

**OLD ORCHARD BEACH TOWN COUNCIL
AND
SACO CITY COUNCIL
COMBINED WORKSHOP
April 8, 2009**

A combined workshop with the Old Orchard Beach Town Council and the Saco City Council was held on Wednesday, April 8, 2009 at 7:00 p.m. at the Saco Transportation Center for the purpose of discussing Saco Bay Boundaries.

Present:

Chair Sharri MacDonald	Old Orchard Beach Town Council
Vice Chair Robin Dayton	
Councilor Laura Bolduc	
Councilor Mike Tousignant	
Councilor Shawn O'Neill	
Town Manager Steve Gunty	
Assistant Town Manager V. Louise Reid	
Mayor Ron Michaud	Saco City Council
Councilor Arthur Tardiff	
Councilor Sandra Bastille	
Councilor Leslie Smith	
Councilor Ron Morton	
Councilor Marston Lovell	
Councilor Patricia Mills	
Councilor Eric Cote	
City Administrator Rick Michaud	

Others in Attendance:

**Representative George Hogan
Senator Barry Hobbins
Gary Lamb
Phil Denison
James Harmon
Liz Gotthelf
John Bird
Mark Johnston
Sandra Guay
Bob Hamblen
Gary Curtis
Ed McDonnough
Win Winch
Dan Blaney**

Mayor Ron Michaud opened the workshop welcoming everyone and indicated that we would be in discussion on “An Act to Clarify the Municipal Jurisdiction of a Portion of Saco Bay.” Chair Sharri MacDonald expressed appreciation for the opportunity to meet together in this fashion.

A little history was provided concerning when Saco signed a lease with Bill Danton to build a floating marina off Old Orchard Beach. It appears that some of the differences are that Saco insists it has jurisdiction over much of Saco Bay dating back to 1883 when Old Orchard Beach was created from the City of Saco. The Legislature extended Old Orchard Beach's jurisdiction to 1,000 feet offshore in the 1970's and 1980's with two 500 foot boundary extensions. Old Orchard Beach feels there is no conclusive evidence backing Saco's claim of boundaries beyond low water, and is supporting a bill submitted by State Representative, George Hogan, to extend the OOB boundary three miles offshore.

Lawmakers have asked the Town of Old Orchard Beach and the City of Saco to try to work out the dispute themselves, but at this point no solution has been agreed upon. The purpose of the workshop this evening was to discuss pending legislation and possible solutions. Mayor Michaud indicated he felt it was a waste of time to discuss boundary lines, and instead would like to see a four-town Saco Bay commission established with neighboring Biddeford and Scarborough to oversee activity in the Bay. He contrasted such a commission to the Saco River Corridor Commission. It was obvious that everyone attending understood that anything happening in the bay was going to have an effect on all Saco Bay municipalities. There was an expression from Saco that total emphasis on boundary lines masks the real issues and wastes resources and efforts. Mayor Michaud indicated he is interested in putting the emphasis on long-term protection of the bay. He suggested that offshore development projects, such as tidal or wind-power, would be competing for use of the bay. He indicated that a commission could make sure those projects are developed with everyone's interests protected and could develop a formula for sharing any resulting revenue. Old Orchard Town Council members expressed the need for more protection in the time it would take to establish a working commission. Chair MacDonald expressed Old Orchard Beach Councilor's desires to proactively address the issues facing them but at the same time protect the rights of its citizens.

Gary Lamb, Planner for Old Orchard Beach, stated that one of the most important things to remember is that jurisdiction is separate from ownership. A community has jurisdiction or regulatory authority only within its town boundaries, and regardless of who owns the land. Knowing exact locations of seaward boundaries is important considering future offshore developments and whose Planning Board will review such projects. To quote the Attorney General's staff, "a municipality has jurisdiction over submerged lands only to the extent expressly delegated by a legislative act." The Massachusetts General Court of 1763 did not describe Saco's boundaries beyond low water when they created what is now Saco. There's only one way a boundary can be changed, and that is with a legislative act. Saco was created legislatively by the Massachusetts General Court of 1763 and Saco's boundaries beyond low water were not specified. Legal research to date has not produced any evidence of legislative acts that created Saco's claimed seaward boundaries. Old Orchard Beach was created with a legislative act by the Maine Legislature in 1883 and subsequent changes. The Old Orchard Beach boundaries are known because these laws are relatively new, easy to find, and provide concise boundary definitions. The bottom line is that no one knows where Saco's seaward boundary is. Saco's position is based on over 200 years of history that has created a logical assumption of offshore boundaries. However, a history of island assessments and harbor patrols does not substitute for legislative acts needed to create a seaward boundary. Old Orchard Beach's position that the present day Saco boundary is at low water is a convincing argument and one that the Maine Department of Conservation uses every day in their submerged lands lease discussions, but

