

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
TUESDAY, SEPTEMBER 21, 2010
TOWN HALL CHAMBERS**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, September 21, 2010. Chair MacDonald opened the meeting at 7:10 p.m.

The following were in attendance:

**Chair Sharri MacDonald
Vice Chair Michael Tousignant
Councilor Robin Dayton
Councilor Shawn O'Neill
Councilor Laura Bolduc
Town Manager Jack Turcotte
Assistant Town Manager Louise Reid**

**Pledge to the Flag
Roll Call**

EMERGENCY ITEM:

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to add an Emergency Item Number 5572 – Discussion with Action: The Sewer Appeal of Moshe Agam, 26 Old Orchard Street (206-4-3), pursuant to Section 58-124 of the Utilities Ordinance.

VOTE: Unanimous.

MOTION: Councilor Bolduc motioned and Councilor Dayton seconded to move Agenda Item 5564 - Discussion with Action: Approve Sea Level Adaptation Working Group to continue their work with Saco, Biddeford and Old Orchard Beach before Agenda Item Number 5562.

VOTE: Unanimous.

ACKNOWLEDGEMENTS:

HELENE WHITTAKER: I am the President of the CWC. You have in your packets a flyer regarding medication disposal. We thank you Councilors for your support. Lt. Tim DeLuca, myself and our partners have worked hard and many months to get this program launched at no cost to the Town of Old Orchard Beach or its residents. We are hoping it will be a yearly program. GOT DRUGS is a National initiative, which addresses a vital public safety and public health issue. Many Americans are not aware medicines that languish in home cabinets, are highly susceptible to diversion, misuse and abuse. Prescription drug abuse in the United States is increasing at alarming rates as are the number of accidental poisonings and overdoses due to the drugs. Studies show that a majority of abused prescription drugs

are obtained from family and friends, including from the home medicine cabinet. Let's also remember, when loved ones pass, many times significant amounts of medications are left behind. In addition, many of us do not know how to properly dispose of our unused medicine, often flushing them down the toilet or throwing them away – both potential safety and health hazards. So it is with excitement that we are having a medication drop-off this Saturday at the Ballpark from 10:00 to 2:00 p.m. It's anonymous and free. Turn in your unused, unwanted or expired medications. This includes prescriptions, controlled, non-controlled and over-the-counter substances such as drops and ointments. We suggest removing any personal information from labels. For those of you watching, spread the word. Let's get these drugs off the street.

COUNCILOR BOLDUC: We want to remind everyone of this Second Autumn Celebration sponsored by OOB365. This was a tremendous success last year and will be even better this year. The events start at Memorial Park from 11:a.m. to 4:00 p.m. and will include a Petty Zoo, Farmer's Market, Pumpkin Decorating, Street Performers, Corn Toss, Line Dancing, Apple Pie Contest, Crafts, Pony Rides, Best Pizza contest, and so much more. In addition join the Pier and the Myst for a Seaside Lobster Bake and Pig Roast in the Town Square with a Bonfire from 4:00 to 8:00 p.m. Tickets are \$20 per person if bought in advance; and \$25 the day of the event. Included that same day in Memorial Park will be a PETANQUE Tournament Scheduled at 9:00 a.m. Come and participate or just watch.

CHAIR MACDONALD: She expressed appreciation to the Chamber of Commerce to the marvelous Car Show this past weekend which brought an enormous amount of individuals to our community. Everything about the weekend was successful and a great community event.

ACCEPTANCE OF MINUTES: Town Council Meeting of August 17, 2010; Special Town Council Meeting of August 25, 2010; Town Council Workshop of August 25, 2010; Town Council Workshop of August 31, 2010; Special Town Council Meeting of September 15, 2010; and Town Council Workshop of September 15, 2010.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Accept the Town Council Meeting of August 17, 2010; Special Town Council Meeting of August 25, 2010; Town Council Workshop of August 25, 2010; Town Council Workshop of August 31, 2010; Special Town Council Meeting of September 15, 2010; and Town Council Workshop of September 15, 2010.

VOTE: Unanimous.

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

PUBLIC HEARING BUSINESS LICENSES AND APPROVAL:

Alyce DeDoes (104-2-9-31), 42 Walnut Street, Unit 31, one year round rental; Charles H. Randall (206-28-5), 27 Summit Street, one year round rental; Michael Quinn (316-4-1-5A), 1 Seacliff Avenue, #5A, one year round rental; and David & Paula Carlson (321-14-4), 19 Oceana Avenue, one seasonal rental.

MOTION: Councilor Dayton motioned and Councilor O'Neill seconded to approve the business licenses as read.

VOTE: Unanimous.

CHAIR: I close the Public Hearing at 7:10 p.m.

