

**TOWN OF OLD ORCHARD BEACH  
TOWN COUNCIL MEETING  
TUESDAY, OCTOBER 5, 2010  
TOWN HALL CHAMBERS**

**A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, October 5, 2010. Chair MacDonald opened the meeting at 7:03 p.m.**

**The following were in attendance:**

**Chair Sharri MacDonald  
Vice Chair Michael Tousignant  
Councilor Robin Dayton  
Town Manager Jack Turcotte  
Assistant Town Manager Louise Reid**

**Absent: Councilor Shawn O'Neill  
Councilor Laura Bolduc**

**Pledge to the Flag  
Roll Call**

**ACKNOWLEDGEMENTS:**

**COUNCILOR DAYTON:** She expressed thanks to Jack Sarno and Phil Weinburg for at the Ballpark almost daily and addressing tasks of many sorts including the press boxes and the seats. She acknowledged the work that has been done by the volunteers and express appreciation to them for hours of dedicated time.

**ASSISTANT TOWN MANAGER:** On behalf of Helene and Carter Whittaker they are asking me to thank publicly and acknowledge the work of the volunteers of the Ballpark. We have volunteered on Sunday for many hours and we cannot say enough about the dedicated staff of volunteers manning the concession stand, the fields and everywhere else. It runs like a well-oiled machine and it is impressive. The Ballpark is looking amazing. Kudos to everyone involved with the Ballpark; a job well done.

**ACCEPTANCE OF MINUTES:** Town Council Minutes of September 21, 2010.

**PUBLIC HEARING BUSINESS LICENSES AND APPROVAL:**

**CHAIR:** I open this Public Hearing at 7:09 p.m.

**Maureen Owen & Michelle Parkinson (315-21-7), 54 Union Avenue, one year round rental; Jillmarie & Steven DeCarolis(316-7-2-1), 19 Ocean Avenue, unit one, one year round rental; Jillmarie & Steven DeCarolis (316-7-2-2), 19 Ocean Avenue, unit two, one seasonal rental.**

**MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to Approve the Business Licenses as read.**

**VOTE;**

**CHAIR: I close this Public Hearing at 7:11 p.m.**

**TOWN MANAGER'S REPORT:**

- A. I want to express my thanks for the many people who provided kindness relating to my mother's passing. My only hope is that I can live to be two days short of my 94<sup>th</sup> birthday as she was able to do.**
- B. The prominent subject for the last two weeks has been the Tide Gate and the West Grand project. The Tide Gate update was provided to you this evening and Ryan Wingard will up-date you on the West Grand Project this evening.**
- C. I have been dealing with Human Resource and Personnel issues and contract negotiations, coupled with "Pay to Throw" meetings steadily for the past two weeks.**
- D. I was particularly busy last week and even though Louise had her doubts I would survive in her absence, I was able to make it through the week. Louise called often to make sure I didn't sell the Town.**
- E. I would like to thank the many volunteers who helped on the Prescription drop-off-day. It was a huge success.**
- F. Enjoyed the company of the Library Board of Trustees learning more about the proposed Library Addition Project.**
- G. The anemometer – first quarter wind Report is now on the web site.**
- H. Hats off to all that worked on the Autumn Festival. It looks like the event was successful and certainly the Petaque court was busy.**

**NEW BUSINESS:**

**# 5573 Discussion: Presentation of a "Detailed Plan" for West Grand Avenue Bond Project.**

**BACKGROUND: Wright Pierce made the following presentation related to the West Grand Avenue Bond Project. Questions were addressed by Ryan Wingard.**

- 1. Background**
  - a. Bond available (\$1.6M)**

- b. Preliminary design process initiated - fall of 2008
  - c. Public meetings
    - i. March 24, 2008
    - ii. June 24, 2009
    - iii. July 6, 2009
2. Preliminary Design Activities
    - a. Topographic Survey
    - b. Hydrologic Analysis
    - c. Tidal Analysis
  3. Preliminary Findings
    - a. Flooding caused by both high tide and rainfall runoff
    - b. Town's general philosophy related to flood mitigation
      - i. Maintain safe/dry evacuation route
      - ii. Confine improvements to within the ROW
    - c. Initial design concept to raise West Grand above 100-year flood level
    - d. Negative feedback from residents warranted reconsideration of design
  4. Review of Preliminary Alternatives
    - a. No Build Scenario (\$0M)
    - b. Moderate Improvements Scenario (\$1.62M to \$1.84M)
    - c. Full Mitigation Scenario (\$3.68M to \$4.14M)
  5. Proposed Plan

**Relocate emergency evacuation route**

**Elements of Work:** Move from West Grand Avenue to Seaside Avenue  
 Intersection pavement improvements  
 Signage modifications

**Funding Allocation:** Preliminary Construction Cost Estimate = \$130,000 to \$162,500

**Preliminary Engineering Cost Estimate = \$20,000 to \$25,000**

**Total Cost Estimate = \$150,000 to \$187,500**

**Mitigation Benefits:** Passable emergency evacuation route  
 Eliminates need to raise signification portion of West Grand

**Improve local storm water infrastructure at Tripoli Avenue**

**Elements of Work:** Modify roadway crown  
 Replace and raise catch basins and storm water piping

**Funding Allocation:** Preliminary Construction Cost Estimate = \$130,000 to \$162,500

**Preliminary Engineering Cost Estimate = \$20,000 to \$25,000**

**Total Cost Estimate = \$150,000 to \$187,500**

**Mitigation Benefits: Local infrastructure improved  
Minimized construction impacts and schedule  
Decreased potential for negative impacts to private property  
Flooding to recede quicker  
Eliminates standing water after tide has receded  
Compatible with future drainage improvements**

**Improve local storm water infrastructure at Tunis Avenue**

**Elements of Work: Raise West Grand maximum of 6 inches**

**Replace and raise catch basins and storm water piping**

**Funding Allocation: Preliminary Construction Cost Estimate = \$250,000 to \$312,500**

**Preliminary Engineering Cost Estimate = \$38,000 to \$47,000**

**Total Cost Estimate = \$288,000 to \$359,500**

**Mitigation Benefits: Local infrastructure improved  
Minimized construction impacts and schedule  
Decreased potential for negative impacts to private property  
Flooding to recede quicker  
Eliminates standing water after tide has receded  
Compatible with future drainage improvements**

**Improve local storm water infrastructure at Hampton Avenue**

**Elements of Work: Modify roadway crown**

**Replace and raise catch basins and storm water piping**

**Funding Allocation: Preliminary Construction Cost Estimate = \$130,000 to \$162,500**

**Preliminary Engineering Cost Estimate = \$20,000 to \$25,000**

**Total Cost Estimate = \$150,000 to \$187,500**

**Mitigation Benefits: Local infrastructure improved  
Minimized construction impacts and schedule  
Decreased potential for negative impacts to private property  
Flooding to recede quicker  
Eliminates standing water after tide has receded  
Compatible with future drainage improvements**

**Improve local storm water infrastructure at Roanoke Avenue**

**Elements of Work: Modify roadway crown  
Replace and raise catch basins and storm water piping**

**Funding Allocation: Preliminary Construction Cost Estimate = \$130,000 to \$162,500**

**Preliminary Engineering Cost Estimate = \$20,000 to \$25,000  
Total Cost Estimate = \$150,000 to \$187,500**

**Mitigation Benefits: Local infrastructure improved  
Minimized construction impacts and schedule  
Decreased potential for negative impacts to private property  
Flooding to recede quicker  
Eliminates standing water after tide has receded  
Compatible with future drainage improvements**

**Improve safety at upstream end of box culvert**

**Elements of Work: Add bar rack  
Funding Allocation: Preliminary Construction Cost Estimate = \$10,000 to \$12,500**

**Preliminary Engineering Cost Estimate = \$1,000 to \$1,100  
Total Cost Estimate = \$11,000 to \$13,600**

**Mitigation Benefits: Reduce drowning safety hazard  
Local infrastructure improved  
Minimized construction impacts and schedule**

**Modify Tide Gate Operation**

**Elements of Work: Close gate in advance of wet weather event  
Relocate gate controls to pump station  
Potential to add two more gate operators**

