

**FALMOUTH PLANNING BOARD  
TUESDAY, APRIL 5, 2016, 6:30 P.M.  
MINUTES**

**MEMBERS PRESENT:** J. Chace-Chair, J. Cole; T. McKeon; R. Israel; B. Kaplan.

**MEMBERS ABSENT:** C. Hickey

**STAFF PRESENT:** Ethan Croce, Sr. Planner; Lisa Sangillo, Recording Secretary

Chair Chace brought the meeting to order at 6:33 p.m. Mr. Chace informed the public that the public hearing related to the Ocean View ordinance amendment was removed from the agenda.

**Item 1** Approval of minutes from the February 2, 2016 Planning Board meeting.

Mr. Israel moved that the minutes of the February 2, 2016 meeting be approved as written. Mr. McKeon seconded. Motion passed 5-0.

**PUBLIC HEARINGS:**

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**Item 2** Amendment to the Zoning and Site Plan Review Ordinance to permit off-premise signs in the Business Professional District where egress to a lot is located off-premise.

Amanda Stearns, Community Development Director, gave an overview of the amendment. Mr. Chace asked what provision/allowance the ordinance has regarding sign co-location with another business. Ms. Stearns explained that the ordinance currently looks at the square footage with a total of 2 signs allowed with no restriction on the number of panels. She stated that if a business is eligible for an off premise sign, the first step would be to get permission from the current business owner.

Mr. Chace asked if the Board had any comments. There were no comments from the Board. Mr. Chace then asked if anyone from the Public wished to comment. There were no comments from the Public.

Mr. Chace asked for considerations from the Board. Mr. McKeon had no problem with voting to recommend the amendment and motioned to send a positive opinion to the Town Council. Mr. Kaplan seconded the motion. Motion passed 5-0.

**Item 3** Amendment to the Zoning and Site Plan Review Ordinance Sec. 19-23.11 Master Development Plan Time Limits, in order to extend the Tidewater Master Plan Development District an additional six months.

Mr. Croce explained that the Board had previously voted on two other six month extensions and that this amendment would just extend the expiration date out six more months. Mr. Israel asked if the 6-month extension was adequate. Mr. Croce stated he couldn't answer that question, but the parties involved were hopeful that they could meet that deadline.

Mr. Chace asked if any members of the public had comments. There were no public comments.

Mr. Chace asked if there were any additional comments from the Board and echoed Mr. Israel's comment. Ms. Farber spoke on the items the parties are trying to complete by the extension deadline and why they chose not add more than six months to the time extension.

Mr. McKeon motioned to recommend the 6-month extension. Mr. Israel seconded. Motion passed 5-0.

**Item 4** Amendment to the Zoning and Site Plan Review Ordinance to remove the sunset provision for minor site plan review and to increase the allowed size of building additions for any one application from 500 to 1,000 square feet.

Karen Farber, Town Councilor, gave an overview of this ordinance. The sunset clause was implemented in the event that the process was not working well. The process has been successful and the Town Council wishes to remove that sunset provision. They also wish to increase the maximum size of one-time building additions allowed from 500 s.f. to 1,000 s.f.

There were no clarifying questions from the Board and no public comments. Mr. McKeon motioned to recommend the amendment to the Town Council. Mr. Israel seconded. Motion passed 5-0.

#### **AGENDA ITEMS:**

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**Item 5** 469 Doten LLC – 2 Hat Trick Drive– Request for Site Plan Amendment to the Rivalries restaurant approval to remove the requirement for certain shared parking on Lot TV3. Tax Sheet 320, Map-lot U52-006-001. Zoned TMPDD.

Mr. Croce gave a presentation of the ordinances and standards that apply to this application. Jim Cloutier, attorney representing the applicant, gave an overview of their application before the Board. He explained that the 20 parking spaces that they are asking to be deleted from the plan approval were weekday night and weekend spaces only. He explained that the legal aspect of the agreement for these spaces has been complex. The spaces are part of a property that is being sold and has not yet closed; therefore, the applicant has recalculated their parking plan in order to move the project forward.

