruling on this decision, therefore if the Planning Board rules in favor or against, they are using information that is incorrect to make their findings. The Variance appeal that wasn't used is required by state law by Chapter 1000 by the DEP regulations.  Planner Hinderliter recommends tabling this item without prejudice and this will allow Mr. Sabin to</p>	<p><b><u>ITEM 2</u></b></p>

<p>come back the Planning Board.          Mr. Sabin will have 2 options:</p> <ol style="list-style-type: none"> <li>1. He can go back to the ZBA for a Variance, or</li> <li>2. He can come back to the Planning Board with a proposal that meets the 30% expansion standard and allow the Planning Board to decide on that proposal.</li> </ol> <p>Mr. Sabin expressed his frustration that the Town had misadvised him and did not know the correct applications he needed to fill out and it is holding him back from doing his work. Mr. Sabin has done everything that the town has asked him to do.          The Planning Board will address the neighbor’s concerns when Mr. Sabin comes back to the Planning Board next month.          As the Chair, Mr. Koenigs would like to encourage re-development of those areas, but it has to be done within the confines of the Shoreland Zone and the district that is there.</p> <p>Win Winch made a motion to table item #2 without prejudice, seconded by Linda Mailhot.</p> <p><i>Planner Jeffrey Hinderliter called for the vote:</i></p> <p>Ryan Kelly – Yes          Win Winch – Yes          Eber Weinstein – Yes          Vice Chair Mailhot – Yes          Chair Mark Koenigs – Yes</p>	<p style="text-align: center;"><b><u>MOTION</u></b></p> <p style="text-align: center;"><b><u>VOTE</u></b> <b><u>(5-0)</u></b></p>
<p><b>ITEM 3</b></p> <p><b>Proposal: Conditional Use, Subdivision Amendment; Site Plan Amendment: 6 unit condominium expansion (Summerwinds II)</b></p> <p><b>Action: Preliminary Plan Decision; Schedule Final Review</b></p> <p><b>Owner: 180 Saco Avenue Development LLC</b></p> <p><b>Location: 180 Saco Ave., MBL: 208-1-1, GB1 &amp; R4</b></p> <p><b>Eber:</b> When we first gave approval I was very happy to see it, we went out of the way to be nice we didn’t go through the whole process because we felt we were replacing a bunch of rundown places with something nicer and because of that we allowed them to have some leeway especially with roads and parking, etc. which was fine but then they wanted to go...and that was supposed to be seasonal which was for campgrounds basically about 6-7 months of the year. Then they asked us if we could go later in the year which we really hadn’t planning on originally and there was no through this whole thing...maybe the developer had an idea that he wanted to expand but there was never as far as I could remember anything said to us that they wanted more units...ever. And maybe he said maybe I already stubbed out this and I got this ready but maybe what he did...he wanted to do that but he never spoke to us because I think it wouldn’t have been. That’s number one...then they wanted to do in fact as nice as it is the roads were not really adequate by giving him longer...I think it was until Christmas or until New Year’s...thanksgiving or something...by doing that we made them less adequate. And finally he says well you know I can’t sell the units can please will you let me do year round...as much as then we really were upset about it because the roads were designed for summertime use with the pitch in the middle totally not designed for winter time use and not wide enough...there were many, many inadequacies. But because he came to us and pleaded and he started and it looked nice we were nice enough give him something that we really</p>	<p style="text-align: center;"><b><u>ITEM 3</u></b></p>

shouldn't have done. But we still gave it to him and it looks nice and it's very nice except the roads are totally inadequate. And if we have this right here, it's going to be significantly more inadequate. And the way that it was designed, it was not designed originally, maybe he says it but if you look at the way it's designed now it's like a mickey mouse design... a road going between 2 units, the roads going to be 3 ft. away from each unit...it's crazy. You know maybe he thought... you know normally if we had something like that we'd never allow that. We'd make sure that the whole thing was designed as a whole, you know...this is totally inadequate as far as I'm concerned and it's going to make it worse...the traffics going to be worse...the road...no matter what you do it's going to be worse and the people are already complaining. We went there for a site walk you couldn't even park the cars there wasn't enough room in the road...personally I'm glad he did it, it's nice and everything but I'll be totally against any addition and I'm sorry he's back, he's spent a lot of money. Maybe the other members will agree with it or not...I'm totally against it. And that's where I stand I mean no matter what. I'm being honest about it...you know?

**Ryan:** I'll back up Eber with the parking, I mean I've got a full size pickup truck I pulled into a parking spot, the back end of my truck was hanging out into the road, if somebody had been parked up to my left when I backed out to leave I wouldn't had to back out onto the grass behind me just to get out. The roads aren't adequate. From the beginning I've had concerns with drainage, with the water issue in units 4,5,6, and 7 with the sump pumps the waters being pumped back out from underneath those units back into the area where you want to put new units. You're going to build those units on a pad I understand so they're not going to have problems with water in their crawlspaces but you're creating a bunch more impervious surface so that water is going to run off those houses and is just going to make it worse for the 4 units that are already having problems. Do you understand what I'm saying about that? Do you understand that? I don't like it.

**Win:** I think Eber said everything that I would've said...so I won't repeat it but I mean it's the same thing I just felt we were extremely flexible along the way by converting a place that was basically just summer cabins that became little much nicer but still came before us as seasonal but yet we accommodated, accommodated, accommodated and so doing we got some stuff that really is not meant for year round

I just don't want to start repeating what Eber said but that's how I feel. I just feel we've been extremely good about this as we've gone on but there's an end some place. So you know how I feel.

**Linda:** I have a slightly different perspective only because I wasn't here on the Planning Board when the other 3 of you were in deliberating this so I look at it purely from where we are today and what the applicant is seeking from us today which is preliminary plan approval to move forward whether or not he's submitted all the paperwork and so on and so forth. So I have relative to that to myself and to Planning Staff is really whether or not everything that has been asked of from the applicant from you folks and also of us has been submitted. I will say that this as-built wasn't exactly what I was looking for. One of the questions that I have on it is the calculation of the impervious surface with the additional parking and walks that are shown on here vs. what was approved if there's been a calculation made with respect to the amount over and above, if there is any, of what was approved vs. what is there now so it's one question that I have I don't know if you have an answer off hand...okay. So that's a question that I have which is a serious one in my opinion after having made the site walk with you guys I saw the site I saw how wet this particular area was I saw the sump pumps coming out into this area. We met with the neighbors over there, we've seen pictures of flooding and so-fourth. So we know what these conditions are like over here so to me that's a big question that I

would like to have the answer. And then also whether or not Planning staff feels that all of their comments and questions and things that they've been looking for...some of them were outlined by Bill Thompson earlier tonight have been received or not, so that's where I come from on this. Thank you.

**Mark:** So your questions are more for the Assistant Town Planner to make sure that...

**Megan:** Stephanie did inspections for Phase 1 but she didn't do impervious surface calculations with what's there now vs. what was approved so I don't know, that might be something that BH2M can get to us associated with the phase 1 amendment that they might have to come back for increasing the parking that wasn't on the original plan that was approved and that's all stuff that's part of what needs to be addressed and there's also the landscaping plan and the other stuff that Bill mentioned earlier that hasn't been received yet.

**Mark:** In your opinion, can that stuff be done under final plan? As a preliminary plan... and condition that we need to have this information.

**Megan:** Yeah and the Planning Board has to make a decision tonight on the preliminary plan either to deny it or to approve it...either way a decision has to be made.

**Mark:** So what we have before us... I think we have to start off with asking for a motion on preliminary plan approval for the conditional use... you said site plan that's what's throwing me off when it says plan decision...preliminary plan decision. If we're amending the conditional use and the subdivision amendment and the site plan amendment we have to take them all at one vote or is it one at a time. Because the last time we did it when we approved it initially was one at a time, if we're amending the amendment...can we tackle it preliminarily all at once? This was a unique subdivision it was a unique project because it didn't fall in any one of the 3 categories totally...you know it didn't fit so that's why it became this 3 approvals to make it work.

**Jeffrey:** It's safe to take them individually.

**Mark:** That's what I'm kind of steering as. I don't know what more to do...I think because of the original approval...

**Jeffrey:** Especially because and one thing that Bernie said and that's important to remember that if there is something that you're not comfortable is just to make sure that there's something factual that supports your uncomfot.