**Funding Allocation: Gate operation adjustments and control relocation**

**Preliminary Construction Cost Estimate = \$20,000 to \$30,000**

**Preliminary Engineering Cost Estimate = \$3,000 to \$4,000  
Total Cost Estimate = \$23,000 to \$34,000**

**Two new operators  
Preliminary Construction Cost Estimate = \$100,000 to \$125,000**

**Preliminary Engineering Cost Estimate = \$15,000 to \$19,000  
Total Cost Estimate = \$115,000 to \$144,000**

**Mitigation Benefits: Minimized construction impacts and schedule  
Increased storage in marsh prior to rain event  
Enhanced SCADA operation  
Increased flow of saltwater into marsh during dry periods**

**Add storage upstream of Free Street**

**Elements of Works: Significant coordination with OPCS  
Raise low point in roadway  
Modify Free Street culvert**

**Funding Allocation: Preliminary Construction Cost Estimate = \$50,000 to \$62,500**

**Preliminary Engineering Cost Estimate = \$7,500 to \$15,000  
Total Cost Estimate = \$57,500 to \$72,500**

**Mitigation Benefits: Local infrastructure improved  
Attenuated runoff into West Grand area**

**Address Invasive Species in Marsh**

**Elements of Work: Physical removal versus chemical removal  
Funding Allocation: Preliminary Construction Cost Estimate = \$50,000 to \$100,000**

**Preliminary Engineering Cost Estimate = \$7,500 to \$15,000  
Total Cost Estimate = \$57,500 to \$115,000**

**Mitigation Benefits: Increase amount of storage available for Rainfall  
Increase overall health of marsh ecosystem**

**Miscellaneous Sanitary Sewer Improvements along West Grand**

**Elements of Works: Replace roughly 2,000 feet of failing sanitary sewers  
Redirect sewer services from West Grand to side streets  
Funding Allocation: Preliminary Construction Cost Estimate = \$200,000 to \$250,000**

**Preliminary Engineering Cost Estimate = \$30,000 to \$37,500  
Total Cost Estimate = \$230,000 to \$287,500**

**Benefits: Local infrastructure improved  
Minimize sewer service backups  
Address sewer issues while other work is occurring**

**Total Cost Estimate:**

**Preliminary Construction Cost Estimate = \$1,200,000 to \$1,542,500**

**Preliminary Engineering Cost Estimate = \$182,000 to \$233,600**

**Total Cost Estimate = \$1,382,000 to \$1,776,100**

**Town of Old Orchard Beach, Maine  
October 5, 2010  
Council Meeting - West Grand Avenue Flood Mitigation**

**Planning Level**

**\$1.6 million bond available for West Grant**

**Planning Level Alternative**

**No building scenario - \$0.0 M**

**Moderate Improvements - \$1.6 to \$1.8 M**

**Full Mitigation Scenario - \$3.7 M and \$4.1 M**

**Preliminary Design Components**

**Relocate Emergency Evacuation Route**

**Improve Local Stormwater Infrastructure**

**Improve Safety at Box Culvert**

**Modify Tide Gate Operation**

**Add Storage upstream of Free Street**

**Address Invasive Species in Marsh**

**Miscellaneous Sewer Improvements**

**Emergency Evacuation Route**

**Work Elements**

**Relocate from West Grand to Seaside**

**Intersection improvements**

**Signage modifications**

**Mitigation Benefits**

**Passable emergency evacuation route**

**Eliminate need to raise West Grand**

**Local Stormwater Infrastructure**

**Work Elements**

**Tripoli, Tunis, Hampton and Roanoke**

**Regrade/modify roadway crown to achieve positive drainage**

**Replace catch basins and piping**

**Raise catch basins and piping**

### **Mitigation Benefits**

- Improve local infrastructure**
- Minimize construction impacts and schedule**
- Decrease negative impacts on private property**
- Flooding to recede**
- Eliminate standing water when tide recedes**
- Compatible with future drainage improvements.**

### **Improve Safety at Box Culvert**

#### **Work Elements**

- Add bar racks**

#### **Mitigation Benefits**

- Address drowning safety hazard**
- Improved infrastructure**

### **Modify Tide Gate Operation**

#### **Work Elements**

- Close gate in advance of wet weather event**
- Relocate gate controls to pump station**
- Add one more mechanical gate operator**

#### **Mitigation Benefits**

- Increased storage in marsh prior to rain**
- Enhanced SCADA operation**
- Increased flow of saltwater into marsh during dry periods.**

### **Storage Upstream of Free Street**

- Raise low point in roadway**
- Modify Free Street Culvert**
- Significant coordination with OPA needed**
- Provides roughly 3 acre-feet of storage volume**  
**(Jordan Park Marshal has a total of roughly 20 acre-feet)**

#### **Mitigation Benefits**

- Improved local infrastructure**
- Attenuated runoff into West Grand Avenue**

### **Address Invasive Species in Marsh**

#### **Work Elements:**

- Physical removal versus chemical removal**
- Use Scarborough work as pilot**



### **Mitigation Benefits**

**Increase amount of storage available for rain  
Increase overall health of marshal ecosystem.**

### **West Grand Sewer Improvement**

#### **Work Elements**

**Replace roughly 2,200 feet of failing sewer  
Redirect sewer services from West Grand to Seaside.**

#### **Mitigation Benefits**

**Improved local infrastructure  
Minimize service backups  
Address sewer while other work is completed.**

### **Stakeholder Ideas**

#### **Stakeholder Meeting of 9/30/10**

**OPSC, OPA, SLAWG**

**Box culvert inspection and maintenance**

**Berm at New Salt Road**

**Replace water line during construction**

**Pilot test new operator via manual opening**

**Light maintenance of drainage canals**

**Divert freshwater away from Ocean Park**

**Other upstream retention opportunities.**

The discussion involved questions raised by Council members including Councilor Dayton, Vice Chair Tousignant and Chair MacDonald. They asked if studies had been completed to prove that Free Street storage will not cause problems or flooding upstream. It was indicated by Wright Pierce that a preliminary analysis has been completed comparing the storage elevation versus property boundaries. Additional study will be needed to determine how high storage can be backed up. The estimated budget for this item includes the costs associated with future study. It was asked if there was capacity in the Seaside Avenue sewer line to accept sewer flows from West Grand Avenue to which it was indicated that the Seaside sewer is a 36" or 48" diameter pipe. It was built 15 to 20 years ago with the West Grand Pump Station. It was designed as an oversized pipe to allow for storage upstream of the pump station and should have enough capacity. Additional sewer modeling will need to be completed to verify this. Modeling is included in the estimated budget for this item. The issue was also raised if the Public Works could do any of the proposed work? Public Works is slated to do the excavation work involved with the proposed work at the Tide Gate, such as laying the conduit. Wright Pierce will continue to use the Public Works crews as much as possible. It was stated that there is \$1.6 Million of budget remaining, yet the High Estimate for this project exceeds this amount by approximately \$200,000. Where will this extra funding come from if it comes out on the high end? Wright Pierce indicated and the Town Manager affirmed that the project can be bid with a series of Bid Alternates, which would allow the Town to eliminate some of the work should the bids come in high. A prioritized list would be established to help determine what work can be eliminated without significantly impacting the goal of the project. The Town Manager

indicated that the numbers presented here tonight are very much planning numbers and are estimates. The \$1.6 M figure is an estimate as well. Once we have a more detailed grasp on what the numbers will be, we can report back to the Council with these updated numbers. The Council asked for an update at the next meeting. Several members of Council commented on their appreciation for the detailed report given this evening.

**# 5574 Discussion with Action: Approve the Beach Management Agreement with the U.S. Fish & Wildlife Services (USFWS), the Maine Department of Inland Fisheries and Wildlife (MDIFW), and Maine Audubon developed for the Town of Old Orchard Beach.**

In 2009, representatives of the Town of Old Orchard Beach (the Town), the U.S. Fish & Wildlife Service (USFWS), and the Maine Department of Inland Fisheries and Wildlife (MDIFW) developed the following Beach Management Agreement for the Town of Old Orchard Beach.

**IMPORTANT!** This agreement is in effect from April 15 through August 31 when nesting activity is occurring, which is defined as when territorial pairs, nests, and chicks of Piping Plovers are present. When nesting activity is not occurring on the Town's beaches, these guidelines are not in effect. The Town must keep in weekly communication with MDIFW or its designee to know when Piping Plover nesting activity is occurring.

This agreement allows the Town of Old Orchard Beach to continue their beach management program without filing federal and state Incidental Take Plan's (ITP) for each Town activity that occurs near or within Piping Plover nesting areas, as long as the Town implements protection measures outlined in this agreement.