TOWN MANAGER'S REPORT:

PROJECTS THAT I AM ADDRESSING

- 1. Investigating retrofitting our Town-owned-street lights in conjunction with Efficiency Maine. Also talking to Efficiency Maine Regarding Town Hall.**
- 2. Currently in the process of repair the leaks in both Town Hall Tower in conjunction with the HAVC Company who has to lift off the Unit ventilators while a roofer installs a new rubber membrane roof.**
- 3. Continue to work on the Train Station project with Wright Pierce and the Railroad.**
- 4. Started work on next year's budget relating to staffing and CIP needs.**
- 5. I reviewed an arrangement with the RSU, Town and the Pine Tree Chapter of the American Theater Organ Society regarding our pipe organ at the Loranger School.**
- 6. Have worked with Gary Lamb with a developer exploring options for an athletic franchise who is seeking a new home.**
- 7. Continue to work with Sanford regarding consolidation of Dispatch and will be traveling to a public hearing in August tomorrow regarding State Dispatch Consolidation/Regionalization.**
- 8. Meeting with representatives of two colleges regarding next years May Collegiate Baseball Tournament.**
- 9. Continuing Contract negotiations with Waste Water and Public Works.**
- 10. Continue to work with the "Pay to Throw" Committee and need Council feedback on a questionnaire which was distributed to the Council a few weeks ago and have provided you another copy this evening.**
- 11. Continue to work on the Tide Gate challenges. A recent inspection by the Company who installed the Gate is addressing a handful of mechanical problems and will provide a maintenance schedule.**
- 12. Continue to work with Wright Pierce on the West Grand Pump Station.**
- 13. Worked with our photo copier vendor to identify ways to reduce our copying costs.**

MEETINGS ATTENDED

Numerous Dispatch Meetings
Ball Park Meetings
Department Head meetings
Business Owners regarding the issue of alcohol pricing.

EVENTS ATTENDED

A weekend trip to the dedication of a new school in Ellsworth that was a pet project of mine.

Attended the Car Show on Friday and Saturday and welcomed the crowd on Saturday morning.

JASON WEBBER: Over the course of the past two month we have had well attended meetings about the skateboard park. In the initial meetings we discussed goals, timelines; types of Skate Parks, what we want in the skate park, really a brain storming session. After, we had some of the kids do some concept drawings from the ideas from the first meeting. The group has worked under the confines of the Recreation Board who has supported the project unanimously. We have been in front of the Ball Park Commission to gain their support in putting the Skateboard Park in the confines of the Ball Park property. They passed that suggestion with a unanimous vote at their last meeting. The exact location will not be determined until we hire a designer who will help guide us and the Town Council on the best location as it will be the Council's vote on where the park will be located. With the \$30,000 that this Council has provided to us, we look to maximize our investment with grants and fundraising. The first grant the Tony Hawk foundation will be submitted on the 1st of October. This is a non-matching grant and looks very hopeful as we have shone that we are committed to this project. We wish to thank the Council for their time this evening and also for the support that you have given.

NEW BUSINESS:

5561 **Discussion with Action:** Authorize the Town Manager to enter into an Agreement with BBI Waste, Ind., for accepting Old Orchard Beach Municipal Solid Waste at the BBI Facility on Vallee Lane in the amount of \$50,000 from Account Number 20163-50340 – Solid Waste Contract, with a balance of \$234,038.28, to include closing the Old Orchard Beach Transfer Station for acceptance of solid waste.

TOWN MANAGER: A few months ago Patrick Coughlin, Kenny Blow, Archie St. Hilaire and the Assistant Town Manager, V. Louise Reid, met with Randy McMullin of the Department of Environmental Protection and discussed the existing and proposed possible Transfer Station responsibilities being taken over by BBI. The above Solid Waste Order is a result of that meeting. It should also be stated that the Town would retain its permit to run the Transfer Station should this arrangement not be in the best interests of the citizens of the Town. The Council gave its indication that an October 1, 2010 date would be a reasonable