**Mark:** I would like to take the Conditional Use because the order that I remember this thing initially was Conditional Use the reason I remember that is because I read through the minutes and I was the one that made the motion to accept it as a Conditional Use from the original...when we did this originally so that's why I remember. The issue as I recall was the number of unit count...replacement, significant changes, to the actually changes of the Conditional Use and the change from what it was before to what it is now and we really had to think long and hard about that. Eventually we approved it so I'm looking to ask the board now 'is this amendment to that Conditional Use any different than that...is there any reason that you have to object to that before we can get into that discussion and take a vote... I need a motion. That motion probably should be conditioned with whatever conditions applied to the Conditional Use.

**Eber:** The original Conditional Use was to make overnight cabins which are nonconforming so...

**Mark:** You have to remember we mentioned...

**Eber:** Which Conditional Use are we discussing specifically that's my question. Is the Conditional Use being 6 more units or the fact that there's nonconforming units.

**Jeffrey:** Why this was a Conditional Use was because it went back to that crazy 78-180 the

Appeals from Restrictions of Nonconforming Uses...the overnight...and that deals with what Eber was saying about the overnight cabins so because this was approved for the property as a whole it still continues to run with the property as a whole. So this use still exists and it's a weird thing it's a very weird thing...

**Eber:** Wait a second so if it still exists...why are we going to vote on it?

**Jeffrey:** Because it's an expansion... to expand, change, or alteration of that nonconforming...that appeals from restrictions of nonconforming use and when you look at that standard whenever there's an enlargement, expansion, extension, resumption, the Planning Board is supposed to vote on that, that's why it's a Conditional Use. As I understand, I was just coming in right around that time and I think that decision was made before I came on board.

**Linda:** Jeffrey, so that I understand proceedings for this evening which would probably benefit Ryan and Robin as well...tonight's decision about moving forward with the preliminary plan is to get us to a spot where we can say we have our information and then move forward with an approval or denial at some point...is that correct?

**Jeffrey:** Correct

**Eber:** Well first we need to have conditional approval before we even go to the plan...that's the first thing you're asking for.

**Mark:** It's an amendment to the Conditional Use as it is currently stands, which has been amended twice with going from the original approval to the seasonal to the longer season out of season and then year round with the snow plan.

**Jeffrey:** Oddly enough, the Conditional Use still applies, in my opinion, because it runs with the land but I don't think it's really even applicable anymore because they've created something that conforms to the land...it's no longer that seasonal overnight cabin use.

**Mark:** That's what I'm trying to get the boards mind around

**Eber:** The other thing it says is will have an impact...the question is do 6 more units have an impact?

**Jeffrey:** We still have that standard running with the land...that approval.

**Eber:** My question is...the original thing was 52 units...the question now is 6 more units, will that have an additional impact, that's the question as I understand.

**Jeffrey:** It would be the question for all 3...

**Eber:** Does it have an impact?

**Linda:** So for further clarification then Jeffrey, is what we are doing tonight going through the 12 criteria of the Conditional Use?

**Jeffrey:** Typically what you do is you identify if there's something lacking so you can get to that final plan decision...as part of the preliminary plan...so you can go through those 12 criteria see if there's anything lacking or you're not comfortable supporting and identify that standard and I would say the reasons why. And again, like what Eber was saying it comes down to the impact because we still have, it was approved under this Appeals from Restrictions of Nonconforming Use we still have that primary standard.

**Win:** Jeffrey, just to clarify in my mind this goes back to when those were cabins, right? That was the nonconformity.

**Jeffrey:** Right, the use. I think...that's what all the paperwork seems to point to.

**Win:** By virtue, it somewhere along the line here it became year round uses, they built year round construction I understand so they thought of some point, they're really conforming,

**Jeffrey:** In a way and I think the Planning Board can say it's tricky but we still have this that we have to deal with, this Conditional Use standard. The Planning Board can say that this

Conditional Use is no longer applicable because they have created a conforming condition on the land so it's no longer expanding the overnight cabin use because they're no longer seasonal. Which is good that's what you're supposed to do with nonconformities is get rid of them.

**Linda:** Okay so the only thing then that I'm missing as far as information to get to a final approval or not approval is the information about that impervious surface calculation to deal with the drainage requirement on the Conditional Use standard. That is number 11.

**Mark:** So the Conditional Use standard 11, the applicants' proposal must adequately provide for drainage through and for preservation of existing topography within its location particularly in minimizing any cut, fill, or paving intended.

**Linda:** So I want an impervious surface calculation when I go through and waive this Conditional Use criteria when we get to that further point.

**Eber:** Which we're going to get to tonight.

**Mark:** Okay, so they provided the calculations already for the original and they provided the modification the amendment area and then they took the total outfall from the entire site and showed that there was no significant increase.

**Linda:** I would like to know whether there was an increase in the impervious surface between the as-built plan that was provided and what was approved. That's my question. That's the information that I'm looking for.

**Bill Thompson (BH2M):** We had a lot of comments... I think I can answer Linda's question or at least give clarification you're looking at phase 1 completed 53 units you want to know with what they built additional for some parking spaces... did that increase the impervious of what was approved. It did, slightly. I don't have the numbers tonight but it doesn't affect phase 2. What we're going to do is submit a revised plan for phase 1. An amended plan...and the board has asked that we submit that due to a couple of changes on the plan. That will be reflected in the submission to show that there's no impact to the downstream areas. There is a slight increase, more pavement and we didn't take anything away and I'll have that number for you. But again it works and phase 2 works on its own and in connection as the chairman indicated when it gets to the outlet point, there's no impact to the Town system.

**Mark:** So what we could do, the chair would recommend is that we condition that in preliminary approval that you get any permission you want before final approval and that Stephanie or someone else reviews it so that you're satisfied. So that's one and that was your only review, that's just Conditional Use and we have the other ones as well. So let's just stick to the Conditional Uses first and see whether or not we can get...because I think there's merit to what the Town Planner has said that we've amended this project and approved it over the course of 5 years from what was a conditional use of overnight cabins with year round cabins and mixture and we've improved the Town through allowing the developer to improve the Town in this local. I don't think anybody here that I've heard has said it looks like an eyesore now and that it's got bad cliental and so forth...this is an improvement. We have to... and I know that we have...and I will be one of the first ones to say that we have done 53 for 53 because of this 78-180 appeals from restrictions uses because of the previous use and trying to make it less nonconforming. And that by making it seasonal and having more than 53 because that's what it originally was that would've been significantly a bigger change. So my point being is that after we amended it 2 more times to make it year round...it's almost that the Conditional Use...I'm trying to put in my own words what I heard the Town Planner say...is that now the use is more conforming to the zones that it resides in GB-1 and R4. Am I reiterating in my own words...does that come back to you?

**Jeffrey:** That is correct, they're no longer the overnight and they're no longer the cabins and

they're no longer the overnight cabins...but we still have...

**Mark:** I understand we still have to act on it...but we should put hopefully some of the older, more invested Planning Board members is that if we were to do preliminary approval of the Conditional Use of this amendment for 6 more units...it is not in my opinion going against making a significant increase of a nonconforming use, it's actually allowed a conforming use of a now more conforming site for development. So I mean I was one of the people who was opposed to it initially because it was a big change because I looked at it as significant...the words that were in this chapter and in this paragraph that we were making a significant change.

**Jeffrey:** I think that a number of concerns that Eber, Win and Ryan has, they're more related to the Subdivision and the Site Plan aspect.

**Mark:** I guess in my own words I'm trying to say that we should be able to get by this one...because in the past I got past this one, personally. I don't know if I got Win and Eber convinced because I don't want to take a vote without having a full discussion before we even have a motion.

**Win:** You're talking the Conditional Use as the overnight which really is... it's a moot point.

**Mark:** They're not overnight cabins anymore, they're not seasonal anymore, and they're year round rentals, residences, condominiums.

**Eber:** I understand that but if you look at number 1...proposed use will not result in significant hazards to pedestrian, vehicle traffic, on site or off site...I have to disagree with that.

**Mark:** I think that's what Mr. Hinderliter was trying to point out is as we approve...as we go through the preliminary approval...each board member needs to bring up the things...