**There is an incentive for the Town to promote the nesting success of plovers, because plovers that nest successfully in April will fledge their chicks by mid-to-late June, thus removing restrictions on the beach.** However, if April nesting fails, or the plovers are forced to nest late, the nesting and chick rearing season will extend into July and August, the peak summer months for beachgoers.

#### **1) Introduction**

The Piping Plover (*Charadrius melodus*) is a small sandy-colored shorebird that nests on beaches from Newfoundland to South Carolina and is imperiled throughout much of its range in the United States and Canada. Once common on sandy beaches in southern Maine, the Piping Plover is listed as Endangered under the Maine Endangered Species Act (MESA), and the east coast population is listed as Threatened under the federal Endangered Species Act (ESA). In 2010, only 30 pairs of Piping Plovers nested in the entire state of Maine.

Habitat loss and lack of undisturbed nest sites are two of the primary factors jeopardizing populations of Piping Plovers. Historically, Maine had more than 30 miles of suitable nesting beaches that may have supported up to 200 pairs of Piping Plovers. However, the construction of seawalls, jetties, piers, homes, parking lots, and other structures along Maine's sand-beaches has dramatically reduced the extent of suitable nesting habitat. Continuing development and intense recreational use of nesting beaches is further reducing the capacity of the remaining habitat to support nesting plovers. Ensuring the availability of this limited habitat is essential

for the continued existence of Piping Plovers and other coastal wildlife, such as the state listed endangered Least Tern.

Historical records document that Piping Plovers nested on Old Orchard Beach in recent decades. In fact, under ideal conditions, these 3 miles of sand-beach habitat may have once supported as many as 10 pairs of Piping Plovers at densities of 3.5 pairs/mile of beach. Unfortunately, development and associated human disturbance and predation greatly reduced the ability of the habitat to support these rare birds. Piping Plovers were a rare summer resident in Maine in the late 1800s, and in the early 1900s, were extirpated as a breeding bird from the state. With protection from the Migratory Bird Treaty Act in 1918, plovers rebounded, and by 1940, they were common on sandy beaches from Kittery to Cape Elizabeth. Nesting of plovers on Old Orchard Beach resumed in 1993. From 1993 to 2008, one to three pairs of Piping Plovers have consistently nested on Old Orchard Beach; clearly, habitat management of Old Orchard Beach is essential to the recovery of Piping Plovers in Maine.

In 1995, the MDIFW designated a portion of Old Orchard Beach (PPLT04 and PPLT08) as Essential Habitat for Piping Plovers. In 2010, to incorporate recent nesting locations by Piping Plovers on Old Orchard Beach, MDIFW expanded Essential Habitat to include two more areas (PPLT14 and PPLT15).

## II) Authority to Enter Agreement

Maine Endangered Species Act of 1975 (MESA)

Federal Endangered Species Act of 1973 (ESA)

## III) Geographic Scope of Agreement

The area under this agreement is the entire, Town-owned beachfront commencing from the Saco/Old Orchard Beach town line at Goosefare Brook, north to the Old Orchard Beach/Scarborough town line. The beachfront includes the seaward side of the frontal dune to the mean low water mark.

The intent of this agreement is to provide a means to protect Piping Plovers on Old Orchard Beach. Success of this agreement depends on the participation and cooperation of the Town, USFWS, and MDIFW.

This agreement does not supersede or replace any local, state, or federal statutes, regulations, or guidelines that apply to private properties.

## IV) Beach Management Guidelines for Piping Plovers

**IMPORTANT!** These guidelines are in effect from April 15 through August 31 when nesting activity is occurring, which is defined as when territorial pairs, nests, and chicks of Piping Plovers are present. The Town must keep in weekly communication with MDIFW or its designee to know when Piping Plover nesting activity is occurring. When nesting activity is not occurring on the Town's beaches, these guidelines are not in effect.

### A) Daily Pickup of Trash Barrels on the Town's Beaches and Rights-of-ways.

**The Town does not place trash barrels on the beach near plover nest sites.** If the Town does decide to place trash barrels on the beach, the Town must place them as far away from

areas of plover nesting activity as possible but no closer than 100 feet from a stake and twine symbolic fence. Any Town vehicle picking up waste from the barrels shall have a trained spotter (trained by MDIFW or its designee) walk in front of the vehicle, which shall proceed no faster than walking speed.

Trash pickup using All Terrain Vehicle (ATV) does not require a spotter if:

1. Personnel picking up trash are in weekly communication with the Town's Plover Monitoring Coordinator and MDIFW or its designee to know the location of nesting plovers and their chicks;
2. ATV operators are trained by MDIFW or its designee; and
3. ATV vehicles proceed no faster than walking speed.

All vehicles will travel as close as possible to the mean high water mark, to assure no conflicts between piping plovers and vehicular traffic.

#### B) Seaweed and Debris Cleanup

The Town agrees not to use mechanical means to clean beaches within 100 feet of stake-and-twine delineated Piping Plover areas. If however, the need arises to use mechanical means to clean the beach, the Town shall follow these guidelines.

1. All beach-cleaning vehicle entrances/exits to the beach will be at locations agreed upon by the Town and MDIFW.
2. The Town will provide a spotter, trained by MDIFW or its designee, to guide all Town beach-cleaning vehicles on the beach. Failure by the Town to use a spotter is a breach of this agreement and gives MDIFW and USFWS the option to implement other protective management actions as identified by the MESA and the ESA.
3. Spotters will use the map given to them by the Town's Plover Monitoring Coordinator (see Section IV, H). They will record observations of adult birds, nests, eggs, and chicks, every 100 feet of the beach prior to vehicular access to that section. If the spotter does not observe plover activity, the cleaner will rake those 100 feet while the spotter stands and watches in that zone. Records of these observations will be submitted to MDIFW at the end of the nesting season or at any time upon request.
4. The spotter will proceed to the next area (approximately 100 feet down the beach), spotting, locating, and watching before giving the signal to allow the vehicles to enter the area.
5. Beach cleaning will not occur within 100 feet of stake-and-twine symbolic fencing. This gives the birds a buffer from disturbance by vehicles and leaves additional foraging habitat intact.
6. Town personnel conducting beach cleaning will record the date, time, and location of each beach cleaning activity in a log kept at the Department of Public Works. Nesting sites and dates will also be noted in the log and submitted to MDIFW at the end of the nesting season, or at any time upon request.
7. The Town will clean rights-of-way by hand unless it is clearly outside any area of plover nesting activity or conducted outside the plover-nesting season. Instances of need for

heavy seaweed removal have historically been few. However, should heavy seaweed removal require using a dump truck and an excavator, a trained spotter will be required on site. No such work will take place within 100 feet of a stake-and-twine symbolic fence.

**C) Lifeguards.**

Lifeguard stands will be at least 100 feet from a stake-and-twine symbolic fence. In the event that a site does not allow for the required 100-foot buffer, MDIFW and the Town will determine an appropriate placement for the lifeguard stand as far as possible from the stake-and-twine symbolic fence. This mutually agreed-upon location will maintain the public safety requirements as well as protect nesting Piping Plovers. When feasible and appropriate, as determined by the Town, lifeguards will assist in educating the public about safeguarding plovers.

**D) Police, Emergency, and Non-Emergency Vehicle use**

It will be the policy of the Town of Old Orchard Beach that non-emergency vehicle use will not occur within 100 feet of designated Piping Plover nesting areas. Outside nesting areas, essential vehicle use will avoid driving on the wrack line whenever possible and will avoid frequent driving on the beach in a way that would create deep ruts that could impede movement of Piping Plover chicks. At least two employees shall respond to any non-emergency incident (such as removal of dead or injured marine mammals) within an area of plover nesting activity, with one employee acting as the spotter to and from the scene.

All emergency response personnel will account for and avoid nesting areas and chicks to the maximum extent practicable, consistent with the nature and urgency of the emergency. All Public Safety or Town personnel assigned or normally required to use vehicles (including ATV's) on the beach shall annually receive specialized education and training from MDIFW or its designee in the spotting and protection of plover habitat (see Training below). All other personnel shall have training materials and aids available to assist in spotting plover nests, chicks, and fledglings, during their beach management activities. Training workshops shall be available for each nesting season.