starting date for such an agreement to be in force and the item will be on the August 17th agenda. The Applicant BBI Waste Industries (“BBI”) has applied for approval to modify the existing transfer station to accept municipal solid waste (“MSW”) from residential customers. The existing transfer station facility is licensed to accept construction and demolition debris (“CSDD”) from commercial and residential users, but accepts municipal solid waste from only commercial accounts. The facility is located at 1 Vallee Lane in Old Orchard Beach. This license amendment request is to expand the “customers” using the facility to include residential customers dropping off MSW at the facility. The Town of Old Orchard Beach is proposing to close the Old Orchard Beach Transfer Station currently operating under Department Order #S-08464-10-C-R. Local changes have been made in Old Orchard Beach community to increase curbside pick up of more MSW and curbside pickup of single sort recycling, which has dramatically reduced the amounts of MSW disposed of at the Old Orchard Beach facility to approximately 400 tons per year. The BBI waste facility is located approximately ½ mile from the Old Orchard Beach facility and proposes changes in the BBI facility to facilitate the acceptance of the MSW from residential customers. Leaf and yard waste will still be accepted at the Town of Old Orchard Beach facility on a reduced schedule. The 1 Vallee Lane site contains the offices of BBI Waste Industries, a maintenance facility for vehicles and containers, and is the site of the transfer station. BBI further proposed amending the permitted transfer station to install a MSW compactor for the acceptance of MSW for residential customers. Traffic control at the facility will be regulated remotely by the operator to prevent residential customers from interacting with commercial customers and to allow for safe entrance and egress by all users of the transfer station. The Town has considered this change in part because of the cost of replacing a compactor that is no longer able to be used and the cost is in the \$60,000 or \$70,000 range to repair. Traffic flow into and out of the transfer facility has generated approximately 250 passenger car equivalents per day according to facility records since the transfer station was constructed in 2001. This amendment is expected to add an addition 32 per day to the total facility traffic flow and this expanded volume does not trigger a traffic study. Peak afternoon traffic flow is estimated to be 50 at the facility entrance. Intersection sight distances where the access drive intersects with Vallee Lane and Smithwheel Road are adequate. The Department of Environmental Protection finds that the facility has been designed to allow for adequate traffic movement into, out of, and within the facility. Solid Waste Management Rules are addressed. Wastes delivered to the site will be inspected by the attendant and directed to the appropriate unloading area. Mixed loads will be sorted by facility personnel to separate reusable, recyclable and process able materials. The facility is gated and monitored during and after business hours. The facility will continue to accept only construction/demolition materials (wood, gypsum board, shingles, concrete, brick, glass, etc.) land clearing debris, while metal goods, universal and e-waste, and a part of this agreement, municipal solid waste. The following materials will not be accepted at the facility: Hazardous and special wastes as defined in statute and rule; waste oil and antifreeze; car/truck tires and batteries; and ash and composted materials. There will be no open burning or disposal of waste materials at the facility. BBI will provide for MSW disposal at one or more of the following approved facilities and in accordance with the Solid Waste Management Regulations: Maine Energy in Biddeford (contract dated February 23, 2004); Mt. Carberry Landfill in Success, NH (contract dated July 28, 2006); and Coventry Energy in Haverhill, MA (contract dated July 21, 2006. The Town of Old Orchard Beach will continue to maintain its ability to operate its own Transfer Station should that ever be another consideration in the future. Further discussion will be ongoing regarding what will be accepted at the Old Orchard Beach Transfer Station such as recommendations being considered such as brush,

grass and leaves, free to residents, with commercial entities at \$6 per yard. It is suggested for discussion purposes that the Old Orchard Beach Transfer Station might be open from 7:15 a.m. to noon on Wednesdays and 7:15 a.m. to 2:00 on Saturdays but closed for the months of December through February; closed for snow removal operations. It has also been recommended that all persons transporting material to the transfer station are subject to proof of residency or proof of real estate ownership requirements if not required to pay a fee. It was also suggested that the Transfer Station might be open other dates as determined by the Town Manager or his designee and also closed on various dates as deemed necessary by the Town Manger. Again, these are discussions that have been held with suggestions being made.

Discussion among Council included the opinion of Councilor O'Neill who felt that we were giving up a part of our town ownership by doing this and that in the years ahead losing our permit. The Chair indicated that our permit would still be valid and that should in a year this not work out, then we have the possibility of going back to the present situation. It was also noted that citizens should realize that at the present time the permits are being funded by the taxpayers. King Weinstein indicated that with such an outstanding business as BBI in our community we should feel comfortable going with their running waste and recycling operations. Councilor Dayton pointed out that there had been four workshops on this issue and that there was an enormous amount of opportunity for people to speak out positively and negatively on the suggestion. Again it was pointed out by Vice Chair Tousignant that the cost of the infrastructure needs makes this a winning proposition. It was indicated by the Chair that the permits presently issued would be honed till the end of the year by BBI and the contract would take effect on November 1, 2010. Councilor O'Neill indicated that from the feedback he has received people do not want us to close the Transfer Station. Councilor Dayton indicated that it will be a savings to the Town as a whole.

MOTION: Councilor Dayton motioned and Councilor Bolduc seconded to Authorize the Town Manager to enter into an Agreement with BBI Waste, Ind., for accepting Old Orchard Beach Municipal Solid Waste at the BBI Facility on Vallee Lane in the amount of \$50,000 from Account Number 20163-50340 – Solid Waste Contract, with a balance of \$234,038.28, to include closing the Old Orchard Beach Transfer Station for acceptance of solid waste.

VOTE: Yea: Councilors Dayton, Bolduc, Vice Chair Tousignant and Chair MacDonald.
Nea: Councilor O'Neill

5564 Discussion with Action: Approve Sea Level Adaptation Working Group to continue their work with Saco, Biddeford and Old Orchard Beach.

