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## **OGUNQUIT ZONING BOARD OF APPEALS MEETING MINUTES APRIL 7, 2016**

### **CALL TO ORDER - 6:00 PM**

Members Present:    Jay Smith – Chairperson  
                             Glenn Deletetsky - Vice Chair  
                             Doug Mayer  
                             Jerry DeHart (1<sup>st</sup> Alternate)

Members Excused:    Peter Griswold - Secretary  
                             Mike Horn

Mr. Smith noted that a quorum was present, and that the Board would follow the agenda as posted.

### **ACCEPTANCE OF MINUTES – March 10<sup>th</sup> Meeting and April 1<sup>st</sup> Site Visit.**

**Mr. Smith Moved to Accept the Minutes from the March 10, 2016 Meeting as submitted. SMITH/DEHART 2:0 UNANIMOUS (Mr. Deletetsky and Mr. Horn were excused from the March 10, 2016 Hearing.**

**Mr. Mayer Moved to Accept the Minutes from the April 1, 2016 Site Visit as amended. MAYER/DEHART 3:0 UNANIMOUS (Mr. Deletetsky was excused from the April 1, 2016 Site Visit.**

### **UNFINISHED BUSINESS –**

**1.      OGUNQUIT SEWER DISTRICT – 5 Marshview Lane – Map 10 Block 53 – Resource Protection District (RP). Variance Appeal Under Article 5.2.B.1.a – Request to increase lot coverage over the maximum of zero percent allowable in the Resource Protection District.**

Mr. Smith noted that this meeting is a continuation of a case first heard on March 10, 2016.

Mr. Smith stated that he, and the other Board members, very recently received information that the Appellant may want to make some changes to the application.

Mr. Smith noted for the audience's benefit that at the March 10<sup>th</sup> meeting it was agreed that the Board has jurisdiction to hear this case. Also at the March 10<sup>th</sup> Meeting the Board voted to recuse Mike Horn because his wife is a Trustee of the Sewer District Board; and for him to hear this case would be a violation of the Zoning Board of Appeals By-Laws.

Mr. Smith stated that the Board heard from the Appellant and the public at the March 10<sup>th</sup> and April 1<sup>st</sup> meetings. He informed the public that nothing that occurs at this meeting will result in the issuance of a building permit or permission to build.

Also, the Zoning Board is not involved in design reviews of any kind. That is a job for the Planning Board.

Mr. Smith stated that the Zoning Board will not consider the Sewer District's financial solvency or its ability to float a bond, borrow money, or the attractiveness of the current interest rate.

Mr. Smith reiterated that the Board is not interested in the Sewer District's long range plans to relocate to another site. It is assumed that this is a given and that it will be done in a manner consistent with the Comprehensive Plan, sea rise projections, and FEMA Flood Plain Management Guidelines.

Mr. Smith stated that if the Appellant comes forward with a significant change in the original plan he will entertain a motion to table the application. He noted that the Board members received the new information late in the process, which is in violation of their policy. Normally the Board expects all documentation to be submitted well before the meeting date.

A motion to defer requires a second, it is debatable, it is amendable; and does require a vote. Any motion to defer will require the application be the first item heard at the next meeting.

Phil Pickering, Ogunquit Sewer District Superintendant addressed the Board. He asked permission to distribute material related to sea level rise. Permission was granted and the material was handed to the Board members.

Mr. Pickering summarized that he has done a great deal of work regarding sea level rise, the District considers it a serious situation and one of their major concerns. The report he distributed was done four years ago It was very detailed and comprehensive. Projections for future relocation of the treatment facility were based on this report. They anticipate they are relatively safe for the next 25 years however 50 to 100 years in the future they will need to be relocated. He suggested people visit the Sewer District's website for more detailed information.

Mr. Pickering noted that Wright Pierce Engineering recently reviewed the report and agreed with its findings. As a result the District began the recommended adaptations: elevating electrical and control equipment, and removing a generator from the Footbridge Beach Parking Lot. The next project involves the treatment facility.

Mr. Pickering responded to a question which was asked at the last meeting regarding sewer district billing.