**E) Recreational Activities**

1. Beach parties, clambakes, volleyball, fires, etc.: Because these activities could seriously threaten plover nests, eggs, and young, the Town should discourage such activities within 100 feet of symbolic stake-and-twine fencing.
2. Kite, sand surfer (wind-driven sand cart), parasail, or par aboard sail. These activities should not occur within 650 feet of symbolic stake and twine.
3. Fireworks. If the Town approves a fireworks display, MDIFW and USFWS require that:
  - a. The fireworks launch site be located a minimum of 1/2 mile from the nearest Piping Plover nesting and/or foraging area.
  - b. For smaller, weekly fireworks displays, at least one uniformed officer is available to control crowds around nesting areas.
  - c. For the annual 4<sup>th</sup> of July fireworks display, the Town has adequate law enforcement personnel, as defined by MDIFW, to protect nesting areas and assist MDIFW staff/volunteers.
  - d. The Town submits a fireworks plan by April 1.

## **F) Animal Control**

**Dogs can be a significant source of disturbance and mortality for Piping Plovers. Ideally, dogs should not be allowed on Piping Plover nesting beaches when territorial pairs, nests, and chicks are present. According to Section 14-6 of the Town ordinances, dogs will not be permitted to enter the beach between the hours of 10:00 a.m. and 5:00 p.m. inclusive, from Memorial Day to Labor Day.**

**The Town agrees not to allow dogs within 100 feet of symbolic stake-and-twine fencing and to erect signs alerting beach-goers of the prohibition on dogs in those areas. Signage will be provided by MDIFW and design and verbiage agreeable between the Town and MDIFW. The Town, MDIFW, and USFWS enforcement officers will enforce this prohibition. If the enforcement of this prohibition is ineffective other options will be discussed for the next season. This prohibition will be in effect from April 15 through August 31, unless MDIFW determines that Piping Plovers are no longer attempting to nest on the beach.**

## **G) Stake-and-twine Fencing and Nest Enclosures**

**Plover nests that are not quickly fenced are vulnerable to disturbance. In an effort to afford plovers the immediate protection they require, the Town of Old Orchard Beach grants MDIFW or its designee, approval to erect symbolic stake-and-twine fencing and nest enclosures, as needed.**

**Stake-and-twine Fencing: Temporary, stake-and-twine fencing and signage is for managing recreational use of the beach in the vicinity of Piping Plover nesting areas, and for protecting nesting and feeding habitat for plovers. Ideally, when courtship and nest scraping first occur, biologists erect stake-and-twine fences and signs around the nesting area. Plover nesting areas are fenced using wooden stakes and baling twine; MDIFW or its designee, provide the signs. Only persons engaged in Piping Plover monitoring should enter the fenced areas. Fenced areas should extend 150 feet on either side of the nest whenever feasible. If the 150-foot radius is inadequate to protect incubating adults and unhatched chicks, biologists may expand the fenced area. In some instances, fenced areas may encompass more than one nest. Monitoring of nesting territories should occur frequently (daily if possible) until nests are located. Stake-and-twine fencing will remain on the beach until all chicks in the vicinity have fledged.**

**Nest Enclosures. Predation by crows, gulls, foxes, dogs, and cats is a major source of nest failure for Piping Plovers. Therefore, MDIFW or its designee, will erect approximately eight-foot diameter nest enclosures around each nest after the birds lay their third egg; this helps protect the eggs and young until hatching is completed. Nest enclosures consist of 2 x 4-inch welded wire fence supported by metal stakes. Biologists string bird netting over the top of the enclosure to help deter avian predators. Guidelines for constructing and maintaining enclosures are in Appendix F of the federal Piping Plover Revised Recovery Plan (U.S. Fish and Wildlife Service 1996).**

**MDIFW or its designee will remove nest enclosures when territorial pairs, nests, and chicks are no longer present.**

## H) Monitoring

The goal of monitoring is to establish regular, daily observational walks to maintain an up-to-date account of Piping Plover activity on Old Orchard Beach to better protect them from predation and human activities. Monitoring of Piping Plovers requires frequent visits by plover biologists and volunteer monitors each week throughout the nesting season to ascertain nesting status, nest location, nest success, and success of young. As the season progresses, monitors may discover new nests at any time as renesting occurs, or as new pairs establish nests on the beach. Adult birds and their chicks commonly move 325 to 650 feet away from the nest to preferred foraging areas (wrack line and intertidal flats). Frequent visits are required to track the survival and movements of family groups.

The keystone of the monitoring program is deployment of trained, Volunteer Plover Monitors (Monitors). The Town's Plover Monitoring Coordinator (Coordinator) recruits and supervises these Monitors.

**Plover Monitoring Coordinator:** the Town will provide the Plover Monitoring Coordinator as needed for the months of April through August. The Coordinator will work under the supervision of the Director of Public Works. In the event the Town cannot find or hire a Plover Monitoring Coordinator, a municipal employee (determined by the Town) will be assigned to coordinate weekly with MDIFW or its designee, regarding piping plover nesting activity.

The Plover Monitoring Coordinator will be in charge of recruiting and scheduling volunteer plover monitors. The Coordinator will communicate with landowners adjacent to Old Orchard Beach to inform them of Piping Plover biology and management needs, and to solicit their support for the monitoring project. The Coordinator will collect daily reports from the volunteer monitors, compile data, and act as liaison between the Town and MDIFW. At the end of each week, The Coordinator will have all volunteers complete a "Volunteer Time and Activity Record Sheet" provided by MDIFW. The Coordinator is responsible for collecting all Volunteer Time and Activity Record Sheets at the end of the nesting season and delivering them to MDIFW. Neither the Coordinator nor the volunteer plover monitors will be involved in enforcement of regulations.

**Volunteer Plover Monitors:** Volunteer Plover Monitors must be available for training and should pledge to make at least a weekly commitment of time. Monitors may also be asked to attend a monthly meeting for program review and reinforcement of training. Monitors shall fill out a standard daily report (provided by MDIFW) following their monitoring activities, and deliver it to the established collection point for pick up by the Coordinator. Monitors will report on the location of Piping Plover nests and on adherence to the provisions of this beach management plan. The Town will provide free parking, if necessary, for Monitors during the time of their monitoring activities.

## I) Education and Outreach

Educational efforts will take many forms, and will rely heavily on local organizations to promote proper stewardship of the Piping Plover and other shorebirds on Old Orchard Beach. Local organizations should be encouraged to include educational materials in their newsletters, at meetings, on bulletin boards, and through other forms of communication.

The Plover Monitoring Coordinator and Volunteer Plover Monitors will utilize opportunities for face-to-face contact with adjacent property owners and beach users to educate them about Piping Plovers and the importance of respecting their habitat.

MDIFW will develop educational packets specifically designed to acquaint renters that use the beach with the guidelines affecting beach use. The Town will encourage landowners and local realtors who handle rental properties to deliver the educational packets to renters. Educational packets will be provided to the Chamber of Commerce, hotels, libraries, Planning Department, Conservation Commission, Town Manager and the Town Clerk to reach day visitors and citizens of Old Orchard Beach and surrounding communities. MDIFW will put information about regulations governing dogs on the beach in the renters' packet and in the newsletter mailed to landowners. Volunteer Plover Monitors will also distribute copies of the dog regulations on the beach.

#### **J) Training**

In support of the volunteer monitoring program, MDIFW or its designee will conduct annual training sessions for the Plover Monitoring Coordinator, Volunteer Plover Monitors, lifeguards, police and summer cadets, appropriate Department of Public Works employees, Emergency Responders, and other appropriate employees of the Town. These training sessions will be held in April and May, and will include information regarding Piping Plover biology, conservation/management, monitoring protocol, record keeping, and regulations, including dogs on the beach. When possible, MDIFW or its designee will include enforcement personnel of the USFWS and MDIFW for these training sessions to address issues of "take" under the federal ESA and Maine ESA. MDIFW will provide a Volunteer Monitoring Handbook developed by Maine Audubon, to the Volunteer Plover Monitors, which contains background and training materials, regulations (including those pertaining to dogs on the beach), and daily monitoring check-off sheets.

When feasible and appropriate, MDIFW or its designee will train all Town personnel, including the Conservation Commission, at the same time, unless it is not reasonable to do so.