BACKGROUND: Sea Level Adaptation Group (SLAWG)

JT Lockman, Planning Director of Southern Maine Regional Planning Commission and Pete Slovinsky, Geologist with Maine Geolical Survey attended. It was their goal to describe SLAWG activities to date and asking for approval by Council to continue this work into the next phase. The steering committee appointed by the Council includes the following from the Town of Old Orchard Beach as well as selected members from Saco, Biddeford, and Scarborough. The membership includes one municipal planner or designee appointed from

each municipality; one at-large citizen appointed from each municipality; and one regional planner appointed by the Director of the Southern Maine Regional Planning Commission. The SLAWG Committee was envisioned a regional challenge grant awarded to communities and to SMRPC from the Maine State Planning Office last year. In agreeing to be part of this group each community has shown its willingness to work together regionally to plan for, and try to adapt to the inevitable changes in the shoreline. As the steering committee meetings have progressed they have become committed to the idea that it will be more efficient, effective and will result in cost savings. In working together they will identify natural environments, infrastructure, and properties at risk, and develop regional solutions. They will also provide greater influence working with higher levels of government that control permitting in our coastal areas. The Council, in agreeing to this Interlocal Agreement work together in the purpose of the agreement which is to establish a working group that is able to review the recent Coastal Hazard Resiliency Tools Project that has analyzed the problem of sea level rise, and then develop an action plan that will estimate regional vulnerabilities, identify regional objectives to address such vulnerabilities, and provide recommendations for regional solutions. The regional action plan shall establish the policy direction for implementing the duties of the working group as set forth in this Agreement.

MOTION: Councilor Bolduc motioned and Councilor O'Neill seconded to Approve Sea Level Adaptation Working Group to continue their work with Saco, Biddeford and Old Orchard Beach.

VOTE: Unanimous.

5562 Discussion with Action: Accept the Financial Statement provided by the Ballpark Commission and verified by signature of the Town's Finance Director.

JILL EASTMAN – FINANCE DIRECTOR: She presented this report to the Council and those in attendance. There was then a question and answer period.

BALLPARK
EXPLANATION OF ACCOUNTS AND ACTIVITY
FY 2009 THROUGH AUGUST 16TH, 2010

FY 2009

In FY 2009 (July 1, 2008 to June 30, 2009) the Town Council appropriated \$25,000 in the General Fund to the Ballpark for safety improvements. This money was accounted for in the Town's financial statement under account number 20201-50804 which was listed in the CIP-General Government. I have attached a report (Exhibit 1) that shows the budgeted amount, the expenditures and the balance at the end of FY 2009. There was a balance at the end of FY 2009 of \$7,452.92. This amount was carried forward into FY 2010.

FY 2010

In FY 2010(July 1, 2009 to June 30, 2010) the Town Council again appropriated \$25,000 in the General Fund to the Ballpark, added to the \$7,452.92 that was carried forward from FY 2009, the total available in the General Fund was \$32,452.92. This money was accounted for in

the Town's financial statement under account number 20201-50804 which was listed in the CIP-General Government. I have attached a report (Exhibit 2) that shows the budgeted amount, the expenditures and the balance of zero at the end of FY 2010.

Also during FY 2010 the friends of the ballpark also started doing fund raising and volunteer work at the ballpark. At this time I set up a fund call the Ballpark Restoration Fund, which is a special revenue fund dedicated to the ballpark. I set up various different revenue accounts to keep track of all of the different types of revenue that were going to be coming in and I set up operating accounts for expenditures. All donations were deposited to this fund including a \$25,000 transfer the Town Council made to the Ballpark in March of 2010. In the spring of FY 2010 as the ballpark began to host events there were other revenues that started coming in and they were also deposited in their respective accounts. Expenditures related to the operations of the ballpark were also posted to these accounts. I have attached a report (Exhibit 3) that shows all revenues and expenditures and the fund balance at the end of the year.

The Fund Balance at the end of FY2010 becomes the beginning Fund Balance for FY 2011.

FY 2011

In FY 2011 the Ballpark Fund started with a Fund Balance of \$2,579.36. I have attached three reports for FY 2011, July (Exhibit 4), August (Exhibit 5) and September(Exhibit 6) (through the 16th). These reports show the cumulative activity for the current fiscal year. As of September 16, 2010, the Ballpark had a fund equity of \$3,306.11.

During the discussion segment of the meeting several people spoke including Paul Ladakakos, Rickie Letowt, Michael Bouffard, Linda Mailhot, Jerome Begart, and members of the Council. Many commented on what has been done at the Ballpark and the praise that should be given to the volunteers who have made it what it is today. Questions were raised on the validity of reporting process and the request that perhaps a friendlier manner of reporting would be appreciated. Councilors Dayton and O'Neill indicated that their concerns expressed at the Workshop the week before were not intended to belittle or take away from the excellent work done by the Ballpark Committee. According to the Finance Director's report, as of September 16th, the Ballpark had a positive balance of \$3,306. Linda Mailhot, President of OOB365, presented a check in the amount of \$2295 to the Ballpark Commission as a result of their fund raising event at the Ballpark. Since 2009 the Town has given the Ballpark \$75,000 for safety improvements and to help ready it for the first season. The Town Council unanimously accepted the financial report. Vice Chair Tousignant indicated that money at the Ballpark is not being wasted and the work has been done to the property which has significantly increased in value. He indicated that this property three years ago was just a dump. Councilor Dayton thanked the administration for providing the information. Councilor O'Neill acknowledged that the Council had asked some tough questions but the fact that the former material provided had indicated that the Ballpark was in the negative for over \$30,000. Vice Chair Tousignant indicated that the Town has provided the Ballpark with \$75,000; the Ballpark has invested at least \$67,978.98 for a total of \$142,978.98; and that labor alone which was provided by dedicated volunteers has amounted to over \$100,000. The Financial Materials are to be put on the Web site. Tom LaChance agreed to provide a list of the volunteer contributions that have been made.