**Eber:** Legally, we have to legally do it so that if he wants to sue us, or there's any legal problem, we know exactly where we stand so I have no problem with that. But I'm just saying that I find a big problem with number 1.

**Mark:** Because it's only a preliminary approval we can't blanket as a majority of the board now votes on these...we can't approve them all at one time then we need to go through them one at a time if the Planning Board members feel that they have enough issues on these conditions.

**Eber:** I have no problem with anything else besides 1...of all of the 12 of them...that's the only one that I have a problem with but I have a major problem.

**Mark:** Okay so we've got yours [Linda's] we've got Ebers. Does anybody else have a really problem with any other than those 2?

**Win:** No, I concur with Eber.

**Mark:** And you would say that 1 is a sticking point with you?

**Win:** That's been an issue along those roads.

**Mark:** Mr. Kelley, you have any reservations with any of the 12 Conditional Use for the amendment that's before use? You've already stated the roads and the parking and the...so you basically came around to what Eber said so I know right now we have 3 out of the 5 that have a problem with this. Just on the basis of 1.

**Win:** Yepp, that seems to be the big issue.

**Linda:** Number 12, which is the financial and technical capacity...there was some conversation previously about other projects in Town...has that been satisfied?

**Jeffrey:** That was satisfied...basically we can't hold this project up if another project is in default because there are different entities associated with both projects. So that's fine.

**Mark:** So this is a preliminary approval so we can approve it conditionally if the 3 people that are saying that they have a real problem with 1 and you say you're going to vote no on it, is there any way that we can condition our preliminary approval on 1?



**Eber:** As far as I...there is 1, but it's expensive to re-build all the roads and I don't see that either...it's crazy.

**Mark:** So when you say re-built the roads you're worried about the crown...

**Eber:** Worried about the crown and the width, because basically we thought it was fine for summertime, it's only a few months a year...when it goes all year round to me it seems very inadequate, it's just by adding more units it makes it more inadequate.

**Mark:** Okay, we've done that before...so Ryan, yours was it the crown or the parking size...width of the road?

**Ryan:** Width...the crown, to me those roads don't meet year round use. They're not adequate.

**Win:** I have to agree. But do we have to find the conditionals for preliminary or not? We don't have to go down each, we're telling and expressing pretty strongly how we feel and that's the next message.

**Mark:** I think the purpose of preliminary approval and actually going through and identifying the ones where we really have final plan approval problems helps the applicant address these in his final plan, that's the purpose and I think it's helpful to have this discussion in public.

**Win:** Absolutely.

**Mark:** And it helps the applicant hear what we have to say and react to it. It's his choice. But Megan's already pointed out that the time is of the essence and we have to make a decision on preliminary plan tonight. If we vote it down then we have to be very specific as to why and I would caution the board that 1 and 11 right now don't really speak strongly to me as a reason not to move forward.

**Eber:** Well we can have a vote and see what happens.

**Mark:** But before we even have a vote, we need to have a motion.

**Win:** Before we even move it forward we need to understand that's going to be an issue at final.

**Mark:** That's why when I ask for a motion, I want a motion that's conditioned with in mind of how can they correct the deficiency as opposed to being negative and saying it's not adequate...that's what I'm trying to get at...I'm trying to get to a positive approval with conditions that gives them a way to make final without...

**Eber:** My feeling would be if they could meet regular subdivision standards of road width I wouldn't have a problem...to me it seems like it's basically impossible from a financial impact.

**Mark:** Take in mind the people that have already invested their money in this development and the members of the Homeowners Association, and how much upheaval making construction requirements to the developer on the entire site for just for the 6...to me that's unrealistic.

**Eber:** I agree, it's unrealistic...that's why...I'm not saying it's impossible...it's unlikely.

**Mark:** It's unrealistic in the fact that the Homeowners Association...not only is the developer going to sue us the Homeowners Association is going to be really pissed off.

**Eber:** You know something, you only really ask me what my idea for making it better would be and what the problems are...they are problems and I admit it, it seems like they're very very difficult to overcome as far as I'm concerned.

**Mark:** I remind the board that, I remember what Mr. Thompson said about the drainage and the size and the way that it's laid out is that if you went to any parking lot in Maine, they're graded the same way, they're pitched in...it eventually flows to another catch basin that's pitched down. So there's always going to be those low points around those catch basins and stuff so even though it doesn't appear to be the traditional development road that we've seen in New England, it should with a proper...and we've said this in the past...second amendment

that the snow plan removal if done right it can work, it can be workable. The issue is it becomes the Homeowners Associations contractor's responsibility to keep the HOA people safe and covered with their snow plan removal. It's not ours...we've approved this roadway the way it is to make this amendment.

Now this is getting off a little bit because we're trying to approve for the 6 and if we bring in the first one we're dragging him into something else. And I'm just trying to speak to that.

**Robin:** Wasn't this approved road-wise through the original summer cottage type roads which now don't exist anymore, it's a year round facility now.

**Mark:** We amended that...we went through the amendment process twice to get to that and we have a snow plan...Mr. Thompson indicated that Megan has actually asked for the snow plan removal to be modified or amended to include the 6 units to be brought up to date with the current approval.

**Robin:** But is this not going to open up a can of worms with other subdivisions that want to comply with the...these roads like they have

**Mark:** No, I don't think so because we have ordinances for that so anybody that comes before us we go back to the ordinances. This got approved as a special condition within the ordinance...we got a variance based on its specific merits.

**Robin:** I mean I'm reading through some of the minutes over here and there were Planning Board members that were really concerned about that then...

**Mark:** Exactly, Mr. Weinstein was one of them I was one of them. We were concerned about it and we asked the question about whether eventually this would become year round.

**Robin:** I'm also seeing that when Mike Nugent was the code he pushed this through as a subdivision right to start with...what is the division between a major subdivision and a subdivision as far as roads go? He did it through as a subdivision...what were the requirements?

**Mark:** Because it looks like a subdivision because it has so many units, it's basically a condominium project with so many units.

**Robin:** So people now that are in front of us that want to build condo units and things like that are going to say well we don't have enough to build the roads to the adequate width that they should be but you let those guys do it why not let us...you know.

**Mark:** Yepp, sets a precedent.

**Eber:** I think basically your question won't be a problem because this was a special thing because of the way it went through and normally like every other subdivision we make them do normal roads, here we let them because we wanted to help out and make it...because the property was in such bad shape, we really wanted to help out. So we gave them a little leeway because we thought it was going to be just summertime and in the end we gave them more leeway and more leeway because it's just...even the second time it was inadequate but we still let him do it. Now to me it's adding to the, it's making it more...I can't see doing it again personally.

**Bill Thompson (BH2M):** We can crown the road.

**Mark:** I want you guys to hear this dialogue and then when we get to the point where we make a preliminary approval with conditions that you can come back in the final and these issues go away somewhat. I know that it might be financially an issue.

**Bernie:** Let me ask a question for you, when we came back to go year round, you guys approved it, you didn't have to approve it you approved it okay number 1, number 2 that road was always designed to be year round, it wasn't for some campground. Wright Pierce inspected the design, approved it, then when we came back to go year round you guys put me

through the same minutia and what happened...you said I want a letter from Wright Pierce stating that this road can be year round. They came back and said yes. The reason it's only 18 Ft. wide is because it's mostly one-ways. So there's a lot of reasons this works...we're doing a subdivision in Saco it's all 15-18 Ft. the Town is taking the road over so it's going to be a public road. You guys have no worries, it's the HOA...so at the end of the day Wright Pierce handled all of this. And you brought it up, we reserved the right, and again, spinning wheels here tonight.

**Mark:** Alright, so back to the Planning Board. Is anybody going to be willing to make a motion to conditionally accept the preliminary amendment to the Conditional Use.

**Linda:** Mr. Thompson referenced a memo from Megan that listed a number of outstanding things, was that the date 11/4 as I understand?

**Bill Thompson (BH2M):** 11/4 if I can answer that...I have a copy here.

**Eber:** As long as we have Mr. Thompson here...when you designed it, you designed it for summer use or...I mean I'm pretty sure I remember you saying you designed it for summer use.

**Bill Thompson (BH2M):** Well the original design was for a summer use, but there's no...

**Eber:** Well the question is the sewer ways... the waterways. I mean the piping isn't really adequate. I mean its working.