#### **K) Beach Restoration, Maintenance, Nourishment, and Dune Creation**

Activities within the sand dune system at Old Orchard Beach occur within a protected resource area under the jurisdiction of the Maine Department of Environmental Protection (DEP). The U.S. Army Corps of Engineers (Corps) has federal jurisdictional responsibilities within the sand dune system; however, all federal activities are subject to review by the USFWS under the Endangered Species Act. Many projects and activities (such as moving sand, altering vegetation, repairs to jetties and seawalls) require a permit from DEP and/or the Corps. Therefore, all proposed beach nourishment, sand fencing, planting, and trail plans should be coordinated by the Town of Old Orchard Beach and reviewed by MDIFW, DEP, USFWS, and the Corps to ensure that state and federal regulations are adhered to and that Piping Plovers are not adversely affected.

#### **L) Permit Review Process**

Landowners and the Town of Old Orchard Beach must apply for and obtain all appropriate, necessary environmental permits before conducting activities or projects that require environmental review. This Cooperative Beach Management Agreement does not negate this responsibility and legal requirement, nor does it supersede or replace state and federal law.



**This Cooperative Beach Management Agreement can facilitate state and federal environmental review and permitting provided that such activities and projects are consistent with other federal and state statutes. Concurrence from the USFWS and MDIFW on any future project that could affect plovers or their habitat within the geographic area subject to this Agreement is contingent upon the successful implementation of all Piping Plover protection measures described in this Agreement and demonstration that these protection measures have proven adequate in avoiding “take” as defined under the federal Endangered Species Act (harass, harm, pursue, hunt, shoot, kill, trap, capture, or collect) of the federal Threatened Piping Plover (U.S. Fish and Wildlife Service 1973), or “take” as defined under the Maine Endangered Species Act (...the act or omission that results in the death of any endangered or threatened species.) (12 MRSA §12808) and “harass” as defined under state statute as any “intentional or negligent act or omission that creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavior patterns” (12 MRSA §10001(29)) of the state Endangered Piping Plover.**

**Situations, activities, or projects may arise that are not addressed in this Agreement that affect the Piping Plovers on Old Orchard Beach. Successful resolution of such eventualities requires communication and coordination; landowners and the Town of Old Orchard Beach are encouraged to seek early and frequent consultation with MDIFW and the USFWS prior to initiating activities or projects that may affect Piping Plovers.**

#### **V) Time Frame of Agreement**

**Recognizing that habitat and other management issues may arise that could require modified management, appropriate members of the Town as determined by the Town Council, USFWS, and MDIFW will meet annually in the winter to review this agreement. This Agreement will commence April 1, 2011 and terminate on October 1, 2013.**

#### **VI) Amendments**

**Amendments to this agreement can be made with the concurrence of all signatory parties to the agreement. Amendments shall not be effective unless documented in writing, dated, signed by all parties, and attached to the agreement.**

**The Council expressed appreciation to the U.S. Fish & Wildlife Service (USFWS), and the Maine Department of Inland Fisheries and Wildlife (MDIFW) and to the Planning Staff for their work on this important document and for considering the requests made by the Council.**

**MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Approve the Beach Management Agreement with the U.S. Fish & Wildlife Services (USFWS), the Maine Department of Inland Fisheries and Wildlife (MDIFW), and Maine Audubon developed for the Town of Old Orchard Beach.**

**VOTE: Unanimous.**

**# 5575 Discussion with Action: Authorize the Town Manager to enter into an Agreement with the Lowell Baseball Team to Relocate to Old Orchard Beach as authorized by the Town Council.**

The following Agreement was signed during the Council Meeting.

**Town of Old Orchard Beach  
and the Lowell All-Americans Baseball Club, Inc.**

**BALLPARK FACILITY USE AGREEMENT AND LICENSE**

For good and valuable consideration, Agreement made this 5<sup>th</sup> day of October, 2010 between the Lowell All-Americans Baseball Club, Inc., with address of 25 Holt Street, North Chelmsford, MA, 01863, a Nonprofit Corporation organized and operating under the laws of the Commonwealth of Massachusetts with a corporate identification number of 043490175, (the “All-Americans” individually a “Party”) and the Town of Old Orchard Beach, a Maine municipal corporation with Town Hall address of 1 Portland Avenue, Old Orchard Beach, Maine (the “Town”, individually a “Party”, and with All-Americans hereinafter collectively the “Parties”) for the purpose of licensing the use of the Old Orchard Beach Ballpark and authorizing certain related activities under the terms set forth herein (the “Agreement”).

1. **The Facility.** The Town owns and operates a public facility consisting of an outdoor stadium facility located at 1 Emerson Cummings Boulevard in the Town known as the Old Orchard Beach Ballpark (the “Ballpark”). The Ballpark consists of a stadium set up for baseball events with stands, a baseball playing field with diamond, bases, fencing, lighting and dugouts; associated parking areas; a clubhouse with offices and locker rooms; restroom facilities and a concession stand. The Town holds certain events at the Ballpark and licenses the facility to various athletic and other groups for purposes of hosting athletic or other outdoor gatherings.

2. **The Lowell All-Americans.** The All-Americans is a baseball team which participates in the New England Collegiate Baseball League and which formerly used a stadium based in Lowell, Massachusetts for the team’s home stadium. The All-Americans wish to relocate their team to Old Orchard, Maine for their home community and to enter into a license arrangement with the Town to use the Ballpark as the All-Americans’ home stadium for the 2011 Season.

3. **Term of the Agreement.** This Agreement is for a single term commencing on June 1, 2011 and ending August 15, 2011. This period is set to accommodate the All-American’s 21 regular home games and up to 6 additional championship or post regular season games (collectively the “2011 Season”). The term may be extended by the Parties under the terms of Paragraph 14, below.

4. **Non-exclusive Use and Scheduling of the Ballpark.** The use of the Ballpark by the All-Americans during the term and 2011 Season shall not be exclusive. Town reserves the right, and the All-Americans agree that the Town has the right, to schedule other events at the Ballpark at any time when the All-Americans do not have a home game during the 2011 Season. In addition, the Town reserves the right, and the All-Americans acknowledge and approve of the Town’s right, to use the Ballpark for the previously scheduled events by other users as set forth in Schedule A, attached hereto.

**The Town pledges to cooperate with the All-Americans in scheduling other currently unscheduled events at the Ballpark and to attempt to reasonably accommodate the practice days, rain make up days and post season games of the All-Americans. The Town otherwise reserves its right, and the All-Americans acknowledge the Town's right, to schedule other events and users for the Ballpark following the Town's receipt of the schedule of the All-Americans for the 2011 Season, (the "Schedule") as the team will provide the Town on or near date of January 31, 2011.**

**5. User Fee and Deposit. For the privilege of using the Ballpark for the All-American's home stadium for the 2011 Season, the All-Americans agree to pay the Town a user fee of \$10,000.00 (the "User Fee") and a security deposit (the "Security Deposit") of \$2,000.00. The User Fee shall be non-refundable. The Security Deposit will be used by the Town to address any damages and repairs to the Ballpark at the end of the 2011 Season after the Town deducts the reasonable costs of repairs for any damages to the Ballpark as may have been caused by the direct activities All-Americans or its team members, normal wear and tear excepted. Payment of the User Fee and Deposit, in full, must be received by the Town on or before February 1, 2011. The Town will refund the security deposit, less any deductions, on or before September 15, 2011.**

**6. Insurance. During the 2011 Season, the All-Americans agree to carry and keep at all times current, at their sole cost, the following insurance policies with the limits set forth below:**

**A Comprehensive General Liability Policy insuring liability and property damage against all claims and demands for any personal injury to or death of any person and damage to or destruction or loss of property which may have or be claimed to have occurred at the Ballpark in an amount not less than \$1,000,000, single limit, for injury to or death of one person, \$2,000,000 for injury to or death of more than one person in any single accident, and for not less than \$300,000 for damage to or destruction or loss of property.**

**During the 2011 Season and for all times the All-Americans have use or access to the Ballpark, the All-Americans agree that the Town shall be listed on the required insurance policies as an additional co-insured, and further agree to require their insurer to provide to the Town certification of the required insurance and that the Town is a co-insured. Nothing in this paragraph shall be deemed to waive any immunity available to the Town under any State or Federal law, including but without limitation the Maine Tort Claims Act, codified at 14 M.R.S.A. §§ 8101, et seq.**

**7. Indemnification. Each Party shall, to the fullest extent permitted by Maine law, indemnify, defend and hold harmless the other Party against all claims, losses, costs, expenses, damages, and liabilities arising from the negligence, willful misconduct or strict liability of such party, or its agents, employees, or contractors, or material breach by such party of any provision of this agreement. Notwithstanding the provisions contained in the sentence immediately preceding, the Town shall have no obligation to indemnify the All-Americans for any damages**

or claims resulting from any act or omission for which the Town is immune under any State or Federal law, including but without limitation the Maine Tort Claims Act, codified at 14 M.R.S.A. §§ 8101, et seq. Neither Party shall be responsible or liable to the other for any claim, loss, cost, expense, damage or liability arising from any claim to the extent attributable to any acts or omissions of the other party.