Bill Bray, traffic engineer from Traffic Solutions, gave an overview of the revised parking study. He handed out a revised Page 9 from the Parking Study. They took the 2015 study and all references to the 20 shared parking spaces in the report, removed them, and recalculated the parking supply and demand. He stated that the loss of these parking spaces only impact times after 5 p.m. weekdays and on Saturday and Sunday. He identified for the Board the edits to Table 7, where the numbers have changed by 1 parking space. He read into the record the changes to Table 7 as follows:

- Weekday - Noon 50 parking spaces
- 5 pm 62 parking spaces
- 7 pm 103 parking spaces
- Saturday - Noon 45 parking spaces
- 5 pm 88 parking spaces
- 7pm 110 parking spaces

Surplus

- Weekday - Noon 4 extra parking spaces
- 5 pm 34 extra parking spaces
- 7 pm 17 extra parking spaces
- Saturday - Noon 75 extra parking spaces
- 5 pm 32 extra parking spaces
- 7pm 10 extra parking spaces

Mr. McKeon questioned Mr. Bray about Table 7 vs. Table 6 stating that he understood “controlled spaces” were ones provided to Rivalries with no competition. He asked if the 20 parking spaces across the street are nailed down. Mr. Bray stated they were. Mr. McKeon then confirmed with Mr. Bray that on the weekends, there would be no competition for those off-site parking spaces.

**Public Comments:**

Tom Mundhenk of 25 Marigold Lane was dismayed at the current proposal. He stated he watched the original meetings. He critiqued the Board’s reaction to the parking proposal where they suggested possibly getting rid of the 9 parallel parking spaces to appease the neighbors. He stated the applicant would not give those parking spaces and now they are getting rid of 20.

Susan Gilpin of 18 Heron Point Road is happy that the Tidewater Master Plan was extended. She feels the parking should be directed away from Farm Gate Road to Clearwater Drive. She feels there is no point in having the 9 spaces on Farm Gate Road as they reduce the buffering that is required. She urged the Board to rescind the 9 spaces on Farm Gate Road.

Andrew Hudson of 19 Marigold Lane feels there is a big flaw in the parking study that is based on a very generic model of a restaurant. He stated Rivalries is a sports bar. He explained that the business model for a sports bar is very different from a restaurant, and the parking demands would probably be much higher than what’s shown in the study.

Mark Eule of 18 Marigold Lane is also worried about parking. He sees that the applicant is basically asking for a reduction of a little less than one third of their parking. He asked staff how the applicant became aware that these spaces were no longer available. Chair Chace stated that the Board does not engage in a question and answer session during the public comment period, but the Board will do their best to answer questions after the public comments.

Russ Anderson of Marigold Lane explained that not everyone in the neighborhood is in opposition to this project or the current proposal. He is looking forward to the restaurant being within walking distance to his house. He stated he doesn't know of any data that will show this restaurant's parking needs are any different from any other restaurant. He feels it's important to have adequate parking as it relates to Town ordinance and urged the Board not to require more than that.

**The public comment period was closed.**

Mr. McKeon began the discussion among Board members regarding this application. He feels Mr. Bray's revised numbers are more closely in line with what the restaurant will need. He feels he would be inclined to vote for the amendment.

Mr. Israel wondered about the assumption that 100% of Clearwater Drive parking would be used solely by Rivalries. Mr. McKeon asked what happened with the 20 spaces that are proposed to be removed. Mr. Cloutier stated nothing happened with the 20 spaces. They were built and have existed for many years. The 20 spaces are, in fact, available to anyone who wants to use them. Bateman is buying the property from Emery Waterhouse. The parking lease with Bateman has been signed; however, in the event that Bateman does not close, the parking spaces would not be for Rivalries use because the current property owner, Emery Waterhouse, wants to reserve the right to negotiate a different arrangement in the future. They don't feel comfortable with not having the right to cancel the lease. As the 20 spaces did not add a lot of functional capacity to the site, the applicants are seeking to remove them instead. They want to begin construction instead of waiting for the Bateman/Emery Waterhouse sale to close.

Mr. Cole asked about previous discussions and decisions and questioned if he should recuse himself on this amendment this evening. Mr. Croce stated the question would be if Mr. Cole has familiarized himself enough with this application to be comfortable voting. Mr. Chace stated that as this is an amendment, as in any other amendment where a Board member may not have been present for the original proceedings, Mr. Cole is not barred from voting as long as he's comfortable with his understanding of the information provided.