Mr. Smith summarized that the cost of relocation will be passed on to the sewer district customers.

Mr. Pickering informed the Board that there are properties in town which are within 150 feet of a sewer line and have chosen not to connect. These property owners pay a \$165 Ready to Service Fee. Fees are based on the District's bond debts, the more a property uses the Sewer District the higher their Sewer Bill. If the treatment facility were relocated the Ready to Service Fee would increase to \$560. The average sewer bill is currently \$425 and would go up to \$900, the average motel or restaurant currently pays about \$6,500 which would increase to approximately \$14,800 over the next 20 years. Across the board the sewer fees would more than double everyone's bill.

Mr. Smith summarized that these figures reflect a total relocation of the treatment facility.

Mr. Pickering informed the Board that after looking again at the Town's SG1 Zone, it was confirmed that the SG1 District extends 30 feet beyond the south, west, and north sides of the treatment facility, and an additional 15 feet to the ocean side to encompass the sea wall. The sea wall was estimated to be at 17 feet in height, which is what they are looking at for the new building. The wall was resurveyed and it was determined to be 21.5 feet tall.

Travis Prior, from Wright Pierce informed the Board that the SG1 Zone encompasses about 2/3 of the proposed structure, which is still on Town owned land. This sets a precedent for past recognition between the Town and the District. They understand where the property boundary line is; however they need additional space to maintain the sea wall and the facility. The value of having immediate access, and having the administration building directly adjacent, to their property was recognized during the SG1 rezoning.

The other changes include a man lift replacement of the handicapped ramps. This was approved by the State Fire Marshal. This change eliminates a portion of the ramps at the side and front of the proposed structure. This reduction in the footprint allowed them to move the building closer to the treatment facility and closer to Ocean Avenue.

Mr. Prior pointed out that zoning requirements state that any proposed project immediately adjacent to another zone, where no setbacks are permanently in place, requires deferment to the immediately adjacent zoning. The setback requirements for SG1 is 10 feet for side, front, and rear. The most recent change to the plans include moving the proposed structure closer to the existing treatment facility, which requires a variance of the 10 foot side setback. This change will also save additional pitch pines. They estimate removal of 4 or 5 of the mature trees and 3 or 4 of the smaller trees.

Mr. Mayer asked if the pitch pines would be moved or removed, and if the applicants have looked at moving the trees.

Mr. Prior responded that they will be removed. They did not consider moving the trees because they thought replacement would be a more successful option.

Mr. Mayer asked if they would replace the removed trees with new Pitch Pines.

Mr. Prior agreed.

Mr. Prior stated that FEMA regulates a height of 3 feet above the 100 year storm or category 1 hurricane. The Applicant's plan is at 17.6. This is well above and beyond what is federally regulated.

Mr. Smith noted that this is a significant change to the plan.

Mr. DeHart asked for confirmation that the Applicant will place Pitch Pines across the street.

Mr. Prior agreed.

Mr. DeHart asked if they used the current flood map adopted by the State.

Mr. Prior responded that they used the Federal Flood Maps adopted by FEMA last year. He was unsure if it was adopted by Ogunquit. He added that many of these projects receive federal funding from the Clean Water Act and in order to receive these funds they have to comply with the Federal Regulations.

Mr. DeHart noted that the original plan called for a structure being built onsite; now the Applicant seems to be talking about bringing in modular units.

Mr. Pickering responded that there will be a concrete foundation supporting a split modular. The plan is to reutilize it when they move in 25 years.

Mr. DeHart reminded everyone that someone from the public was concerned about whether or not the Town could reuse that building, now the applicant is talking about taking it with them when they move. He suggested the number and quality of the recent changes might require the Board defer this application to a later date.

Mr. Smith agreed and added that there seem to be three significant changes to the plan. He asked if the foundation would be solid or open to allow for the free flow of water and sand.

Mr. Prior responded that Town Ordinances require it be open on three sides. They will use gate valves to allow water to flush through. This will give them cold storage under the building. The foundation will have solid walls with three gate valves that are kept closed during normal conditions and open during storms to allow water to flow through the cold storage area.