**8. Concessions and Ticket Sales, Distribution of Proceeds and Cash Management Policies.** The Town shall oversee and operate all of the concessions during the 2011 Season. Proceeds collected from concession sales shall be remitted to and deposited with the Town Treasurer along with receipt tapes from the registers and an accounting on or before the close of the next business day following each game.

Upon the Treasurer's completion of a review and certification of the receipts for each game, the Town shall distribute twenty five percent (25%) of the gross proceeds from concession sales of food and beverages to the management of the All-Americans, such distribution to occur no later than 7 business days after each game. The balance of seventy five percent (75%) of the gross proceeds from concessions sales from each game shall be retained by the Town in a separate account and applied first to cover the costs and overhead of operating the concessions, and second towards the costs of operating and maintaining the Ballpark.

Concession sales of all team items and team souvenirs, the inventories of such items, and the security of the same shall be the sole responsibility of the All-Americans or their agents. The proceeds from sales of team items and team souvenirs shall be the sole property of the All-Americans. The All-Americans may also pursue sales of team items and team souvenirs at third party locations.

The All-Americans may also engage in selling sponsorship signage to third parties for placement in the Ballpark. The Ballpark Commission shall have final determination of the appropriateness of any sponsorship, the duration of the time period during which sponsorship signs may be displayed, the content and message of the signage and the location of display of any sponsorship signage within the Ballpark. The Ballpark Commission will designate a person with authority to make decisions as to appropriateness, duration, content and message of sponsorship signs, subject to review by the Ballpark Commission in the event of a dispute between the Parties. The proceeds from the sales of sponsorship signage shall be the sole property of the All-Americans.

The All-Americans shall be solely responsible for ticket sales. Ten percent (10%) of the revenues derived from ticket sales, along with supporting receipts and an accounting, shall be sent to the Town on a weekly basis.

**9. The Condition and Suitability of the Facility for the Purpose of the All-Americans.** The All-Americans acknowledge and affirm that the conditions of the Ballpark premises as of the date of execution of this Agreement are acceptable and fit for the intended purposes and uses of the All-Americans hereunder. The Town pledges and affirms that during the 2011 Season it will maintain the Ballpark in a similar or like condition and suitable for the All-American home games. The All-Americans agree and pledge they will not engage in or promote any actions which

may cause unnecessary degradation to the current conditions of the Ballpark, normal wear and tear excluded.

**10. Use of the Ballpark Facilities.** During the 2011 Season home games, and other games as may be hereafter otherwise agreed to by the Town, the All-Americans shall have the exclusive use of the field, clubhouse and stadium. When other events are scheduled at the Ballpark, the parties holding or participating in such events shall have the exclusive use of the Ballpark premises with the exception of an office area located in the clubhouse, which during the period of the 2011 Season and as will otherwise be agreed to by the Parties in writing upon execution of this Agreement and receipt of full payment of the User Fee and Deposit hereunder, shall be set aside for the exclusive use of the All-Americans. The office area used by the All-Americans shall be used solely for team purposes.

**11. Utilities and Other Expenses.** The Town shall be solely responsible for maintaining the gas, water, sewer, internet and electricity service and utilities serving the Ballpark and paying all costs of the same during the 2011 Season.

**12. Broadcast Rights.** The All-Americans shall be solely responsible for any broadcasting of games and all expenses of the same. The Town shall make available its internet service at the Ballpark to the All-Americans but shall not be responsible for any interruptions in internet service or the consequences of the same to the broadcast activities of the All-Americans.

**13. Early Termination.** This Agreement may be terminated by either Party in the event of a material breach or other reason supporting termination. Termination shall take place upon the receipt of notice of termination to the other Party. Such notice shall be in sent by certified mail, return receipt requested to the other Party at the address set forth herein or as may otherwise be provided by the Parties.

Material breaches and reasons supporting early termination shall include, but are not limited to material circumstances such as acts of God which make the Ballpark unavailable for use during the 2011 Season, condemnation or closure of the Ballpark by State of Federal Authorities, material or repeated improper accounting or cash management related to proceeds from concessions or ticket sales on the part of either Party, actions by either Party in blatant contravention of this Agreement, actions on the part of either Party making it significantly impracticable or impossible to hold the home games for the All-American's 2011 Season at the Ballpark, insolvency on the part of either Party or material illegal or criminal activities on the part of either Party.

In the event of and Early Termination, the All-Americans acknowledge and agree that no direct, consequential, indirect or other damages or refunds shall be recoverable by the All-Americans from the Town and waive their rights to the same.

**14. Amendment.** This Agreement (including the Exhibits attached hereto) constitutes the entire agreement between the parties and supersedes all prior written and verbal agreements, representations, promises or understandings between the

parties. Any amendments to this Agreement must be in writing and executed by the Parties.

15. **Separability.** If any provision of this Agreement is found by a competent court to be invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable will not be affected and each provision of this Agreement will be valid and enforceable to the fullest extent permitted by law.

16. **No Transfer.** The rights hereunder may not be transferred or assigned without the consent of both Parties.

17. **Maine Law.** This Agreement is governed by the laws of the State of Maine. The Lowell All-Americans Baseball Club, Inc.

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### Schedule A

#### 2011 Season of Prescheduled Uses of the Ballpark for Other Events

The Ballpark has already been previously scheduled for the use and activities of other parties on the following dates during 2011:

May 13 – 18, 2011	Collegiate Tournament
June 25, 2011	Hero's Tournament
August 4 – 11, 2011	American Legion Baseball Tournament

The Parties acknowledge that due to these pre-existing commitments the Ballpark will not be available on these dates for exclusive use by the All-Americans. The Parties further acknowledge that, in the event the All-Americans are called upon to play in post-regular season playoff or championship games, there will be a need to identify four dates during the time period of August 4, 2011 through August 11, 2011 on each of which a single game can be played by the All-Americans. The Parties agree to work cooperatively in order to schedule such post-regular season games while also accommodating the American Legion Baseball Tournament.

**JEROME BEGERT:** After two years of hard work from hundreds of Ballpark volunteers and several months of due diligence from the Ballpark Commission, your Ball team proposal will be voted on today and is a significant new beginning toward a time, hopefully soon, when our Ballpark generates enough surplus-money to pay-off a bond toward construction of the Community Center that all of us have long-envisioned.

There were many who gave their compliments for this Agreement and expressed appreciation to the Council for approval of this Agreement which they believe will add greatly to our community. The contract which is good through next summer but is long enough for the team to play its 21 home games and six possible playoffs day. The Town will still be able to

**DAVE AYOTTE**, President and General Manager, spoke about his delight in this agreement being approved by the Council and thanks all those who were involved in the very comprehensive discussions and planning. This agreement may only be for one year but personally he said he was looking forward to a long relationship. He said he knew this move is going to work out well. A lot of hard work and thought was put into this agreement.

**TOWN MANAGER:** He also acknowledged the hard work that had gone into this contract which included a couple of provisions not included in the original contract. It represents the best proposal for all parties and will permit the start of the rivalry with the Sanford Mainers collegiate team which is based in Goodall Park. He indicated he was happy to be in Old Orchard and said having this team here will bring a group of fine young athletes as well as their families and friends to town.

**MOTION:** Councilor Dayton seconded and Vice Chair Tousignant seconded to Authorize the Town Manager to enter into an Agreement with the Lowell Baseball Team to Relocate to Old Orchard Beach as authorized by the Town Council.

**VOTE:** Unanimous.

# 5576 Discussion: Update provided by the Recycling Committee, Board of Assessment Review, and Recreation Committee.

**TOWN MANAGER:** At the request of the Chair the following three Committee Chairs will give us an update this evening on the work and progress of the Recycling Committee, the Board of Assessment Review Committee, and the Recreation Department.