Mr. Chace explained, for the Public and Board, the parking requirements with respect to the ordinance. He feels the numbers are close but still within the parameters.

Mr. Cole stated his concern that the parking availability was being cut very close without any wiggle room if the estimates fall short. Mr. Kaplan asked if the study takes into account seasonality. He feels the outdoor seating wouldn't be used in the winter. Mr. Bray stated he calculated the parking on the full occupancy of every seat at the restaurant. He portrayed a conservative, worst case scenario to calculate needed parking spaces and felt very comfortable in these calculations.

Mr. McKeon stated he understood the neighbors' concern about parking and understood Mr. Bray's revised parking. He feels comfortable with the changes proposed by the applicant.

Mr. Israel asked Mr. Bray about the Clearwater public parking spaces and what percentage of those parking spaces were currently being used. Mr. Bray stated they conducted a limited parking survey, and there were only 3 times where spaces were occupied on the undeveloped TV3 lot. This could change if and when TV3 is developed, but at this point in time, they can't predict for certainty what impact that will have.

Mr. Chace stated that the Planning Board received many emails with comments regarding this application that would be made part of the public record.

Mr. Chace then asked if any conditions were drafted. Mr. Croce stated that the conditions from the prior approval would carry forward.

Mr. McKeon moved to approve the amendment. Mr. Chace seconded the motion and noted to the public that if there was deemed to be inappropriate parking on Farm Gate Road, the Town Council was the venue to address that concern. Motion passed 4-1 (Israel).

**Item 6 Falmouth Self Storage, LLC** – 50 Gray Road– Request for Pre-Application Sketch Plan Review for 19,350 square feet of additional storage units and for a two-unit residential building. Tax Sheet 451. Map-lot R05-045. Zoned MUC, LR & RP (Shoreland), RTE100CO.

Mr. Croce provided a zoning overview of the application. Tom Greer gave an overview of the application to the Board. He began by stating that they would be filing a DEP application in the near future. He stated that two of the additional storage units would be the traditional units that are there now and there would also be one climate controlled unit as well as a duplex dwelling unit for onsite staffing.

Mr. Chace asked Board members for any points of clarification. He then opened up the Public Comment portion of the application. There were no public comments.

Mr. Chace explained what the Board looked at during the original submission of this application in 2013 as background for the audience. Mr. Israel stated that since this was recently approved under current standards he has no opposition to this application.

Mr. McKeon stated that there was some comment about this being seen from the river. Mr. Greer stated that very little would be seen. They are on a steep hill and if someone were canoeing on the river they would see a little bit of the duplex being roughly 200 feet away. Mr. Cole has no concerns at this time. Mr. Kaplan has no concerns at this time as well.

Mr. Chace stated that the waiver request seemed like a reasonable request and he had no issues as the landscape architect was fully involved in the original project design from the previous approval.

**Item 7 Tall Trees Construction Corp.** – Foreside Road—Request for Pre-Application Sketch Plan Review for a 5-lot subdivision. Tax Sheet 162, Map-lot U14-014. Zoned RA, RCZO.

Mr. Croce provided a zoning context as it relates to the application. Peter Biegel of Land Design Solutions, representing the applicant, Brad Gilbert, gave an overview of the application. He stated that Mark Hampton from Mark Hampton Associates completed the wetland delineation. He stated surveying of mature trees was only performed in the areas slated for potential development. He then presented the site analysis explaining all the conservation areas to be set aside. He proceeded to explain the site distance along with a traffic survey that was done by Bill Bray. He pointed out two obstructions, one being on the property and the other on abutters' properties. The abutters are amenable to having the obstructions removed to have a clear site distance. The final plan was the subdivision plan where he explained that the road is 1,100 feet long and designed to avoid placing the road through any wetlands. He stated that the ordinance requires 3.32 acres of open space, and they are proposing 3.62 acres of open space.

There would be underground power, water and sewer. They believe they will need an infiltration basin about half-way down the road and perhaps another near the beginning of the road at Foreside Road to handle the stormwater. He stated that the Maine Natural Areas Program stated that there may be variable sedge on-site. As they cannot look for it until May, they won't be moving forward until this is resolved. The Maine Historic Preservation Commission does not have any concerns with the development. Due to Mr. Croce's concern in his notes regarding the house lot situated close to the wetlands, Mr. Biegel stated they would be open to enhancing the buffer in the setback between the lot and the wetlands.