Mr. Smith asked about the dark dotted line on the newest plans. He asked if that area is the Sewer District's property.

Mr. Prior responded that this is the line which was proposed during rezoning for the SG1 Zone. The line on the plans does not reflect the Sewer District's property. It depicts the boundary between SG1 and RP.

Mr. Smith asked if the Applicant didn't include the Zoning line because they were unaware of its exact location.

Mr. Pickering responded that even on the Town's tax maps it's difficult to determine exactly where the SG1 Zone Line is located. The maps make it appear as if it is a property line however it is not.

Mr. Prior added that it is still outside the Sewer District's property and doesn't effect the application in terms of the above zero percent lot coverage in the RP Zone. Everything they are proposing is on Town property.

Mr. Smith expressed concern regarding the changes to the type of variances needed and how great a variance is needed. He noted that even with the changes some of the Pitch Pines will be removed.

Mr. Prior stated that the deed was put in place almost 50 years ago. Last year when the Town went through its rezoning it was noted that the treatment facility and the beach parking lot were already in place; which is why the Town noted that they need to be in conformance, thus the adoption of the SG1 Zone. The Town also recognized that it needed to extend the buffer to allow for large maintenance vehicle access. This indicates a willingness to "sacrifice" some of the buffering around the Treatment Plant.

Mr. Mayer noted that the original deed indicates that the entire length of the beach was to be preserved as a park. He asked if the Sewer District purchased the property or if they leased it long term.

Mr. Pickering responded that the Ogunquit Sewer District owns the property outright.

Mr. Smith asked for confirmation that the Sewer District only owns the land inside the perimeter fence.

Mr. Prior agreed.

Mr. Smith stated that they need a variance to go outside that property line.

Mr. Prior responded that their change in variance requests is, in addition to allowing more than zero lot coverage, to reduce the setback in the SG1 Zone from 10 feet to zero which would allow the proposed building to be pulled closer to the treatment plant.

Mr. Deletetsky asked when the property was last surveyed.

Mr. Pickering responded that it was surveyed last fall. There was a boundary survey, topographic survey, and confirmation of the deeds.

Mr. DeHart asked for a copy of the deed.

Mr. Mayer asked if the heavy dotted line on the plan is the boundary between the SG1 and RP Districts.

Mr. Pickering responded that it is assumed to be the boundary. He stated that the online town map makes it difficult to see. He agreed that the boundary between SG1 and RP is 30 feet beyond the treatment facility property line.

Mr. Smith pointed out that the Comprehensive Plan indicates five critical areas which deal with the dunes and Pitch Pines. These five areas are identified as critical and are registered with the State of Maine Critical Areas Program. Two of the five areas are impacted by this case: the Dune Area and the Pitch Pine Stand Area.

Mr. Smith noted that there are several sections of the Comprehensive Plan that deal with planning implications in critical areas. He suggested this must be a relevant piece of any decision the Board makes. He pointed out that the Maine Critical Areas Program has been superseded by the Maine Natural Areas Program which doesn't negate the fact that these are special interest areas. Mr. Smith noted that there is a great deal of language in the Comprehensive Plan that outlines what can, and cannot, be done in special interest areas. He noted the Plan includes language like "prohibit". The State Planning Office has identified the Pitch Pine Stand near the Sewer Treatment Facility as a "significant natural area containing an outstanding example of the Pitch Pine Sand Dune plant association".

Mr. Smith suggested that there are a number of significant implications of "messing around" in the dune and Pitch Pine Stand areas that are more State than locally focused.

Mr. Smith pointed out that the Comprehensive Plan also has a lot of language referencing further development in the flood plain or flood prone areas; and that it should be avoided.

There is also a section dealing with sea level rise and indicates that the dunes are particularly vulnerable.

Mr. Smith quoted from the Land Use Plan which states that "the Town's land use regulations should continue to limit uses that do not adversely impact the resource value of these areas and to prohibit virtually all development".