MOTION: Councilor O'Neill motioned and Councilor Dayton seconded to Accept the Financial Statement provided by the Ballpark Commission and verified by signature of the Town's Finance Director.

VOTE: Unanimous.

5563 Discussion with Action: Approve the Letter of Intent for the Lowell Baseball Team to Relocate to Old Orchard Beach as authorized by the Town Council; and authorize the Town's Legal Counsel to prepare final legal documents for approval by the Town Council at the October 5, 2010 meeting.

TOWN MANAGER: The Town Council was presented to the opportunity to do something special in regards to the recently renovated and historic ballpark by bringing a New England Collegiate Baseball League to the Town. The Council was presented with a plan to relocate the Lowell team in Old Orchard Beach for next spring. This is an opportunity the Ballpark Commission hopes the Town will not pass by. Old Orchard Beach is a tourist destination for thousands in the summer months and is billed as an attraction of historic beauty and also a destination for not only the tourists but for locals as well. The NECBI leadership indicated that baseball could thrive in Old Orchard Beach when it played a home away from game against Sanford Mainers when it drew over 1,000 fans. Money-wise it was noted by the Commission that it could and does make sense. The team would pay \$10,000 usage fee for the park which would be the highest amount of any town within the NECBI. It was pointed out that some of the NECBI towns such as Holyoke pay management to have the team in town. On top of the \$10,000 usage fee, the current proposal in front of the Council this evening was the Town would receive 75 percent of all revenue from food and beverage concessions while the final 25 percent goes to the team to help offset operating costs. The team has also agreed under the proposal to donate kitchen appliances for use in the concession stands, such as a cooktop, freezer, large popcorn maker and oven.

The following Letter of Intent was read into the Minutes and the Draft Agreement was also provided to those in attendance and asked to be part of the Minutes.

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

BALLPARK USE AGREEMENT

For good and valuable consideration, Agreement made this ____ day of _____, 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 July 31, 2011, this period is set to accommodate the All-American’s 21 regular home games and up to 4 additional championship or post regular season games (collectively the “2011 Season”). The term may be extended by the Parties under the terms of Paragraph _____, 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.

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 \$5,000,000, single limit, for injury to or death of one person, \$5,000,000 for injury to or death of more than one person in any single accident, and for not less than \$1,000,000 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.

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. 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 the sponsorship, the duration of the sponsorship, the content and message of the signage and the location of display of the signage within the Ballpark. 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 upon service of a written notice of termination of a material breach or other reason supporting 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. Termination shall be immediate upon receipt of such notice.

Material breaches and other reasons supporting early termination shall include, but are not limited to, acts of God which make the Ballpark unavailable for 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, insolvency on the part of either Party or the conduct of material illegal or criminal activities on the part of either Party.

Upon Termination, the Parties agree that no direct, consequential, indirect or other damages or refunds will be available or payable by the Town to the All-Americans.

11. **Amendment.** This Agreement (including all 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.

12. **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.

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

14. **Maine Law.** This Agreement is governed by the laws of the State of Maine.

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 pr-existing commitments the Ballpark will not be available on these dates for use by the All-Americans.

COUNCILOR O'NEILL: He asked that the Letter of Intent be included in the Minutes and read it aloud to the audience and those watching on television.

OOB Town Letterhead

**Harry J. Ayotte
President of the Board of Directors
The Lowell All-Americans Baseball Club, Inc.**

Dear Mr. Ayotte: THIS IS A DRAFT LETTER OF INTENT

The Old Orchard Beach Town Council recently met and considered the discussions ongoing about the use of the Old Orchard Beach Ballpark by the Lowell All-Americans as the team's home stadium for the 2011 season.

We are pleased to report that the Council wishes to support the team's interest in joining our community and using the Ballpark as its home stadium. Please accept this letter as the Town's letter of intent to formalize the relationship with the All-Americans to use the Ballpark under the terms of a license agreement in substantially the same form and under similar conditions as included the attached draft license agreement.

We trust the draft license we provide embodies the terms that you, your son Doug and the Town's representatives have been working out over the last several months. Please let us know your comments and concerns. We look forward to finalizing the agreement with the Team at your earliest convenience.

Thank you for the many courtesies to date.

Very truly yours,

cc: Robert J. Crawford, Esq.

MOTION: Councilor O'Neill motioned and Councilor Dayton seconded Approve the Letter of Intent for the Lowell Baseball Team to Relocate to Old Orchard Beach as authorized by the Town Council; and authorize the Town's Legal Counsel to prepare final legal documents for approval by the Town Council at the October 5, 2010 meeting.