**JOHN WEAVER:** Recycling has been our major emphasis over the past two years and the Committee has worked hard and diligently to move the recycling efforts ahead. Our Silver Bullets have been extremely successful and we have worked diligently with the Council on the change from the closing of our Waste Water Department to use of BBI for our waste pickup. He related the impressive Recycling Numbers with the total for 2010. He also indicated he has been working closely with the Town Manager on the plans for "Pay to Throw." The committee has done an educational program and meets often to continue their recycling emphasis to the citizens of Old Orchard Beach.

**MICEHELE PARKINSON:** As the Chair she reported on the meetings of the Board of assessment Review. She spoke about their recent meeting in which they established Rules of Procedure for conducting under the Town of Old Orchard Beach Code of Ordinances, Division 7 (Board of Assessment Review.) She reviewed the six meetings they have held and also talked about the organization of the Board and the need for two alternates and the

request will be brought to the Council at the next meeting. The purpose of the Board is to hear appeals from the decisions of the assessor regarding applications for abatements to property taxes and make determinations with respect to assessments in accordance with the general laws of the state. Three members of the board shall constitute a quorum for the purpose of hearing and voting upon a matter presented to the Board. An appeal can be granted only by a majority vote of those members present and voting. The taxpayer has the burden of establishing that the assessment appealed from is manifestly wrong.

**DRU LADUKE:** Members of the Town Council, my name is Dru Laduke and I am presently the Town of Old Orchard Beach Recreation Board President, along with Dean Plante, Janet Doroughty, John Regan and Eric Santos who serve on the Board. Thank you for your invitation to address the Council and general public in regards to the best “Community Based Recreation Department in York County. As you may or may not be aware well before your public service to Old Orchard Beach, the department of recreation had a high turnover rate of directors and was poorly supported Today I am pleased to say that we as a Town have been fortunate enough to retain the present director, Jason Webber, for the last seven years and have been witness to the growth in reputation and programming for recreation in our area. One might expect coming to a community like Old Orchard Beach to see a recreation department that has a few weekend athletic programs and an arts and crafts summer camp that would attract a mediocre group of children. I’m here this evening to share with you the cornerstone of what makes your Recreation Department the best for its citizens. Jason will be the first to admit that becoming the best Recreation Department in the county has not been done overnight and it hasn’t been done by just one person. The department has steadily grown to include Nikki Duplisea, Assistant Director/Child Care Coordinator (10 years, 5/5 years); Jen DeRice – Program Director, youth and adult programs, special events (1 ½ years); and Peg Smith – Office Clerk – 30 years for the Town; four years with the recreation department. This team has fostered the growth and coordination of inclusive programming that takes into account youth sports programs, the after-school programs, summer recreation camp, and a 50+ adult program that has become the heart and soul of our department and reflective of the citizens of our community. The foundation of the Community based Recreation Department is: Recreation Division – The division strives to provide leisure and enrichment activities that will meet the needs of the citizens and in a financially responsible manner. The Recreation Department will continue to be guided by a cost of services principle with regard to our rates and fees. We are committed to continually improving all programs, adding value and an improved quality of life to our participants. Partnering with local school sports leaders, the Recreation Department provides a great feeder system that promotes healthy competition and good sportsmanship in the sports of football, soccer, cheering, and basketball. Even today the Department is planning to expand services and offering in the coming year with new sports programs for teens and adults, summer youth sorts camps. Teen trips, and after-school enrichment classes are held. Senior Division – Our 50+ Club continues to increase its membership for people who are able to choose from multiple programs on nearly a weekly basis. Our programs are a work-in-progress. We are listening to our citizens and are e excited for the expansions we experience in 2009. The addition of a 14-passenger mini=bus in 2008 and in additional staff person has afforded us the opportunity and flexibility to improve our programming options and the ability to cater our activities to the needs and desires of each individual group. Along with nearly 100 annul program options, members of the 40+ group benefit from quarterly newsletters, meetings to share program ideas, and also from the use of the Recreation Department’s fitness equipment. This year was spent building a strong foundation of dedicated followers, and the coming year will bring the expansion of



overnight and extended travel options to this aging and active population. Community Events Division – Our department coordinates and/or assists in several special events throughout the year. Some of the major community events include: Summer Concerts in the Park, Annual Spring Egg-stravaganza, 4<sup>th</sup> Grade Holiday Theme Park, Annual Spring Egg-stravaganza; 4<sup>th</sup> Grade Holiday Theme Trees, Seaside Art Festival, Celebration by the Sea, Christopher Cash Memorial Race, and Jimmy the Greek’s “Frozen 4 Miler.” In our addition our department has been instrumental in the newly formed group, OOB365. We have participated in the coordination of such programs as: Taste of OOB, Autumn Festival, Woofstock, First Night, Winter Carnival, and the Hot Air Balloon Festival. Child Care Davison – We are very proud of the growth and quality of our Gull Care After-School Program. This program continues to exceed expectation by holding to the State of Maine Day Care Regulations. We do this in order to provide the quality care for our students and families, promoting good values and a positive sense of community. Other child care opportunities include School Vacation Camps, Teacher Workshop Days, Early Release Days, Summer Rec Camps, Gull Challenge, and Before School care. This past summer we made significant changes to our summer recreational camps that through feedback improved the overall quality of our summer day camp experience. The Old Orchard Beach Recreation Department is committed to developing and maintaining programs that emphasize safe and healthy environments for all participants. We value good sportsmanship, respect, responsibility and team-work and strive to foster opportunities to increase self esteem in our community’s young people. Recently the youth of our community has sought out the leadership of recreation department to assist in taking a skate park dream and make it a reality. As a parent, taxpayer and community citizen, I think I can speak of the members of the Board in saying that we are proud to continue the work and support Jason and his staff.

# 5577 Discussion with Action: Rescind Town Council Policy 05-01 – Transfer Station Policy.

**CHAIR:** Due to the Transfer Station changes and BBI handling our trash services, the following Policy needed to be revised.

**BACKGROUND: TOWN OF OLD ORCHARD BEACH  
TOWN COUNCIL POLICY 05-01  
TRANSFER STATION POLICY**

The Town Council has established the following policy for the issuance of and charges for Transfer Station permits.

**PERMIT PROCEDURE:**

- A. Permits are available to any real estate property owner who completes an application form. Such persons may be issued a transfer station permit, which they will show at the transfer station when disposing of waste material. Permits are limited to one per property owner. For purposes of this policy, all co-owners of a property shall be considered a single owner.
- B. The permit includes three yards of acceptable demolition material. Once this allotted amount is exceeded, the cost of acceptable demolition material will be \$28.00 per cubic

yard. For the purposes of this policy, acceptable demolition material is waste to be transported to the energy recovery facility deemed acceptable by the energy recovery facility, and construction or demolition debris, white goods and brown goods, furniture, and other waste deemed agreeable by the transfer station operator. Hazardous waste, which is waste deemed hazardous by the DEP, EPA, or the State of Maine, will not be accepted at the Transfer Station.

- C. Permit holders are subject to a fee per cubic yard of waste material disposed of, this fee to be set by the Town Council annually or more often if necessitated by contract changes. Permit holders may dispose of up to three cubic yards in any one year without paying a disposal fee. For the purpose of this section, “any one year” means 12 months from the date of issuance of the permit.
- D. Application forms for permits shall be made available through the Office of the Town Clerk.
- E. Applicants agree to abide by all regulations established by the Town of Old Orchard Beach. Such regulations may include limitations on the types of waste material which may be disposed of at the transfer station, and specific fees for specific waste material as determined by the Public Works Director or his designee.
- F. Transfer station permits are \$25, and are non-replaceable.
- G. All persons transporting material to the transfer station without a permit are subject to proof of residency or proof of real estate ownership requirements.

**MOTION:** Vice Chair Tousignant motioned and Councilor Dayton seconded to Rescind Town Council Policy 05-01 – Transfer Station Policy.

**VOTE:** Unanimous.

# 5578 Discussion with Action: Adopt Town Council Policy 10-01 – Brush/Grass/Leaves Policy, Brush Disposal Area (BDA).

**CHAIR MACDONALD:** Again, as a result of the change in the use of our Transfer Station, the following policy was adopted.

**BACKGROUND:**

**TOWN OF OLD ORCHARD BEACH  
TOWN COUNCIL POLICY 10-01  
BRUSH/GRASS/LEAVES POLICY  
BRUSH DISPOSAL AREA (BDA)**

The Town Council has established the following policy for the acceptance of brush, grass and leaves.