Mr. Israel asked about the obstructions and the abutters with respect to the site distance. Mr. Biegel stated the abutters were all in agreement with clearing the obstructions and the project itself, and he hoped to have a written letter from them in the next submission.

Mr. Israel asked about Lot 2. Mr. Biegel pointed out the very narrow finger wetland on-site that was most likely hand dug at some point that they intend to fill. Mr. Israel asked if they needed a permit to fill that area. Mr. Biegel stated they would only need a permit from the Army Corps of Engineers as they are under the 4300 s.f. threshold for DEP. Mr. Cole asked if that drainage ditch currently carries water. Mr. Biegel stated it dead ends and collects the water currently.

Mr. Chace opened up a public comment period.

Ross Wadland of 18 Knight Street stated that he was speaking for a large number of attendants at the meeting this evening. There is concern regarding the level of wetness to the land as there is a significant amount of standing water, which affects the drainage to Knight Street. He stated the wetland survey was done in mid-December, which is not an ideal time to do the wetland survey. Spring would have been an ideal time. He handed out a summary of his comments, which included wetland mapping performed in mid-December, more thoughtful concern about vernal pools, botanical features, as well as a wetland map from 2010 from the Maine Inland Fisheries and Wildlife.

Dave Herring of 10 Ricker Road was concerned about the traffic and safety as well as hydrology and drainage issues experienced on Ricker Road. He feels there is a lot of downplaying when it comes to impacts of the proposal.

Pete Baker of 20 Knight Street was also concerned about the drainage issues and felt a hydrogeological assessment would be pertinent. He was also concerned that the developer was attempting to preserve an area for a thru-road to Route 1.

Mike Pearce of 16 Knight Street is a lifelong resident of Falmouth. He explained the water displacement due to the Applegate project and added that the ditch the Planning Board previously required be installed is not being maintained. He was concerned about a new subdivision being installed, experiencing another water situation/drainage issues, and the impact of this subdivision on neighboring properties as well as traffic, vehicular, bicycle and pedestrian,.

Public comments closed.

Mr. Cole stated that he was concerned about the water issues that are present on the currently undeveloped site as the ability to manage this drainage issue is critical to the project. Mr. McKeon stated there was concern with the wetland mapping. He asked Mr. Croce if this was something that could be peer reviewed. Mr. Croce stated it was. Mr. McKeon asked what the legal status of the trail would be after it leaves the open space and if it would be an easement across lot 4. Mr. Biegel stated they could make it part of the open space and stated Mr. Shafto of the Falmouth Conservation Commission informed him they needed only an 8-10 foot wide space to put a trail in the open space. Mr. McKeon wondered if there was a way to configure the open space to connect to the Town owned space and provide more open space to the rear of the lots next to town land. Mr. Biegel stated he understood what Mr. McKeon was saying and pointed out the prime building areas that were at the back of the property in this area and how there may not be much flexibility in cutting into these building areas for open space. Mr. McKeon stated when the applicant comes back, the Board would want to know if the open space is dedicated to the Homeowners Association or to the Land Trust or Town.

Mr. Kaplan referred to the pond offsite and asked how the water runoff would affect the pond. Mr. Biegel stated the pond was above the project and the water runs away from the pond and stated it would all be factored into their stormwater model. He stated that the applicant does not want to build houses in a pond and it behooves them to make sure they're done well stating they would have to come up with something onsite that helps with water quality and quantity. Mr. McKeon stated it would be helpful to have the abutter concerns addressed by the next submission. He also suggested that Mark Hampton go out and double check his report. Mr. Biegel stated he was sure he could. Mr. Chace felt the timing was right for them to do a vernal pool study and a wetland study. Mr. Chace would like to have a peer review done on the drainage issue. Mr. Biegel stated he had no problem with a peer review.

Mr. Chace asked Mr. Croce about street connectivity and what the context would be related to this subdivision. Mr. Croce stated the developer was required per the ordinance to provide at least a paper street connection if not a physical connection. Mr. Chace also asked Mr. Biegel to re-examine lot 3 as to the 50' setback to wetlands. He noted he was not ready to consider the request for consideration of a waiver for a high

intensity soil survey. With respect to Lot 2, he asked Mr. Biegel if he would propose to maintain any hydrologic connection between the main wetland feature and the pocket or would they fill it in. Mr. Biegel stated they would not fill it as there is a possibility it may dry up on its own. He stated it didn't seem large enough to put a hydrologic connection, and they would let it do whatever it does.