VOTE: Unanimous.

5565 Discussion with Action: Authorize the Town Manager to issue a Request for Proposal (RFP) for consultant assistance to the Comprehensive Plan Committee from Account Number 20201-50802 – Comprehensive Plan Committee, with a balance of \$52,600.

TOWN MANAGER: The beginning of the development of the Comprehensive Plan requires a consultant's assistance and the Planner is requesting the such services be provided through Southern Maine Regional Planning.

Discussion includes a comment by King Weinstein that he did not understand why Town Hall staff could not do this without going out to bid. It was explained the complexity of the time constraints and the feeling that staff requirements would not permit without other responsibilities being hampered and that is the why the decision was made to go out as other Town's have done for assistance in the formation of this important document.

MOTION: Vice Chair Tousignant motioned and Councilor Bolduc seconded to Authorize the Town Manager to issue a Request for Proposal (RFP) for consultant assistance to the Comprehensive Plan Committee from Account Number 20201-50802– Comprehensive Plan Committee, with a balance of \$52,600.

VOTE: Unanimous

5566 Discussion with Action: Contract Sebago Technics to provide an analysis of the 2010 FEMA Flood Insurance Study to ascertain if there is a Basis for Appeal, in the amount of \$13,000 from Account Number 20118-50350 - Contingency, with a balance of \$25,000.

MIKE NUGENT AND JAMIE LOWERY: As part of a larger scale project FEMA has redrafted flood insurance rate maps for Old Orchard Beach that are expected to go into effect next year. Current FEMA flood insurance maps here date back to 1984. FEMA recently completed it's final revisions and initiated a 90-day appeal period beginning on September 2. In June of 2009 and May of 2010, the Town of Old Orchard Beach received new Flood Insurance Rate Maps from the Federal Emergency Management Agency. You are receiving this mailing because your property's flood hazard designation will change as a result of the new mapping. A brochure that has been prepared was sent as well. There are regulations that change the way properties are developed or substantially improved within a designated flood hazard area. These regulations will be updated in 2011 as well. More than 1,000 property owners will be impacted by the new pamps – some have been placed ina higher risk category; some in a lower risk category. Special flood hazard zones are areas FEMA has designated as having the highest risk of flooding. Flood insurance is mandated for those who

own homes with mortgages in these areas. Sebago Technics has been successful in getting FEMA flood maps in Portland and South Portland modified, according to a report from the company. The study is expected to take eight weeks. The study will include wave modeling and analysis of wind data. In addition to South Portland and Portland, other areas doing similar studies includes Kennebunk, Kennebunkport, and Biddeford. Town Manager, Jack Turcotte, indicated that it is in our best interest to stay consistent with our neighboring communities. Chair MacDonald indicated it is “a window of opportunity” that we should not miss.

Below is some of the information in the material sent to residents:

- Go to the Town’s Web Based GIS maps (<http://eisweb.woodardcurran.com/oob/>) and select your address or Map-Block-Lot number ; choose “FEMA Draft 2010” and you can see what zone your will be in.. If you need to know how your property is currently designated or have other questions, contact Mike Nugent at 934-5714 ext 237 or email mnugent@oobmaine.com
- Once you know how you will be designated, contact your insurance company and discuss flood insurance. VERY IMPORTANT*** IF YOU PURCHASE FLOOD INSURANCE PRIOR TO THE EFFECTIVE DATE OF THE FLOOD MAPS (estimated effective date June/July 2011) THE RATES WILL BE LOWER THAN IF YOU WAIT UNTIL AFTER THE EFFECTIVE DATE!!!! Contact your insurance provider for rate information.
- If you feel that the mapping is WRONG, and you have scientific or technical data that indicates that the flood zones or elevations are incorrect, YOU HAVE THE RIGHT TO APPEAL.

The fact that there are questionable locations that might be available for a basis for appeal (approximately 100 homes), the Council is being asked to approve this agenda item. The changes in the flood plain designations have left some residents feeling exasperated. Announced last year the changes take place in 2011 requiring some residents to seek the additional flood coverage for their home. There is a 90 day appeal process which started on September 3rd for residents who feel that they have unfairly, or inaccurately, been included in a newly designed flood zone. But the requirements for filing a successful appeal are steep. In order to make a successful appeal, a certified engineer has to present scientific or technical information to FEMA that contradicts the findings of its specialists. The approval by the Council this evening will permit the Town to hire engineers to review the FEMA findings. Sebago Technics has done this type of review for other municipalities. Bob Gerber has indicated that the flood studies use historical data and that storm intensities are increasing. The old maps called vector maps were out of date due to advances in digital technology and changing climate patterns across the globe. The new studies identify new areas in which storm water and wave run-up could pose potential threats to residences in the higher risk zones. It was emphasized that a lot of homeowners think that their homeowner’s policy covers floods and it does not. Right, wrong or indifferent, that’s the case. People can get flood insurance from whoever they get their homeownership policy but from a risk management standpoint, flood insurance is no different from any other insurance and people need to get pertinent information from their insurance agents.