**Bill Thompson (BH2M):** I mean it's down below...it won't freeze.

**Eber:** It's still not designed to year round standards.

**Bill Thompson (BH2M):** There's no 2 standards for the road.

**Eber:** I'm not just talking about the road I'm talking about the water supply...sewage and everything. It wasn't designed as regular.

**Bill Thompson (BH2M):** Well everything's below

**Eber:** I understand but...

**Bernie:** Because we came in for year round, we designed it to be...even the buildings. They came from a factory so they were built to standards.

**Mark:** I want Mr. Thompson to answer Mr. Weinstein's question.

**Eber:** So my question is when you designed it, you didn't design it specifically for year round, you designed it originally for summertime. Even though it's adequate...it's adequate for winter but it wasn't designed for regular wintertime like you design a year round project.

**Bill Thompson (BH2M):** It is but it certainly would with every road we design would withstand because it's going to get winter...

**Eber:** I'm not talking about the roads. I'm talking about stuff like water pipes...

**Bill Thompson (BH2M):** Water...sewer...they're all designed for year round.

**Eber:** No I just remember...

**Bill Thompson (BH2M):** If they weren't...they'd be drained. When we do campgrounds, they may do a waterline just a couple and the whole system is drained.

**Eber:** So what you're saying is you didn't design this specifically for year round.

**Bill Thompson (BH2M):** I don't recall that...I mean the goal was it was going to be seasonal, in putting the catch basins in the center of the road was an option. Certainly conventional like the chair said you go all around Maine this road has worked, the drainage has worked for 4 winters.

**Eber:** I mean I do remember seeing letters about people complaining...

**Bill Thompson (BH2M):** You know...where don't you get, go anywhere in Town, any project, if you get the right...wrong conditions between freezing and thawing, low points, you may have some ponding but you know it's worked over 4 winters as designed. Same as the Hannaford shopping center, they don't close that down because they have catch basins in the

middle of the parking lot. They plow them, they have a great winter maintenance plan for snow and ice.

**Eber:** But let's say you were designed for year round use and you were...

**Bill Thompson (BH2M):** A conventional road as offered, we'll crown it and put the catch basin on the road that would be the normal.

**Eber:** Okay...that's all my....

**Bill Thompson (BH2M):** And it's not wrong...what we did. I just want that...

**Eber:** No, I didn't say it was wrong I just want that...

**Bill Thompson (BH2M):** I understand.

**Linda:** I will make a motion that we grant preliminary plan approval to Summer Winds with the following 3 conditions:

- That prior to final plan approval, Summer Winds shall come back before the Planning Board to address changes that were made on the site that were not in accordance with the previously approved site plan.
- Number 2: That they come back with the current amount of impervious surface today vs. the approved plan.
- And 3: That they address the outstanding issues in the email/memo dated 11/4/2016 from the Planning Department to the applicant.

I am open to amendment of that motion.

**Mark:** Anyone wish to second?

**Win:** Just to get us going, I'll second that.

**Mark:** So we have a second, now for discussion. On the conditions...

**Eber:** Want to go through all of them, or?

**Mark:** The conditions that vice chair has proposed, those are the ones I would like to speak...as far as a motion to approve the preliminary approval, preliminary emphasized and conditional use.

**Eber:** So we have to meet the 12 standards in this case.

**Mark:** Yes, but I think we have to meet the discussion we had prior to the motion, the only ones that were outstanding were 1 and 11. So I didn't hear in the conditions anything to speak to 1. So if someone heard something can you inform me where that was at...especially for Mr. Weinstein, Mr. Kelley and Mr. Winch's concerns about the conditions of the road and adequate width. So we can give the applicants engineer some sort of conditional...if we don't condition it, they've at least heard the discussion that, so when it comes back under final they can condition it in a way that we can guide them to what we're looking for. I've heard crown, we could add a crown to it, but to do that you're going to need to do some catch basin work to get the water to go back to the drain.

**Eber:** I don't want to see a crown... I mean the more of the question is the adequacy of the road and the amount of traffic in there, turnaround, and especially this piece. The way it's designed is a 90 degree angle which is very difficult.

**Mark:** The applicant and the plan that we have that's sitting up there has addressed the Fire Department radius concern so it has been amended to address that additional...the public safety issue has been addressed. So that's been taken care of, but maybe not all of what we're talking about in terms of the width in terms of the winter use and stuff. And maybe we don't need to add a condition to the approval.

**Eber:** The other thing is when we gave a condition of approval for Conditional Use, they asked for 94 parking spaces. Do we want to reduce it down...make sure they meet...

**Mark:** I did not hear that from the actual HOA they want even more parking spots, they complained about not having enough parking with the added 6 units. That's what I heard in the testimony...

**Eber:** I know, I understand that but I'm just saying the original...did they go through the proper channels to get more because we originally gave them 94...

**Bill Thompson (BH2M):** That's why we're coming back.

**Mark:** The conditions, if I heard you right, one of the conditions, is that they need to actually submit and get...part of the approval is to get those, the amended Phase 1 we'll call it for lack of better terms, the first development (53 units) up to code and to the original approval.

**Linda:** That's the first condition.

**Mark:** Mr. Thompson is aware of that.

**Win:** I think we've said very strongly how we feel so...

**Mark:** I was just wondering if we need to...if we feel...there's no need that we should put a condition that we're going to for certain get one addressed. We're going to leave it to the applicant's hands to take what we've discussed tonight and if they don't provide it then it's going to cause heartburn for 3 of the members. 3 out of 5 is not a good vote. That's all I'm trying as a chair to guide us to success or away from not success.

**Robin:** You are talking just the new roads that they want to put in, correct, not the whole subdivision?

**Mark:** The amended plan already has...Mr. Thompsons already stated that the plan is as amended for the 6 units, they've crowded the parking area and expanded the driveway they've listed to everything that the Planning Board has said about what's wrong with the first phase. But what Mr. Weinstein and Mr. Kelley and Mr. Winch has been saying is that what was done in the past has been amended so many times that it doesn't meet what is an adequate use. The applicant completely disagrees and he has that right to disagree. He feels he's done what was originally approved and that's what section is done but I think condition 1... on the table is that he needs to show us that he's done that and submit something to that effect.

**Linda:** Yeah, it says shall come back before the Planning Board for an amendment.

**Mark:** Yeah, so they're going to actually amend the stuff that's not included in this amendment right now so we could basically bundle it all together at one time and say okay so you're amending 1, catching up on all the things that were not done right or that we feel might not have been done right or wasn't done to the extent of what was required in the first approval or the second approval or the second amendment. Catch him all up, that's what your intent was.

**Eber:** Well, my feeling is that, I'll just read it section 78-1240 standards before authorizing any Conditional Use the Planning Board shall make written findings certifying that the proposal is in compliance with the specific requirements and the individual conditions must specify that the proposed use standards, number 1 the proposed use will not result in significant hazards to pedestrians or vehicle traffic on site or off site. As it stands now, I don't feel that it does. We can't vote for it, I don't want to have a condition because then they'll just...right now it does not meet that condition. If they want to bring something back, I mean I'd have to vote no because if you disagree with any one of these 12, you can't approve it. So I mean...I guess I would have to vote no on it because of the way it stands now I don't want to put a condition on it I don't know what the changes are going to be. I mean I don't want to keep pushing them off and have more and more...these extra 6 units, it's not really designed for that. That's my feeling. If they had of gone for the original, all these units first then they could've had the road include these so it wasn't...but right now the way I feel it just...it doesn't work and you know...one of the things we have to consider is whether this is

good...planning wise is this good? I feel that planning wise it's not good, it's a Mickey Mouse after-the-fact addition. Originally he was very happy to get the 53 even though he's going to sell those but now he's sold them he sees there's more market so he's trying to push something extra in a place that it really wasn't designed for which is totally within his rights to ask for...I just feel that it's not really correct from a planning point of view. That's my whole thing and the fact that they made it 12...year round, okay fine because it's basically almost working but there's some inadequacies but you know we voted for it and it's a relatively good project in many ways. I just feel that by adding this extra it'll hurt the basic way it works. That's my own personal feeling. You know I have to say in my own, it's the way I feel from a planning point of view. It's really not designed correctly, that's all. I mean from an engineering point, yeah, but from basic design point you can see it's just a thing thrown in on the side.