Mr. Israel confirmed that staff reminded the applicant what approvals they needed from the Town Council to make the road public and connect the sewer.

Mr. Chace asked if the project would require a DEP permit. Mr. Biegel stated they do not believe they will need a stormwater permit, but would need an Army Corps of Engineers permit which will trigger the US Fish and Wildlife to look at bat habitat. Mr. Croce stated that the Cumberland County Soil & Water District (CCSWD) typically reviews the all stormwater plans and erosion and sedimentation control plans and asked if the Board was looking for something beyond that or in addition to that regarding the referenced peer review. Mr. Chace was hoping that a peer review would delve further into hydrology than a typical CCSWD review. Mr. Cole stated it would be something that would be able to accommodate not only this subdivision, but the surrounding properties with respect to the referenced drainage problems. Mr. Chace stated it was important to note that the applicant is not responsible for fixing existing problems, but to not make the problems worse.

**Recessed for 5 minute break at 9:08pm**

**Meeting called back to order by Mr. Chace at 9:15pm**

**Item 8 Charles Harriman** – 98 Field Road – Request for Preliminary Approval for a 4-lot subdivision. Tax Sheet 210, Map-lot R03-076-A, Zoned F, RCZO.

Mr. Croce gave a zoning context overview for the Board. Keith Smith of Terrence J. DeWan Associates gave an overview of the application this evening including what has changed since the previous meeting. Mr. Chace stated that a quick overview of the 4-step process would be helpful. Mr. Smith proceeded to quickly go over the 4-step process.

Mr. Smith then addressed staff comments. The first was the waiver from producing the Resource Impact and Conservation Plan. He addressed staff's concern regarding Step 2 of the 4 step process where lot 3 was 75 feet from the steep slope. He stated that the requirements were generally 100 feet from the conservation area, but they can relook at that if warranted. He showed the tree save area on lot 3 and removing that area from the building envelope as well as a reference on the plan to preserving those trees. He stated that adding some deed reference as to retaining those trees could be accommodated if that's what the Board wants. Regarding the Field Road view shed, Mr. Smith provided an updated visual of lot 4 where they increased the buffer slightly and stated that the view would remain the same as previously shown but would be somewhat obscured.

**Public Comments:** Lisa Patterson of 97 Field Road which is across the road from Charles Harriman's house doesn't feel developing a house in the field is appropriate.

Lot 4 is a bone of contention, and she would also like more of a buffer by possibly adding trees along the road so they aren't staring at lot 2's house.

Dave Gagnon of 121 Field Road stated that he's a member of the Land Management Acquisition Committee (LMAC) and informed the Board that they don't get quite enough set aside land in the upper corner near lot 3 to keep the trail that is there as they need an additional 35 feet. He stated it was understood that it would be protected, but it isn't. Mr. McKeon confirmed with Mr. Gagnon that there was part of the trail on the remaining land of Mr. Harriman. Mr. Smith confirmed this. Mr. Chace stated they had previously received the LMAC concerns about the trail being protected.

Mr. Gagnon hopes that the previous comments are still reviewed and taken into consideration as he feels placing a house in the middle of the prime view shed was wrong.

Mr. Chace stated they did receive a memo from Bob Shafto on behalf of LMAC.

### **Public comments closed.**

Mr. Chace stated that the Board previously identified the view shed as being the most critical area that needed to be addressed. Mr. Chace stated that in Step 2, 3 out of the 4 buildings are placed in the critical view shed. He then stated that the ordinance allows for reduced lot sizes and dimensions to protect view sheds. Mr. Smith stated that he's allowed to develop the land that's shown on Step 2, but the applicant has also set aside several acres for town open space. He stated it's difficult for Mr. Harriman to "squish down" this development because he bought beautiful land and it seems like a punishment to do so. Mr. Smith stated his objective was to create a balance for everyone. He then referred to the tax map and trying to find smaller lots in the area is difficult. Mr. Chace stated he understood but that existing house lots in the area were developed in a different era under different ordinance requirements and he felt there were more opportunities to strike a better balance.