MOTION: Councilor O'Neill motioned and Councilor Bolduc seconded to Contract Sebago Technics to provide an analysis of the 2010 FEMA Flood Insurance Study to ascertain if there is a Basis for Appeal, in the amount of \$13,000 from Account Number 20118-50350 - Contingency, with a balance of \$25,000 but also with the request to pursue any possible grant dollars to fund the Appeal.

VOTE: Unanimous.

5567 Discussion with Action: Accept or Deny Bids for Sale of Surplus Goods as advertised on www.oobmaine.com.

BACKGROUND: Both Public Works and the Fire Department have provided a list of surplus items to be put out for bid. The last time this was done, there was only one item that bid on and so the Council requested the Administration go out again for bids on the remaining items:

NUMBER ONE:

1998 Ford Crown Victoria – VIN # 2FAFP71W4WX167771 – 125,045 miles – Minimum bid of \$500.

Bids received from:	Clarence Stewart - \$ 201.99
	Stanley Fifield 117.00
	John Allen 50.00

MOTION: Councilor Bolduc motioned and Councilor Dayton seconded to Accept the bid from Clarence Stewart in the amount of \$201.99.

VOTE: Unanimous.

NUMBER TWO:

1984 Chevrolet K20, 4X4, VIN # 2GCGK24N7E1228669 - 17,387 miles

Bids received from:	John Allen \$ 75.00
	Larry Fifield 395.00

MOTION: Councilor Bolduc motioned and Councilor Dayton seconded to Accept the bid from Larry Fifield in the amount of \$395.00

VOTE: Unanimous.

NUMBER THREE:

1988 Oanan Generator, VIN # 65.OKB-15R

Bids received from:

John Allen	\$	125.00
Stanley Fifield		374.00
Ken Crowell		250.00

RECOMMENDATION: THE ADMINISTRATION IS RECOMMENDING THE REJECTION OF THESE LOW BIDS FOR THE VALUE IS HIGHER TO THE PUBLIC WORKS DEPARTMENT.

MOTION: Councilor Bolduc motioned and Councilor Dayton seconded to reject bids from John Allen, Stanley Fifield and Ken Crowell for the 1988 Oanan Generator, VIN # 65.OKB-15R -and to remain the property of Public Works.

VOTE: Unanimous.

NUMBER FOUR:

1995 Holder side walk plow – VIN 41420234 – 3,153 hours – with plow/blower/V-blade – one set of tires

Bids received from:

Michael Gendron	\$	1,051
Labbe Excavating		1,200
Larry Fifield		476
Jerry Letellier		876
John Allen		705

MOTION: Councilor Bolduc motioned and Councilor Dayton seconded to accept the bid from Labbe Excavating in the amount of \$1200 for the 1995 Holder side walk plow – VIN 41420234 – 3,153 hours – with plow/blower/V-blade – one set of tires- Minimum bid - \$3,000.

VOTE: Unanimous.

NUMBER FIVE:

1976 Caterpillar Forklift, VIN # 83K2884 - 3,149 hours

Bids were received from:

John Allen	\$	200.00
Stanley Fifield		123.00

MOTION: Councilor Bolduc motioned and Councilor Dayton seconded to Accept the bid from John Allen in the amount of \$200 for the 1976 Caterpillar Forklift, VIN # 83K2884 - 3,149 hours

VOTE: Unanimous.

5568 Discussion with Action: Approve the Special Event Permit application for the

Salvation Army to hold their evening program in the Square, in the area near the Pier, from 5 p.m. to 11 p.m. on Saturday, July 30, 2011 to Friday, August 5, 2011; Request to place a banner in the Square, approval pending receipt of insurance; and a request to waive the fee.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Approve the Special Event Permit application for the Salvation Army to hold their evening program in the Square, in the area near the Pier, from 5 p.m. to 11 p.m. on Saturday, July 30, 2011 to Friday, August 5, 2011; Request to place a banner in the Square, approval pending receipt of insurance; and a request to waive the fee.

VOTE: Unanimous.

5569 Discussion with Action: Approve the Special Event Permit application for the Salvation Army to hold their annual parade at 3:50 p.m. on Sunday, July 31, 2011, from Saco & Biddeford Savings Bank to the Pier Parking area; approval pending receipt of insurance; a request to waive the fee.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Approve the Special Event Permit application for the Salvation Army to hold their annual parade at 3:50 p.m. on Sunday, July 31, 2011, from Saco & Biddeford Savings Bank to the Pier Parking area; approval pending receipt of insurance; a request to waive the fee.

VOTE: Unanimous.

5570 Discussion with Action: Approve a Blanket Letter of Approval for Games of Chance for the Veterans of Foreign Wars (VFW), Post 7997, 76 Atlantic Avenue, from January 1, 2011 to December 31, 2012.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Approve a Blanket Letter of Approval for Games of Chance for the Veterans of Foreign Wars (VFW), Post 7997, 76 Atlantic Avenue, from January 1, 2011 to December 31, 2012.