**Mark:** Anyone else have anything to address about the motion on the table? So can we have the motion read back to us and then call for the vote?

**Megan:** To grant preliminary plan approval for the Conditional Use with the following conditions: that prior to final plan approval the Summer Winds development shall come back to the Planning Board for an amendment to address changes that were made on the site that were not in accordance with the approved site plan. To come back with a plan that shows the current amount of impervious surface vs. what was approved for the original Summer Winds development and to address the outstanding concerns that were in the memo from the Planning department dated November 4, 2016 to the applicant.

**Mark:** Okay, you guys ready to vote? Call for the vote.

Mr. Kelley: No

Mr. Winch: No

Mr. Weinstein: No

Vice Chair Mailhot: Yes

Chair Koenigs: Yes

Fails 3-2

**Mark:** So now what?

**Eber:** We can't really go any further...

**Mark:** No one wants to make another motion to get this thing...so we voted no on the motion to approve, the only way we can move really forward on this is I need a motion to basically deny it I guess. I'm at a loss here...somebody help me.

**Eber:** I'll make a motion to deny...it didn't get approved that's the first thing. If you don't have the first step, you can't get the second step, you don't have the second step you can't get to the third.

**Mark:** So we're denying it on what grounds? That's my point...

**Eber:** As I said, number 1: the proposed use will not result in significant hazards to pedestrians, vehicles, traffic on site or off site. I feel that's going to be a problem traffic wise vehicle wise.

**Mark:** Okay, so that's clear.

**Win:** That's pretty much it.

**Eber:** I mean the other one, I didn't have a problem with anything else, everything else is, I mean there's adequate off-site parking I think they can meet that eventually. No increase in fire hazard, water pollution I don't see as a problem, unhealthy conditions because of smoke I don't see as a problem, no sense in any...that's the only one I have a problem. But I do have a problem with that.

**Jeffrey:** Okay, I'm trying to sort through this on the fly here, so first the board is saying

**MOTION**

**VOTE**

**FAILED**  
**(3-2)**

number 1 on the conditional use aspect. How about the subdivision and site plan because there are very similar standards in subdivision and site plan to number one thinking that we do have 3 applications here.

**Eber:** If you want to vote on them...fine.

**Mark:** I believe we have to vote on the other 2 as well and have the same outcome essentially.

**Eber:** Whatever it is...

**Mark:** So it's official because otherwise we'd leave those other 2 without direction.

**Win:** I've never had to deal with this this way so...

**Jeffrey:** And denial of the preliminary plan doesn't necessarily mean its full denial of the project at this point. It means that if you want a favorable vote from the Planning Board, they don't feel you've met these particular items so...

**Eber:** I'm just saying the way it's designed now from my standpoint...I'm not against the whole project, I just feel the way it's designed now

**Jeffrey:** So it could be brought back and designed in a way where the board members who don't feel comfortable with it would feel comfortable.

**Eber:** I wouldn't have a problem.

**Jeffrey:** So I just want to say, you know, it's not a flat out denial.

**Mark:** Something for me as the chair is that this is an amendment. It's on our agenda as an amendment to Summer Winds II. It has nothing to do...although it does have something to do with what we've already approved conditionally on the original approval. It seems like the heartache is on what was not done in the past. That's why I voted yes.

**Linda:** Jeffrey, the site plan criteria that we're now talking about since we just did the Conditional Use. That's the 9...

**Jeffrey:** Correct.

**Linda:** So as I read through the 9 and think about what's just previously been said in our discussion about conditional uses, I have one question and 2 comments. The 1 question is on item 1, I wasn't at last month's regular meeting but I did watch all 4 exhausting hours of it this afternoon and was this the one that had some sort of question about part it being in 2 different zoning districts?

**Win:** Yes, that was that 50 Ft. rule or something.

**Linda:** And how was that resolved and in what was determined about that? I remember some discussion about applicable standards and it having to be within 50 feet of the other restrictive zone or less restrictive zone, can you clarify how that left off?

**Bill Thompson (BH2M):** What section is the assistant chair referring to so I can follow along?

**Mark:** Site plan review requirements, 78-216(d) criteria for site plan approval

**Jeffrey:** Okay, when a lot is in more than one district as we have here, except in the Shoreland District, and it's in single ownership at the effective date of the ownership, which it was, the Planning Board may permit the extension of the district regulations applicable to the larger portion of the lot into the smaller portion for a distance of 50 feet from the district boundary line upon review and approval as a conditional use as part of this chapter.

**Linda:** So the 2 comments again going back to the just previous discussion that we had, item 4 was the stormwater which is what I wanted to address in one of my conditions there is wanting to know what the number is in one of the increased impervious surface. We know there's an increase, we just don't know how much it is. And number 5 is the adverse on-site and off-site impact to existing vehicular and pedestrian circulation systems within in the community or neighborhood. 2 of the same things just worded somewhat differently.

**Mark:** This project was approved under 3 different ordinances. The reason why is because this

project is unique. And now we're trying to amend those 3 different ways. One of them is going to have the same issues so it should be pretty straight forward to make another motion and another second and another discussion and come up with the same, probably, outcome. If anything it'll be on the record. What the chair's trying to say is we don't have to belabor the site plan and subdivision review unless somebody sees something within these 9 criteria that's new that we disagree with, we're just...or don't think it conforms with or meets the...so has everyone had a chance to read them for yourselves and...

**Jeffrey:** Just maybe to help a little, I know a number of the concerns are about the road and the parking, number 5 is a standard that is very similar to what standard number 1 is in the Conditional Use.

**Mark:** Right, so 4 is like 11 and 5 is like number 1 in the Conditional Use. And I think it's set up this way in the ordinances so that everything whether it's a Site Plan or Subdivision...it still has a similar criteria it's just that one has 12 one has 9 and the other one has 14 or something.

**Linda:** I will....

**Eber:** Oh before you do that, are you going to make a motion? Number 1 criteria is the proposed project conforms to all standards of the zoning district, etc. etc. but we didn't get the conditional use...we just voted it down. So we'd have to say that we didn't get that. Am I incorrect or is that correct?

**Mark:** For number 1, so what Mr. Weinstein is pointing out is that the proposed project conforms will all standards in the zoning district and meets or exceeds the performance standards specified in this article and article 8 of this chapter...well one of those things it has to conform with is the Conditional Use.... The actual use.

**Jeffrey:** Good point, let me see real quick if Conditional Use is part of article Roman numeral number 8.

**Eber:** Didn't we just vote on Conditional Use?

**Jeffrey:** Right and I see what you're saying, you could not vote in favor on number 1 if you didn't vote in favor of the Conditional Use because ...

**Eber:** No what I'm saying is...the Conditional Use is not ruled so we'd have to vote no one number 1. I mean if they change it and they change the project then it will get Conditional Use.

**Jeffrey:** Actually Conditional Use is Article 7, not 8 and this is just in this article which is whatever article Site Plan review is an article 8 of this chapter, conditional uses is article 7.

**Mark:** So ones a standard, ones a performance standard like whether the roads to size...so does everyone understand the nuance there, one's article 7, conditional use and 8 is...roman numeral 8 is performance standards.

**Jeffrey:** The first sentence says the proposed project conforms to all standards, let me just break it down, the proposed project conforms to all standards of the zoning district and meets...okay so the zoning...it's the conditional use parking standard that's in question. Okay so, what we didn't vote that it didn't meet all standards in the zoning district, we didn't vote about this article Site Plan...but that's what we're voting on. Number 1, you wouldn't. You wouldn't because it's worded really weird but you would vote not in favor of number 1 because you don't feel it meets or exceeds performance standards specified in this article and Site Plan is in this article.

**Mark:** But it just means it...if you're saying you don't agree with 5 then you can't agree with 1, so 1 is another part of 5.

**Jeffrey:** Right, exactly.

**Win:** Okay, that makes sense.



**Mark:** I mean I guess that was my point, it's that these...the things that we've said which are the stormwater, the roads and getting all the information that we have requested, they're going to be the same for all 3 of these. So we just have to find out where they are. I'm going to ask for a motion then.