Mr. Smith read Article 5.5.2.b of the Zoning Ordinance which requires DEP input for any cases involving Shorland Zones. Mr. Smith expressed concern that the Board hasn't received input from the DEP or the Maine Natural Areas Program. He asked the Code Enforcement Officer why the Board doesn't have anything from the DEP.

Scott Heyland responded that his office mailed notification of the application on February 12, 2016. He followed up with a telephone call to Mike Morse in Portland who stated that if the DEP doesn't respond within 20 days it means they have no comment. He added that the DEP was notified of a variance request, he can't be sure it reached the level of individual responsible for reviewing things like dunes and pitch pine stands.

Mr. Mayer stated that the ordinance requires comments from the DEP be made part of the record. In this case there were no comments to be made part of the record.

Mr. Heyland agreed.

Mr. Prior informed the Board that he went to a pre-application meeting with the DEP and DEP representatives came out to the site. David Cherry and Bob Green from DEP met with the applicant last fall as a follow-up to the pre-application meeting. They stated that the parcel the Sewer District owns is fully developed and that the applicant could look to develop on the Town's parcel because it is well under the State's threshold for building coverage area. They screened the area for endangered or threatened species and didn't find any. The Pitch Pines were identified as significant however there are no regulatory requirements behind that. If the application were to go forward they would still have to appear before the Planning Board, and the DEP and Inland Fish and Wildlife would be involved. The DEP won't weigh in on an application that involves land not actually owned by the applicant which is why they need the variance before they can approach the Town for an easement.

Mr. Smith asked what "registered with the State" involves.

Mr. Prior responded that the trees were considered to be significant but they don't meet any State or Federal thresholds as endangered or threatened species. The trees are unique and they don't grow anywhere in the State of Maine except Ogunquit. He agreed that the Town clearly considers them culturally significant.

Mr. Smith reiterated that there are policies in the town to prohibit development in, or adjacent to, these critical areas. He noted that the Comprehensive Plan is policy while the Zoning Ordinance is law however the two are joined together.

Mr. Prior asked the Board to consider that the Sewer District is separate from Town government because of the Clean Water Act. The Board needs to weigh the negative impact of a catastrophic failure of the facility and its effect on the Pitch Pines and other eco systems of the beach. He asked the Board to think about the short term impact vs. the long term impact of a catastrophic system failure of the facility.

Mr. Smith reminded the Applicant that in order to be granted a variance they will need to meet all the requirements of Article 5.5.2.b. of the Zoning Ordinance. He expressed his desire to take a fresh look at the application and information particularly given the recently submitted changes.

The Board agreed that they need a copy of the deed in order to overlay its language over the site plans.

Mr. Heyland summarized what the Applicant is asking for:

Variance of lot coverage up from zero percent in RP and up from 20 percent in SG1. Mr. Heyland pointed out that part of the proposed structure will be in the SG1 where the beach parking lot and bath house are already located. He explained that if the SG1 coverage already exceeds 20 percent the applicant will need a variance for the amount of additional building coverage he proposes in that zone. Also, the Applicant needs a variance for whatever percent of building coverage he proposes in the RP Zone.

Mr. Smith stated that the Board will need a revised application that specifically details what the Applicant is asking for. A variance for lot coverage in the RP Zone and the SG1. The Board needs the specific numbers for each zone.

Mr. DeHart agreed that the Board needs to know what percentage of the SG1 is already covered by the parking lot and beach house.

The Applicant is also now asking for a ten foot variance for relaxation of the side setback to bring the new building up to the property line.

Mr. Prior stated that the newly proposed building design reduces its footprint from the original proposal. The applicant doesn't need the 10 foot buffer between the new administrative building and the treatment facility which is why they want to bring the new building right up to the property line. Their goal is to tuck the new building as close to the existing facility as possible.

Mr. DeHart reiterated that what the Board is being presented now is a new application.

Mr. Heyland noted that when the most recent map, with the overlay, was adopted there was some confusion. The map still has some discrepancies. Ultimately the map is representative; it is the text which should be referred to.

Mr. Mayer suggested the key term is "already developed land". He suggested the developed land ends at the Sewer District's boundary, the fence line, not 30 feet beyond.