VOTE: Unanimous.

5571 Discussion with Action: Appoint Eric Santos as the Old Orchard Beach Student Representative to the Recreation Board, term to expire December 31, 2011.

MOTION: Councilor Dayton motioned and Vice Chair Tousignant seconded to Appoint Eric Santos as the Old Orchard Beach Student Representative to the Recreation Board, term to expire December 31, 2011.

VOTE: Unanimous.

5572 Discussion with Action: The Sewer Appeal of Moshe Agam, 26 Old Orchard Street

(206-4-3), pursuant to Section 58-124 of the Utilities Ordinance.

MOTION: Councilor O'Neill motioned and Councilor Bolduc seconded to deny the Sewer Appeal of Moshe Agam, 26 Old Orchard Street (206-4-3), pursuant to Section 58-124 of the Utilities Ordinance.

VOTE: Yea: Councilors O'Neill, Bolduc, and Chair MacDonald
Nea: Councilors Dayton and Vice Chair Tousignant

GOOD AND WELFARE

JEROME BEGERT: During the evening he presented the valuable issues being raised by the Charter Review Commission. He indicated he wanted fellow citizens to come and share their questions, ideas and opinions about the following: Do you want the number of Town Councilors to be 5 or 7 (or some other number.); do you want term limits, or are the current biannual elections and our ability to recall councilors enough of a term limit; discussions will mean that we will not "throw the baby out with the bath water." He talked about ward-style voting asking if we want to be restricted, and be only allowed to vote for one ward councilor; or do you like our current way of voting in and voting out all of the candidates who are running in every year's election. All that, and more are up to the citizens. He invited citizens to participate in every Charter Commission meeting which is scheduled the second and fourth Tuesdays of the month in the Town Council Chamber and gives everyone an opportunity to share their opinions. Earlier in the evening he had also presented an excellent suggestion about video clips – PSA's – vide describing Mission Statement – what each committee does, advocate for open positions and it would be a big step in encouraging citizen participation. He recommended promotion of the following groups: Comprehensive Plan, Planning Board, Ordinance Review, Charter Review, Conservation, Finance, Recycling, Zoning Board of Appeals, Ballpark Commission, Business License Review, Sea Level Adaptation Group, Façade Improvement/Grant writing opportunities, Design Review, Recreation Board, Library Association, Historical Society, Community Watch, Community Animal Watch, Community Watch Group, Eastern Trail Alliance, and a multitude of civic groups.

PAUL LADAKAKUS: He indicated that he felt it would be a good idea to have a skating rink at the Ballpark and also at First Street and requested that the Recreation Committee look into the possibility.

TOWN MANAGER: It was mentioned that the Petaque Courts could also be used for skating as it has a liner that is conducive to this.

VICE CHAIR TOUSIGNANT: He raised the concerns about the destruction prevalent at the Basketball Court and suggested that perhaps they should be closed down altogether for the cost and the safety issue is a great consideration.

COUNCILOR DAYTON: She suggested more police visibility.

COUNCILOR BOLDUC: She indicated that even with the police visibility her son was injured by a BB Gun shot. It will take more than police visibility.

JOHN BIRD: In April the State of Maine received approximately \$30 million dollars to create an energy efficiency loan fund. The Legislature in turn enacted a law to structure this loan fund. The Efficiency Maine Trust is administering the program and municipal participation in this fund is important to its success. For any building owner to be eligible for a loan under the program, a municipality must agree to participate by enacting an ordinance. Mr. Bird asked the Administration to look into this and the possibility of it being provided to the citizens of Old Orchard Beach.

HELENE WHITTAKER: Community Watch Council wants to publicly thank Hazel and her Neighborhood Watch Group at Orchard Terrace off Portland Road for putting on a pot luck spread last Friday as a thank you to the Old Orchard Beach Police Department and the Community Watch. It was a thrill to see this Neighborhood Watch area alive and well again, hearing the comments like – “We are sleeping better, love new neighbor, etc.” You, the Councilors may not hear too much about CWC, but let me just inform all of you, our work is never done. It’s meetings in neighborhoods, walkabouts; behind the scenes are ongoing including mediation meetings with some good results like Orchard Terrace. This is what we strive for and it’s inspiring because the Police Department, CWC, and Orchard Terrace Neighborhood Watch, were all determined to clean up their neighborhood. It works. It is always a work in progress and we are all in this together. So again, thanks to the ladies of Orchard Terrace for acknowledging us, we appreciate them too. CWC and the Police Officers always enjoy attending pot luck suppers. If anyone is interested in Neighborhood Watch for their neighborhood, please contact the Police Department at 934-4911 – Officer Peter Guay – or you can contact CWC through our e-mail – oobcwc@yahoo.com Thank you.

ADJOURNMENT

MOTION: Councilor O’Neill motioned and Councilor Dayton 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 twenty-one (21) pages is a true copy of the original Minutes of the Town Council Meeting of September 21, 2010

V. Louise Reid