

**Town of Old Orchard Beach, Maine
Special Town Council Meeting
Wednesday, December 12, 2012
Minutes**

A Special Town Council Meeting of the Old Orchard Beach Town Council was held on Wednesday, December 12, 2012. Chair MacDonald opened the meeting at 7:03 p.m.

The following were in attendance:

**Councilor Sharri MacDonald
Councilor Laura Bolduc
Councilor Michael Coleman
Councilor Robin Dayton
Councilor Dana Furtado
Councilor Linda Mailhot
Councilor Bob Quinn
Town Manager Mark Pearson
Assistant Town Manager V. Louise Reid**

**Pledge to the Flag
Roll Call**

The Town Council Chair called the Special Town Council Meeting to order:

Executive Session pursuant to 1 M.R.S.A. section 405 (6)(E) concerning the Town's legal rights, duties and responsibilities related to the continuation or termination of the Town Manager's contract, with possible discussion and action to follow.

Approximately eighty residents and town employees attended the meeting which originally had been scheduled by the Chair as a closed-door meeting to discuss with the Town Attorney the Council's rights regarding the Town Manager's contract. It was indicated that Chair Sharri MacDonald had asked the Town Manager, Mark Pearson, to resign in a meeting with him on Friday, December 7, 2012, but did not specify the reasons for the request. The Town Manager declined and asked for the closed-door meeting to be held in public. The Chair informed the Town Manager that a majority of the Town Council was not sure if he was the right fit for the community. She contacted the Town's legal firm, Bernstein & Shur, who told her that giving the Town Manager the opportunity to resign was the most professional approach given the circumstances.

The Chair reiterated that while she felt there was some basis for cause in terminating the employment of the Town Manager that the executive session was to hold the opportunity for discussion amongst the Councilors with possible discussion and action to follow. She said that the language used in the agenda provides the Council with a clear “either/or” scenario in terms of continuing the employment of the Town Manager or terminating his contract should the majority of the Council feel this appropriate.

Attorney Robert Crawford and Attorney Glen Israel from the firm of Bernstein and Shur were present to represent the Town Council; and legal Counsel for the Town Manager was Attorney John Richardson who indicated that the one prejudiced today by transparency was his client and that Mr. Pearson stood ready, willing and able to answer any questions. He reminded the Council that pursuant to 1 M.R.S.A. Section 405(6)(A)(2) that the Town Manager has the right as he did to request in writing that he be permitted to be present and that under I. M.R.S.A. Section 405(6)(A)(3) that “any person charged or investigated may request in writing that the investigation or hearing of charges or complaints against that person be conducted in open session. A request, if made to the agency, must be honored; and (4) any person bringing charges, complaints or allegations of misconduct against the individual under discussion must be permitted to be present.” The Town Manager also requested that the Town’s Auditor, Ron Smith, be present on the basis of the investigation or complaint because of the financial nature. He also requested the attendance of the Town’s Human Resource employee, Tammy Lambert; the Town’s Interim Finance Director, Maura Halkiotis; Accounts Payable Clerk, France Beaulieu; and Town Finance Director, Diana Asanza. The Town’s legal counsel suggested that the Executive Session be held and the public meeting be scheduled for another date. There was a loud response from the audience with comments made that members of the audience needed to have the opportunity to speak.

The Chair decided to ask for a motion to enter into the executive session:

MOTION: Vice Chair Bolduc motioned and Councilor Mailhot seconded to enter into Executive Session pursuant to 1 M.R.S.A. Section 405 (6)(E) concerning the Town’s legal rights, duties and responsibilities related to the continuation or termination of the Town Manager’s contract, with possible discussion and action to follow.

**VOTE: Yea: Councilors Mailhot, Furtado, Vice Chair Bolduc, Chair MacDonald
Nea: Councilors Coleman, Quinn and Dayton**

The motion failed pursuant to 1 M.R.S.A. Section 405 – Executive Sessions – Item 3 - Procedure for calling of executive session – “An executive session may be called only in public, recorded vote of 3/5 of the members, present and voting, of such bodies or agencies.”

The Chair repeatedly mentioned a draft letter to her from RHR Smith & Company, the Auditor responsible for conducting the on-going audit. The letter did indicate “significant issues we believe require immediate attention” but it was pointed out that although this is the audit for July 1, 2011 through June 31, 2012, the Town Manager had only been on site since February 15th of 2012, five-and-a-half months. The Auditor indicated that there was still a lot to be done in preparation of the audit but he again reiterated that the audit shows no wrongdoing by the present Town Manager, Mark Pearson, and that much of the audit issues related to past practices. He also indicated that there has been complete support from the Department Heads as well as they moved forward with the audit. The auditor’s letter stated that “Although the Town in the past few months instituted many needed controls, it appears more controls will be necessary.” The Town Manager again stated he was addressing these concerns and that additional staff has been brought on to do just that. It was pointed out that the Town which has a municipal and school budget of about \$26 million has had four managers in five years and it was mentioned that the Town has had five finance directors in the past thirteen months with the Town Manager mentioning that the most recent served on an interim basis two days a week.

One of the other concerns expressed by Councilors Coleman, Quinn and Dayton was that they had not heard from any of the other Councilors or the Chair about the specific issues with the Town Manager. Vice Chair Bolduc mentioned a list of sixteen concerns that she had relative to the Town Manager’s performance but they were not recounted. It was pointed out that three members of the new seven-member Council have been in their places less than a month and that the decisions were premature. Also noted was the fact that Mark Pearson had a vote of confidence just recently from the previous five-member Council when they signed the contract that gave him a \$96,000 yearly salary and \$5,000 annually for health insurance.

The Chair in discussing the issues indicated that she had received information from someone on the staff that the Town Manager was going outside the purview of his position. There were those who asked for the name of the staff member but that was not provided. It should also be noted that the Councilors who did not support the Town Manager did not outline all of their concern, alluding to the fact that issues related to the audit were brought forward.

Residents went to the podium during the evening to present their comments. Those speaking included Fred Dolgan, Patricia Brown, Miriah Bouthiller, Roxanne Frenette, Chris Johnson, Helene Whittaker, Phil Dennison, Mark Dumont, John Gallo, Don Pilon, Jerome Begart, Kathy Smith, Pierre Bouthiller, Sheila Flathers, Curt Koehler, Kelsey Koenig, George Kerr, Phil Dennison, David Putnam, Jim Dufranse, Maria Turner and Joseph Zemmin spoke.

Several in attendance spoke about the need to come to consensus and work together and to move on for the benefit of the community.

It should be noted that this meeting was videotaped as requested by the Town Manager and copies are available through the Office of the Town Clerk.

MOTION: Councilor Coleman motioned and Councilor Dayton seconded to adjourn the meeting.

Vice Chair Bolduc indicated that the Chair had not recognized anyone.

MOTION: Vice Chair Bolduc motioned and Councilor Dayton seconded to Adjourn the meeting at 10:14 minutes.

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 four (4) pages is a copy of the original Minutes of the Special Town Council Meeting of December 12, 2012.
V. Louise Reid**