**Linda:** I will make the exactly same worded motion that I made earlier with respect to the Site Plan review criteria.

**Mark:** So just replacing Conditional Use with Site Plan review?

**Linda:** Correct, with the same 3 conditions.

**Win:** I'll second to move it forward.

**Mark:** Do we have any further discussion?

**Eber:** As I mentioned in the previous motion I feel that this project doesn't meet criteria number 5, the proposed project will not have an on-site off site impact on existing vehicular and pedestrian circulation systems within the community or neighborhood and the fact it doesn't meet 5 would also mean the fact that I feel it doesn't meet criteria 1. If they meet 5 then I would agree that it meets criteria 1. The rest I don't have a problem with.

**Mark:** Okay, Mr. Kelley? Would you be saying the same thing?

**Ryan:** I have to go the same thing.

**Win:** I haven't changed.

**Eber:** One other thing, it says the proposed project received all ZBA and federal and state permits which they haven't. So you'd have to make a condition on that already. They haven't got the DEP permits yet, right? We'd have to put that as a condition and undo the motion because they haven't gotten the permit yet.

**Mark:** As a preliminary approval we'd need to amend that Ms. Mailhot would have to agree to amend the motion that those would be a condition for final.

**Eber:** Because we didn't get that yet...

**Mark:** Yes, so I think without having to read them all but you have read them so...

**Linda:** So Win would have to remove his second before I can...

**Mark:** So you follow, Win, what Eber was saying about having to modify our conditions so we add conditions about the required permits...federal and state permits. Do you concur to remove your second?

**Win:** Yep.

**Linda:** Okay so Win removed his second so I'll modify my motion to include a 4<sup>th</sup> condition on the site plan approval that the applicant meet the requirements of item 2 which are to have all of the required ZBA and or Design Review permits as specified in division 2 and article 5 of this chapter if applicable and has or will receive all applicable federal and state permits. So this motion now has 4 conditions.

**Win:** Second.

**Mark:** Okay so motion has been amended and seconded to include a 4<sup>th</sup> condition. Required to have the FEMA and the stormwater PBR. By the wording of the condition it's understood that those 2 things have to be submitted...prior to final. Seeing no further discussion, call for the vote.

Mr. Kelley: No

Mr. Winch: No

Mr. Weinstein: No

Vice Chair Mailhot: Yes

Chair Koenigs: Yes

**Mark:** That does not pass 3 against and 2 for. Okay, moving on to subdivision requirements. So we need the, that's in Chapter 74, the review criteria.

**MOTION**

**VOTE**

**FAILED**  
**(3-2)**

**Jeffrey:** One thought, first we have one that relates to roads but interestingly it's highway or public roads we are not dealing with as far as I understand the issues we have are with internal or private roads so they're not highway or public roads. That's number 5 of the 14. So to not rule in favor of that as I understand wouldn't be consistent with your ruling because your rulings based on the internal private roads.

**Eber:** Again, my question using number 10 it says the proposed subdivision is in conformance with a duly adopted subdivision regulation or ordinance, is it technically in conformance if we vote it down? The Conditional Use?

**Jeffrey:** Yeah that's what Megan was just pointing out, I think if we break it down first let's think land use plan, what we voted on was the zoning ordinance not a land use plan, we didn't vote on a development plan or the comprehensive plan only thing is a duly adopted ordinance which both Site Plan and Conditional Use are duly adopted ordinances so I would say number 10 is applicable because you didn't vote in favor of the proposal for Conditional Use or Site Plan. I think that's the only one of the 14.

**Eber:** Did we have a problem with the elevation of the land relative to floodplains, I can't remember if that was...somewhere we were talking about it.

**Mark:** Well that's what the FEMA was for, they have to adjust the floodplain and foundation elevations will be above that 36 ft. elevation. Once they get FEMA to rule to get the floodplain moved to 36.

**Eber:** So it would have to be a condition?

**Mark:** I think this subdivision would have to be just like we did the last one, the site plan we have to condition the approvals that we would...and that's like the beginning, that's what we would need for final. Preliminary approval we don't need the FEMA and we don't need the stormwater but we're trying to be very thorough in saying that these things need to be done for final so that we're making it a condition of the preliminary. Just so it's very clear to the applicant so when we say that it's denied we're actually also saying we're voting it down it's just this impact to the pedestrian and traffic.

**Linda:** As I look through these 14 criteria, items 4 and 13 would bring up the same condition regarding wanting that impervious surface information, number 4 is the proposed subdivision would not cause unreasonable soil erosion or reduction in the capacity of the land to hold water. Item 13, the proposed subdivision will not alone or in conjunction with existing activities will not adversely affect the quality or quantity of groundwater. Item 10 I have a question on. The proposed subdivision in conjunction with a duly adopted ordinance, comprehensive plan, development plan or land use plan...does the construction of the road have anything to do with this item? Construction of the road, width of the road, those aspects regarding the road.

**Jeffrey:** Interesting. The road design standards are part of the subdivision ordinance but one of the problems is the Planning Board previously approved those road design standards as part of other applications so I think it does, the road design standards are part of this because it's a subdivision but the Planning Board previously approved applications for those existing roads.

**Eber:** I think the existing roads are fine because we already okayed them from the Planning Board. I don't think that's the problem I think the problem is as we said that because we turned down the conditions so it's not meeting every ordinance. But I don't think the original roads are a problem...personally, because they were already permitted by us...the Planning Board, so even though they don't meet the standard, they are legal from an ordinance point of view or whatever you want to say. From that point of view, I personally don't think that's a problem. I think the problem is that we didn't give them conditional approval...so they're not meeting all the regulations and ordinances etc.

**Jeffrey:** Right a duly adopted ordinance which would be Conditional Use and Site Plan. You didn't find in favor of that.

**Eber:** Right and I vote against this for that but not in the original roads because we already gave approval on the original roads. The original roads I don't think are a problem. They're not great, but from a legal point of view they're not a problem from these standards that we're looking at right here.

**Jeffrey:** So what would be important is if you continue to be consistent, if you have another motion that separates where...you don't just say number 10 as a blanket.

**Eber:** Part of our job is to specifically notate exactly why we have a problem in each one. We have to actually give a reason so that we know what's going on from a lawyer or a court or something else they'll know exactly why we did something. So I mean I would absolutely give my reason so if I agreed or disagreed. If I agreed I probably wouldn't have to do it but if I disagree I'd probably have to give a reason.

**Mark:** So number 11 wraps up numbers 1-10. Looking for a motion.

**Linda:** I will make a motion that we grant preliminary subdivision plan approval to Summer Winds with the 4 conditions as read in the site plan approval. So to clarify that would be that the Summer Winds development come back for an amendment to address changes that were made on the site that were not in accordance with the approved site plan. Number 2 that they come back with the current amount of impervious surface today vs. what was on the original plan and 3 address the outstanding issues in the 11/4 memo/email from the Planning Department to the Applicant and number 4 secure any and all governmental permits required.

**Win:** Seconded.

**Mark:** Any discussion?

**Eber:** In item 10 it's that they meet all ordinances, if they meet all of the ordinances then I wouldn't have a problem so as it stands they're not meeting 2 ordinances but with the condition that the vice chair has put on that they meet all ordinances...did you say that as a condition?

**Linda:** Well that is one of the subdivision review criteria.

**Eber:** If they meet all ordinance which is to say that all of those things that we voted on earlier approved then I wouldn't have a problem...if they get all of those approved then I would have no problem with this as it stands but we don't have them approved so I don't know how I should go on that one because the condition that she just made was that they get approval for everything.

**Megan:** Are you talking about them coming back for the things they need to address with the original summer winds or are you talking about the permits that they need to get?

**Eber:** I'm talking about number 10 the proposed ordinance is in conformance with a duly adopted subdivision ordinance, comprehensive plan, land use plan...right now it's actually not because he didn't meet 2 of them.

**Megan:** Site Plan and Conditional Use?

**Eber:** He's not really meeting them now, if he met those I wouldn't have a problem.

**Megan:** I don't think that's part of the motion though.

**Eber:** But that was the condition.

**Jeffrey:** When Linda introduced that motion it seemed to be more in reference to number 2 where we were thinking of the federal and state permits number 2 of site plan.

**Eber:** Okay, thank you. Again I have a problem that as it stands it doesn't meet item number 10 as far as I'm concerned it's not in conformance with every regulation or ordinance.