Mr. Chace asked staff about the two other existing Field Road lots that were identified as part of a previously approved subdivision, the Montgomery lot and the Shattuck lot. Mr. Croce stated that the only undeveloped and approved lot there is the triangular Montgomery lot. The Shattuck lots were merged and so is all one house lot. Mr. Smith confirmed that the Sperry lot was still a buildable location, but would have to come back before the Planning Board to make a new lot. Mr. Croce stated the property owner could put a shed, barn or other accessory structure in the viewshed but not a house. Mr. McKeon asked if the applicant has approached the Town yet to turn over the open space. Mr. Smith stated that LMAC had stated their willingness to take this land but they have not approached the Council yet. Mr. McKeon stated there are still a lot of comments from Staff that need to be addressed. He also stated he agreed with Mr. Chace's comments but also noted that the Town was getting a lot of valuable open space. Mr. Smith stated that there would be planting mitigation that would still be required. If lots 3 and 4 are pushed back, they would still be visible.

Mr. Chace stated that lot 4 continues to require attention. Mr. Cole asked who was responsible for the maintenance of vegetation and plantings. Mr. Smith stated the Covenants and Restrictions outline that as well as stormwater, road maintenance and

street trees, etc. Mr. Chace confirmed with Staff that the Board was allowed to require a field and viewshed to be maintained as part of the subdivision approval as was done with another previously approved subdivision. Mr. Croce said that was done with the former Overlook Farms Subdivision which is now owned by the Land Trust as Hurricane Valley Farm. Mr. Kaplan asked about design standards for the homes. Mr. Smith stated that Mr. Harriman will oversee the design of the houses and either accept or reject what's being proposed on a particular lot. Mr. McKeon stated before final approval, the Board will need to see those legal documents and also address the maintenance issues staff raised in the notes.

Mr. Smith stated Mr. Harriman was amenable to having a discussion with the abutter about maintenance of the buffer.

Mr. Chace stated that if the Board is not at the point where they are satisfied with the 4-step design, then it's up to the applicant to come back with additional information. Mr. McKeon stated that the Board has the discretion to consider more than the minimum amount of open space required by ordinance. Mr. Croce confirmed Mr. McKeon's comment. Mr. Kaplan asked if there could be a height restriction on the building on lot 4 to preserve the viewshed and/or a square footage limitation. Mr. Croce stated that the Board has a lot of discretion in reviewing projects and can impose any such restrictions or conditions it feels is warranted if necessary to comply with the Town's regulations and standards.

Mr. McKeon stated that given the present proposal and lot 4's impact, he would likely vote against the proposal. It may help to restrict lot 4's building envelope or use a smaller home and place it closer to the road. Mr. Cole agreed as well. Mr. Smith asked if that was something that they could do with preliminary approval with conditions so the project could move forward. Mr. Chace stated that he didn't think the Board could grant a preliminary approval without seeing what they are approving. Mr. McKeon agreed.

Mr. Israel asked what they are looking for with lot 4. Mr. McKeon stated that what he is looking for is not what is being proposed. Nancy St. Clair of St. Clair Associates who is part of the application team, stated that the Board had the leeway to waive geometric standards for the roadway. She asked if the Board would be amenable to road modifications as the Board has discretion to approve those modifications. Mr. Croce stated that the Town Engineer and the Public Works Director would want to have input in any proposed change to the street design, especially if there is any intention of the road becoming a public street. Ms. St. Clair confirmed with the Board that they were amenable to landscape treatment buffering, restrictions on location, more covenant type issues if they were to come back with an alternate plan. Mr. McKeon stated it always helps to answer the question "how do we know it will stay that way". She then went over the things they are doing to maintain a balancing act with respect to the development.

Mr. Smith asked if the Board was fine with the fact that they don't want to bring water over from the Cavendish subdivision. Mr. Chace stated they were.

The Board then voted to table the application.

**Item 9 Election of Planning Board Officers**

Mr. McKeon nominated Mr. Chace to continue as Chair, Mr. Cole seconded. Mr. Israel nominated Mr. McKeon as Vice Chair, Mr. Chace seconded. Motions passed 5-0.

**Meeting adjourned at 10:26.**