Mr. Heyland agreed and added that no one could argue that the pitch pine area is developed, it isn't. Mr. Heyland added that the request for coverage is .011; a minimal number.

Mr. DeHart asked if the building has also been moved closer to the existing road.

Mr. Pickering agreed and added that this parking area has been calculated as developed.

Mr. Heyland added that the shape of the SG1 box has a leg off of it where the parking area is located.

Mr. Pickering informed the Board that this was the original entrance to the facility.

Mr. Smith suggested review of the tables which outline what can, and cannot, be done in the SG1 Zone. He also asked if there was additional documentation needed to determine whether or not the Applicant can meet the four criteria of Section 5.5.2.b of the Ordinance. He also pointed out that it is not illegal to have a public structure in the RP Zone.

Mr. Dehart again suggested that this is a new application and he wanted to be sure that the public has the opportunity to review the new material and make their comments.

Mr. Mayer again noted that they do not know the exact boundary line between the GB1 and RP Zones.

Mr. Deletetsky asked about the survey.

Mr. Pickering responded that the surveyor didn't look at the zoning districts.

Mr. Deletetsky stated that the survey would show the property boundary line.

Everyone agreed that the location of the fence is the property boundary line, and the boundary of the currently developed area.

Mr. Mayer stated that the new application has less of an impact than the original.

Mr. Dehart asked the applicant if he could get the surveyor to stamp the plan with the zone boundary.

Mr. Heyland responded that it is ultimately the Code Enforcement Officer who determines where that boundary line is located and if there is disagreement between the Code Officer and the Applicant it is up to the Zoning Board to make the determination. He added that the parking area and roadway could be argued as development.

Mr. Smith asked if there was anyone in the audience who wished to be heard.

Newell Perkins addressed the Board. Mr. Perkins suggested the Board does not have proof of right, title, and interest and they shouldn't even look at the application without it. He researched the Ogunquit Beach District which was established by Legislature in 1923; and it was all of the area the Sewer District now occupies. In 1962-3 Olden Jacobs surveyed a parcel of land 300'x250'. He marked it with wooden stakes; he also measured from that parcel to the Ogunquit town line and back. That parcel is absolutely fixed as to where it is located. Mr. Perkins stated that he has read the deed and suggested the Sewer District provide a copy to the Board. The transfer was for the parcel and the road only, no mention of any expansion. Mr. Perkins also discovered a 1973 Quit Claim Deed wherein the entire beach was transferred to the Ogunquit Village Corp.

Mr. Perkins also suggested the Board should have the survey.

Mr. Smith asked if there was anyone else who wished to be heard. There was no one and the Public Session was closed.

Mr. Mayer agreed that the Board should have proof of ownership in the form of the deed.

Mr. DeHart suggested the Board should defer until it has time to further review the changes and until the applicant provides additional documentation.

Mr. DeHart Moved to Defer the Application with conditions.  
DEHART/DELETETSKY

**Mr. DeHart Moved to Defer the Hearing of the Application pending submission of the following documentation:**

- 1. Copy of the deed indicating the 30' leeway;**
- 2. A copy of the Code Enforcement Officer's letter to the DEP;**
- 3. Memo from the Code Enforcement Officer indicating where he determines the zoning boundary line to be and the percentages / setbacks in each zone;**
- 4. Site Plan indicating the location, size, and type of trees to be removed and what they will be replaced with;**
- 5. Survey indicating where the zone line is located.**

**DEHART/DELETETSKY 4:0 UNANIMOUS**

**NEW BUSINESS – None**

**CODE ENFORCEMENT OFFICER BUSINESS – None**

**OTHER BUSINESS –**

Mr. Smith reminded everyone that the Town is working on revising the Comprehensive Plan.

**ADJOURNMENT -**

**Mr. Mayer Moved to Adjourn at 7:40 p.m.**  
**MAYER/DEHART 4:0 UNANIMOUS**

Respectfully Submitted  
Maryann Stacy  
Maryann Stacy  
Recording Secretary

Approved on May 26, 2016