**Mark:** Can you for the record, be specific, I know you said it 10 times tonight...

**Eber:** The 2 previous motions we made for Conditional Use which has to do with the road

**MOTION**

adequacy, if they fixed the adequacy of the road again I would not have a problem and right now they're not meeting Site Plan review and Conditional Use. Preliminarily they don't have those approvals so I'd have to say that it doesn't meet number 10. If they meet those then I'd be open to change...

**Mark:** Okay so that's under land use, so Conditional Use (land use) portion of 10.

**Eber:** Provisions...the subdivision is in conformance to...

**Mark:** So it's kind of a circular thing...

**Eber:** Right, it is.

**Mark:** Once you get the other 2 then this one will be...

**Eber:** Right, if they get the other 2 then I would have no problem with this one.

**Mark:** So if you vote no on this...

**Eber:** The way I see it is I can't vote yes on this because we've already voted no on...it's circular from the things we voted on tonight.

**Mark:** Okay, Mr. Kelley do you have anything to follow his logic? Just for the record, if you're going to vote no that's the reason...you don't have any other reasons you want to add for the record?

**Ryan:** No.

**Win:** Ditto.

**Mark:** Okay, I just want to be very clear for the record that...

**Eber:** Unless someone has something else that they disagree with, I mean I don't have anything else that I disagree with, this one as Jeffrey stated earlier the traffic on this is relative to public roads which I don't think it actually has any effect on the public road.

**Mark:** On number 10 I believe what we've done in the past is we've amended the subdivision and land use ordinances adequately by using variances to the subdivision regulations and ordinances for overall plan approval and the actual amendment to add 6 is in conformance with them so I think...

**Eber:** You feel it doesn't meet them?

**Mark:** I believe the applicant has made the amended area, the 6 units and the areas that are affected by the 6 units to meet the regulations and all the land use other than, like you said, we voted no...some people voted no on the first 2, that circular argument, but with respect to the subdivision ordinances they have met it so...

**Eber:** Well, I mean a duly adopted subdivision ordinance...if we go specifically by this, what we voted against tonight is not a subdivision regulation; it's not an ordinance. The question is a developmental plan, I think it is a development plan...so I feel it doesn't meet that.

**Mark:** Okay so it doesn't meet that. So everyone's stated there position where they specifically will stand on the total of 14 and it's just 10. Call for the vote.

Mr. Kelley: No  
 Mr. Winch: No  
 Mr. Weinstein: No  
 Vice Chair Mailhot: Yes  
 Chair Koenigs: Yes

**Mark:** So that does not pass 2-3. And for the record the no votes have been very clearly stated for the minutes and for the applicant so they know where the 3 no votes objected to the preliminary approval.

**VOTE**

**FAILED**  
**(3-2)**

**This Planning Board meeting being at this point 10:00 pm. All members were in agreement to keep going with the following items on the agenda.**

**ITEM 4**

**ITEM 4**

**Proposal:** Subdivision Amendment: Relocate proposed detention basin #1; Relocate proposed sewer lines; Relocate proposed building G; Relocate and add stormwater pipes and catch basins; Proposed road retaining wall replaced with rip rap.

**Action:** Ruling on Amendment

**Owner:** KRE Properties Inc.

**Location:** Settlers Ridge Condo's, Ross Road, MBL: 103-1-5, RD

Eber Weinstein was going to abstain from voting on this item because of a conflict of interest, however Vice Chair Linda Mailhot did some research and found that KRE Properties, Inc. was once owned by Gary Salamacha and King Weinstein, but a while ago King Weinstein sold his portion of KRC Properties, Inc. to Gary Salamacha so it is 100% owned by Gary Salamacha.

Planner Jeffrey Hinderliter stated that this meeting tonight comes down to whether the Planning Board is comfortable with the Wright Pierce comments.

Bill Thompson, Project Engineer from BH2M representing the applicant introduced himself.

Mr. Thompson stated that Settlers Ridge Amendment goes way back. Pilgrim Place was approved in 1988. The project was engineered by Woodard & Curran. In the first section 6 buildings were built coming in from the Ross Road. In May of 2013 BH2M was asked to revise the plan basically for a name change to Settlers Ridge.

In July of 2013 they made some pavement changes. The Planning Board approved this on September of 2013 but the plan was never recorded.

The applicant is trying to build the last phase and they couldn't proceed because of the title issue that the plan was never recorded.

The applicant is coming back with this proposal to get a new approval. So to bring it forward for an approval, KRE Properties, Inc. decided to add a couple more things

- The developer noticed that the detention pond needs to come back and be part of the site.
- Parking space designation.
- Clean up some labeling.
- The sidewalk has various widths, some 4' and some 10'.
- Replace retaining wall with rip rap and maybe needs a guardrail.
- Culverts
- Moved the handicapped spaces in front of building G.
- A couple of labels on sewer pipes.
- 100 year flood zone is out of any of the building footprints.

These went to Wright Pierce for their review.

- They have questions about the storm water report. Applicant will provide that to them.
- Rip rap outlet was mislabeled.
- Erosion control detail.
- Cross section on the sidewalks.

Eber Weinstein questioned that by putting the retention pond in that area, is it going to affect the 2 or 3 lots?

Assistant Planner Megan McLaughlin stated that Stephanie Hubbard's concern was that in Homewood Park there are 3 lots on the new Kapok Street that are going in, and associated with those lots are sub surface wastewater disposal. They don't have sewer there so there is going to be septic systems and the issue is that there are setbacks from a detention basin to these septic systems and by putting in the

<p>detention basin at the end of the backside of this development, those 3 lots cannot put in their septic systems so they will be undevelopable unless they get sewer in Homewood Park.</p> <p>It was unclear what the distance is that a septic system needs to be from a retention pond.        All agreed that there are other design issues that can be made.</p> <p>Planner Hinderliter stated that in regards to Wright Pierce comments, there are a lot of things that we can work out internally as we have done before.</p> <p>Linda Mailhot made a motion to approve the amendment as presented with the condition that the owner shall work with the Planning Department staff to address the concerns of the Wright Pierce memo dated November 3, 2016. Seconded by Win Winch.</p> <p><i>Assistant Planner Megan McLaughlin called for the vote:</i></p> <p>Win Winch - Yes        Ryan Kelly - Yes        Eber Weinstein - Yes        Vice Chair Linda Mailhot - Yes        Chair Mark Koenigs - Yes</p>	<p><b><u>MOTION</u></b></p> <p><b><u>VOTE</u></b></p> <p><b><u>(5-0)</u></b></p>
<p><b>ITEM 5</b></p> <p><b>Proposal: Plenary Plan Approval 1-Year Extension: 5,910 sq. ft. building expansion (Landry’s Shop n’ Save)</b></p> <p><b>Action: Ruling on Extension Request</b></p> <p><b>Owner: BCL Cascade LLC, PRL Cascade LLC</b></p> <p><b>Location: 2 Cascade Road, MBL: 205-15-1</b></p> <p>Planner Hinderliter stated that Landry’s Shop n’ Save received a site plan approval in 2014 for just over a 5,000 sf. addition. (Internal rehab, some on-site construction/improvements.        A site plan requires 2 years for a project to be substantially complete. This work was not substantially completed within these 2 years.        In order for the project to continue, the Planning Board can grant a 1 year extension. But for the Planning Board to grant a 1 year extension there is a standard that the Planning Board must find that the applicant meets.        Standard:        The applicant must present compelling evidence that additional time is required to meet federal, state or local permit requirements or in reaction to market changes in order for the Planning Board to grant that 1 year extension.</p> <p>Planner Hinderliter has been in communications with the owner Paul Landry and Foreside Architects and they presented a solid proposal for a 1 year extension.</p> <p>Win Winch made a motion to grant a 1 year extension to substantially complete construction by November 11, 2017. Seconded by Linda Mailhot.</p> <p><i>Assistant Planner McLaughlin called for the vote:</i></p> <p>Win Winch - Yes        Ryan Kelly - Yes        Eber Weinstein - Yes        Vice Chair Linda Mailhot - Yes</p>	<p><b><u>ITEM 5</u></b></p> <p><b><u>MOTION</u></b></p> <p><b><u>VOTE</u></b></p> <p><b><u>(5-0)</u></b></p>