is also without legislative reference. We now have the opportunity to change both Saco and Old Orchard Beach boundaries in one bill during this legislative session. It was suggested that both communities have better things to do than debate boundary lines. Gary Lamb suggested that we fix the problem and move on. He also indicated setting up a Saco Bay Commission could take several years. In the meantime, Old Orchard Beach feels it needs to protect itself so Saco cannot try to assert jurisdiction off Old Orchard Beach with a new proposal. He stated he believed solving the boundary line is the only way to get to first base with any future multi-town Saco Bay Commission.

Saco City Councilors Smith and Tardiff do not recognize State ownership of submerged lands. They feel it is just the State's opinion that submerged lands beyond low water are owned by the State of Maine. It appears they are not interested at all in using the legislative process to validate/recreate or change Saco's boundaries. Councilor Cote indicated he did not want this to go to the courts and spend taxpayer money on what he felt could be solved by the setting up of a Commission. In discussion of Bluff and Stratton Islands, it was obvious that Saco claims them in their jurisdiction. Old Orchard Beach appears to have no interest in placing these islands within Old Orchard Beach's jurisdiction.

Old Orchard Beach's Councilor Laura Bolduc spoke about the potential revenue from offshore development and that concerns for our beach environment should not be overlooked or taken lightly. Several Old Orchard Beach Councilors confirmed their belief that since the mouth of a river is the point at which it meets the sea, this is evidence that the Massachusetts General Court defined the easterly boundary of what would later become Saco, as on the shore, not out into the ocean as claimed by Saco.

Considerable discussion ensued re: forming a four town Saco Bay Commission. This is the focus of Saco's City Council. Old Orchard Beach's Council still asserts that municipal boundaries along Saco Bay stop at low water unless extended by the Maine legislature, and that beyond Old Orchard Beach's 1,000 foot boundary, the State waters are not within any organized municipality.

Councilor Robin Dayton specifically asked Mayor Michaud if there were any other developments or projects on the table that have not been shared with Old Orchard Beach. She was assured there are not. She also asked the question as to why we would want to develop the bay? During the discussion of past history, former Mayor Mark Johnston apologized for the manner in which the Danton project was brought forward and the lack of immediate involvement of the Old Orchard Beach Town Council. Councilor Sandra Bastille spent time informing Councilors of the lack of commitment from other municipalities, Old Orchard included, when the Camp Ellis erosion issue was at the forefront. She indicated it was obvious it was going to impact Saco, Biddeford, Scarborough, Old Orchard Beach and none responded to participate in discussions and productive activities. We should learn from that experience that joint efforts are necessary for any workable solutions for all those involved in this issue. Councilor Patricia Mills joined the majority of the Saco City Council encouraging the establishment of a Saco Bay Commission similar to the Saco River Corridor Commission, which was established by the legislature in 1973 to oversee land use developments. It consists of members from twenty municipalities who are each represented by one regular and one alternate member.

Representative George Hogan reconfirmed that it is the position of the State of Maine that municipal seaward boundaries and municipal jurisdiction stop at low water unless described differently by a legislative act. He indicated Saco has not provided legislative proof of the creation of any seaward boundary past low water. Absent such proof, a municipal seaward boundary is considered to be at low water. He indicated that for a community four or five miles away to try to control our shores wasn't very nice. He stated that this situation brought to light a dormant issue of managing the bay. This is perhaps the most significant issue facing our town. The outcome could set precedent for future policy throughout coastal Maine as communities weigh costs and benefits of fish farms, marinas and other submerged lands projects.

Historian Dan Blaney and Executive Director of the Chamber of Commerce Bud Harmon, both expressed their opinion that they believe Old Orchard needs to go ahead in support of the George Hogan bill before the Legislature. It was evident they felt consideration of a Commission is an option but pursuing passage of this bill now is vital to protecting Old Orchard Beach.

Mayor Michaud and Chair MacDonald expressed appreciation to each Councilor for their willingness to come together for frank discussion. No decisions have been made and each Council will discuss amongst themselves the various opinions expressed this evening. This was a good opportunity to communicate and discuss our respective opinions.

The Workshop ended at 9:30 p.m.

Respectfully Submitted,

**V. Louise Reid
Town Council Secretary**

I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of four (4) is a true copy of the original Minutes of the Town Council Workshop of April 8, 2009.

V. Louise Reid