**PROCEDURE:**

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- A. Brush, grass and leaves will be accepted at the Brush Disposal Area, free to residents.
- B. Brush, grass and leaves will be accepted at the Brush Disposal Area from commercial entities at \$6.00 per yard.
- C. The Brush Disposal Area will be open from 7:15 a.m. to 12:00 p.m. (Noon) on Wednesdays and 7:15 a.m. to 2:00 p.m. on Saturdays.
- D. The Brush Disposal Area will be closed for the months of December through February.
- E. The Brush Disposal Area will be closed for snow removal operations.
- H. All persons transporting material to the Brush Disposal Area are subject to proof of residency or proof of real estate ownership requirements if not required to pay a fee.
- I. The Brush Disposal Area may be opened on other dates and times as determined by the Town Manager or his designee. Brush Disposal Area may also be closed on various dates as deemed necessary by the Town Manager or his designee.

**MOTION:** Councilor Dayton motioned and Vice Chair Tousignant seconded to Adopt Town Council Policy 10-01 – Brush/Grass/Leaves Policy, Brush Disposal Area (BDA).

**VOTE** Unanimous.

# 5579 Discussion with Action: Accept the bid from Coastal Telephone in the amount of \$43,643.72 for the Telephone System for the new Police Building from Account Number 31143 – 50891, with a balance of \$1,912,371.70.

**BACKGROUND:** Bids for the IP Based Phone System

Bids from an RFP for the Police Department Phone System were sent out and the following bids and opened on Friday, September 24, 2010. The Assistant Town Manager opened the bids which were witnessed by Town Manager Jack Turcotte, Deputy Chief Keith Babin; Allen Cornwall of Systems Engineering, Mike Stephenson of National Telephone & Technology; and George MacDonald of Coastal Telephone.

PAETEC	\$ 36,867.27
No cabling quote provided	
CTI Communication Technologies	\$ 77,873.75
Including Cabling	

CMC Technology Group		\$ 69,138.00
Cabling	10,683.00	\$ 79,821.00
Tele Communications	\$ 28,250.00	
Cabling	15,386.72	\$ 43,636.72
Systems Engineering		\$ 104,925.00
Coastal Telephone Corporation		\$ 43,643.72

Staff recommends accepting the bid of \$43,643.72 from Coastal Telephone from Account Number 31143-50891 – New Police Station, with a balance of \$1,912,371.70. Councilor Dayton thanked the Public Works Director for due diligence in the bid process.

**MOTION:** Vice Chair Tousignant motioned and Councilor Dayton seconded to Accept the bid from Coastal Telephone in the amount of \$43,643.72 for the Telephone System for the new Police Building from Account Number 31143 – 50891, with a balance of \$1,912,371.70.

**VOTE:** Unanimous.

# 5580 **Discussion with Action:** Accept the bid from Dancause Construction in the amount of \$8,950 for galvanized steel to be used for construction of the west wall at the Sand & Salt Facility from Account Number 20203-50826 – CIP – Public Works Building Improvements with a balance of \$46,768.11.

Public Works went out to bid for the above construction of west wall at the Sand & Salt Facility and received three bids:

Paul Provencher Builder	Option 1	\$10,300
Faulkner Building Co.		9,885
Dancause Construction		\$ 8,950

Staff is recommending the bid from Dancause Construction in the amount of \$8,950 for galvanized steel versus plywood.

**MOTION:** Vice Chair Tousignant motioned and Councilor Dayton seconded to Accept the bid from Dancause Construction in the amount of \$8,950 for galvanized steel to be used for construction of the west wall at the Sand & Salt Facility from Account Number 20203-50826 – CIP – Public Works Building Improvements with a balance of \$46,768.11.

**VOTE:** Unanimous.

# 5581 Discussion with Action: Set a Public Hearing Date of October 19, 2010 to revise Chapter 50, Article II, Sidewalks, Section 50-52 and 50-53 of the Town of Old Orchard Beach.

**NOTICE OF PUBLIC HEARING  
MUNICIPAL OFFICERS OF THE TOWN OF  
OLD ORCHARD BEACH**

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on October 19, 2010, at 7:00 p.m. to consider the following:

Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that Chapter 50, Article II, Sidewalks, Sections 50-52 and 50-53 of the Town of Old Orchard Beach is added by adding the underscored language:

**Sec. 50-52. Construction by town or abutting landowners.**

(a) Notwithstanding section 50-51, the town council may at any time direct the construction of a sidewalk or curbing or both along any accepted street in the town. Such sidewalk or curbing shall be constructed by the town, and the cost thereof shall be borne by the town.

(b) Sidewalks or curbing or both may be ordered by the council upon petition of an abutting landowner, and one-half of the cost thereof shall be assessed to such abutting landowner and shall be collected by the town in the manner provided in sections 50-57 and 50-58. The landowner is required to submit three competitive bids. The Town Council, based on the recommendation of the Public Works Director, has the option of selecting to pay half of the lowest bid, but the homeowner has the right to choose any contractor. The Town Council also has the right to reject any and all bids.

**Sec. 50-53. Reconstruction; assessment of cost.**

(a) The town council may at any time direct the reconstruction of any sidewalk or curbing which has been constructed along any accepted street by other than the town and which has not been accepted as the responsibility of the town. Such sidewalk or curbing shall be reconstructed by the town, and the cost thereof shall be borne by the town.

(b) Such improvements may be ordered by the council upon the petition of an abutting landowner, and one-half of the cost thereof shall be assessed to such abutting landowner and shall be collected by the town in the manner provided in sections 50-57 and 50-58. The landowner is required to submit three competitive bids. The Town Council, based on the recommendation of the Public Works Director, has the option of selecting to pay half of the lowest bid, but the homeowner has the right to choose any contractor. The Town Council also has the right to reject any and all bids.

**MOTION:** Vice Chair Tousignant motioned and Councilor Dayton seconded to Set a Public Hearing Date of October 19, 2010 to revise Chapter 50, Article II, Sidewalks, Section 50-52 and 50-53 of the Town of Old Orchard Beach.

**VOTE:** Unanimous.

## **GOOD AND WELFARE**

**JEROME BEGERT:** I'm concerned that Old Orchard Beach voters might not receive enough information about and exposure to the seven candidates who are running for three seats on the Town Council. Newspaper-coverage won't be very-extensive nor interview-oriented. Cable-TV3's broadcast (on Wednesday, October 13, 2010) of the candidate-forum will be somewhat time-limited, by dividing questions and answers among the seven candidates. And roadside signs show nothing more than names with the first strong-wind or mischievous Halloween pranksters turning those signs into roadside-litter. Because of that, and because all that sign-clutter distracts drivers, I will not erect any signs myself. So I have two suggestions. One – At Town Council on October 19<sup>th</sup> meeting, after other-citizens speak under good and welfare, Council candidates should be allowed to speak up to five minutes to explain why they are running, and what they stand for including incumbents Mike Tousignant and Robin Dayton. And second the week before which is Tuesday, October 12<sup>th</sup> during the Charter Review Commission meeting Good and Welfare compare our current thirteen year old Charter with what they think should be in a new charter and explain what they like and dislike about what the Charter Commission has thus far tentatively proposed, presuming that all the candidates have cared enough to watch our televised meetings about the Charter's rules that govern our government. Before I was appointed to a vacated Charter Commission seat, just as a curious citizen, I strongly advocated for the televising of the Charter proceedings; so as to better inform voters before they decided the Charter referendum and I urge my fellow Commissioners to take the full two years allowed for Charter revisions, so citizens have enough time to listen, analyze, talk with each other, and to join Charter meetings to guide our process before the November 2011 referendum vote. Charter broadcasts began last February with earnest affirmation from our Town Councilors and from our Charter Commissioners (a first in Old Orchard Beach history.) with generous assistance from John Glass our TV3 media grandmaster, who also trained Town Clerk, Kim McLaughlin and Recreation Jason Director to operate the broadcast controls. All these people cared enough informing Old Orchard Beach citizens about their town government that exists to serve our best common interests. I want to hear Council Candidates views about charter revision next Tuesday, October 12<sup>th</sup>. and continuing through next year. I want every Old Orchard Beach citizen to guide us with your ideas and questions on the way voters want it to be before November 2011 charter referendum.

## **ADJOURNMENT**

**MOTION:** Councilor Dayton motioned and Vice Chair Tousignant seconded to adjourn.

**VOTE:** Unanimous.

**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 thirty-one (31) pages is a true copy of the original Minutes of the Town Council Meeting of October 5, 2010.**

**V. Louise Reid**