<p>Chair Mark Koenigs - Yes</p>	
<p><b>ITEM 6</b>  <b>Proposal:</b>     <b>Conditional Use Amendment of Approved Plan/Appeals from Restrictions on Nonconforming Uses (Overnight Cabins): Change use of 7 units from seasonal to year-round (currently 5 year-round use for a total of 12)</b>  <b>Action:</b>       <b>Discussion; Schedule Site Walk; Schedule Public Hearing</b>  <b>Owner:</b>        <b>SRA Varieties Inc., D.B.A. Paul’s II</b>  <b>Location:</b>     <b>141 Saco Ave., MBL: 311-1-10, GB2</b></p> <p>Planner Hinderliter stated that back in August 2016 this was on the Planning Board’s agenda. There were some outstanding items that the Planning Board and staff needed responses on before the project could move forward. And particularly responses to the Department Head comments. In August we still hadn’t got these responses.</p> <p>The Planning Board chose to remove the item from the agenda with prejudice so that the applicant could bring this back to the Planning Board and address some of the concerns that the Planning Board and staff had.</p> <p>The applicants resubmitted an updated proposal and received responses to Department Heads comments and concerns and provided more details to the 12 conditional use standards.</p> <p>Unfortunately there are 2 problems:</p> <ul style="list-style-type: none"> <li>• We need responses to the restrictions of the non-conforming use section. (This is how this proposal was grandfathered). We never received this information.</li> <li>• The proposal shows 14 units on the application and plan.</li> </ul> <p>The previous proposals were only 12 units and the Planning Board insisted on only 12 units. The 2 units that are shown on the plan are in a common area. From speaking to the Code Office that area was to be reserved for open space to be split between 2 of the units in each building to meet the occupancy square footage requirements.</p> <p>Without these things the Planning Board cannot determine the application complete. Planner Hinderliter’s recommends that the applicants get these responses to make the application complete.</p> <p>They also need to amend the sketch plan to be amended to show only 12 units.</p> <p>Eber Weinstein would also like to see dimensions, curb cut, parking and driveway information. Robin Dube asked about the exit onto Union Avenue where the pavement has to be finished in regards to the Public Works memo.</p> <p>Robin Dube is also concerned about the diesel fuel trucks that are parked in the driveway. The applicants stated that they are trying to find a place to put them. Robin Dube is also concerned about the dumpster is always overflowing. The applicants stated that there is illegal dumping and they are going to put a lock on the dumpster.</p>	<p style="text-align: center;"><b><u>ITEM 6</u></b></p>
<p><b>ITEM 7</b>  <b>Proposal:</b>     <b>Conditional Use: Accessory Dwelling Unit</b></p>	<p style="text-align: center;"><b><u>ITEM 7</u></b></p>

<p><b>Action:</b>        <b>Determination of Completeness; Schedule Site Walk; Schedule Public Hearing</b>  <b>Owner:</b>        <b>Mark and Catherine Andrews</b>  <b>Location:</b>     <b>98 Ross Rd., MBL: 105-4-4, RD</b></p> <p>Win Winch made a motion to determine the application complete and to schedule a site walk at the next workshop on December 1, 2016 at 5:30 pm and the public hearing will be on December 8, 2016. Seconded by Ryan Kelly.</p> <p>Linda Mailhot noticed that the current deed was not attached to the proposal.</p> <p>Win Winch made a motion to amend the previous motion to include with the requirement to submit the current deed. Seconded by Ryan Kelly.</p> <p><i>Assistant Planner Megan McLaughlin called for the vote:</i></p> <p>Win Winch - Yes  Ryan Kelly - Yes  Eber Weinstein - Yes  Vice Chair Linda Mailhot - Yes  Chair Mark Koenigs - Yes</p>	<p><b><u>MOTION</u></b></p> <p><b><u>VOTE</u></b></p> <p><b><u>(5-0)</u></b></p>
<p><b>ITEM 8</b>  <b>Church Street Station Findings of Fact</b></p> <p>The Planning Board has reviewed everything and will sign the Findings of Facts at tonight’s meeting.</p>	<p><b><u>ITEM 8</u></b></p>
<p><b>Design Review Certificates</b>  <b>ITEM 1</b>  <b>Proposal:</b>     <b>Building expansion and rehabilitation</b>  <b>Action:</b>        <b>Certificate of Appropriateness Decision</b>  <b>Owner:</b>        <b>Harrisburg H&amp;P &amp; Harrisburg Group Gen Partnership</b>  <b>Location:</b>     <b>9 East Grand Ave., MBL: 306-2-6, DD1</b></p> <p>The Design Review Committee approved this conditionally at their last meeting on November 7, 2016.\</p> <p>Chair Koenigs read the 2 conditions:</p> <ul style="list-style-type: none"> <li>• A 1’ x 6’ piece of freeze board shall be placed on the top of the shed overhand and shall follow the bottom line of the balcony just above the 1st floor to divide the back of the building facing the ocean.</li> <li>• No excessive light internal or external neon or otherwise shall be placed on the 2<sup>nd</sup> floor of the building.</li> </ul> <p>Linda Mailhot made a motion to accept the Design Review Certificate for the Harrisburg property located at 9 East Grand Avenue, seconded by Eber Weinstein.</p> <p>Planner Jeffrey Hinderliter stated that this will be followed by a site plan review.</p> <p>Robin Dube questioned where they will be having their loading dock?  Planner Hinderliter stated the deck that faces Kinney Avenue will be used to get the product into the building. They only have 2 ft. of space behind the building.</p> <p><i>Assistant Planner McLaughlin called for the vote:</i></p>	<p><b><u>ITEM 1</u></b></p> <p><b><u>MOTION</u></b></p>



<p>Win Winch - Yes          Ryan Kelly - Yes          Eber Weinstein - Yes          Vice Chair Linda Mailhot - Yes          Chair Mark Koenigs - Yes</p>	<p><b><u>VOTE</u></b></p> <p><b><u>(5-0)</u></b></p>
<p><b>Workshop Items</b></p> <p><b>1. Paradise Park Update</b>          Planner Hinderliter stated that we still don't have a definite answer as to whether the parcels that have been under question can 100% be developed as part of the campground. However, we are more confident that one parcel definitely has the potential to be proposed to be developed into campsites. This is what has been referred to as the pistol shaped parcel and this larger parcel is what the neighbors are most concerned about.          Mr. Hinderliter stated that he just received an Administrative Site Plan Review Application for a campground expansion from Paradise Park. Mr. Hinderliter is going to refer this to the Planning Board and what he expects the Planning Board to do as part of the review process is to determine if they feel that the lots are in Paradise Park Campground according to the 2004 campground overlay registration. The review will include public hearings, site walks, etc. so the public will be allowed to participate. We will expand the notification beyond our requirements. We will notify all of the condo residents.</p> <p><b>2. Design Standards</b>          The Planning Board has set their own agenda for this item going forward for design standards discussion for visioning</p> <p><b>3. Planning Board Procedures</b>          The Planning Board passed an internal procedural item to amend the Planning Board procedures from 14 days in advance of the meeting for submission to 17 days.</p>	
<p><b>GOOD AND WELFARE</b></p> <p>Win Winch questioned Planner Hinderliter about getting Planning Board staff notes to the Board Members at the workshop meeting on time so he can have enough time to go over the notes.</p> <p>Planner Hinderliter stated that is why he and Megan amended the procedures to add the 3 extra days to get submissions in. Assistant Planner suggested that it would be good to get the submissions electronically.</p> <p>Linda Mailhot stated that the Planner and Assistant Planner have a good action plan in place. Ms. Mailhot thanked the Planner and Assistant Planner for their hard work.</p> <p>Linda Mailhot also suggested that it would be great if a wireless microphone could be available for the meetings.</p>	
<p><b>ADJOURNMENT</b></p> <p>MARK KOENIGS, CHAIR</p>	
<p>Meeting adjourned at 11:25 pm</p>	<p><b>Adjournment</b></p>

*I, Valdine Camire, Administrative Assistant to the Planning Board of the Town of Old Orchard Beach, do hereby certify that the foregoing document consisting of twenty-six (26) pages is a true copy of the original minutes of the Planning Board Meeting of November 10, 2016.*

Waldine Amire