

**TOWN OF OLD ORCHARD BEACH  
TOWN COUNCIL MEETING  
Tuesday, October 2, 2012  
TOWN HALL CHAMBERS  
7:00 p.m.**

**A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, October 2, 2012. Chair Quinn opened the meeting at 7:00 p.m.**

**The following were in attendance:**

**Chair Bob Quinn  
Vice Chair Michael Tousignant  
Councilor Sharri MacDonald  
Councilor Robin Dayton  
Councilor Michael Coleman  
Town Manager Mark Pearson  
Assistant Town Manager V. Louise Reid**

**Pledge to the Flag  
Roll Call**

**PRESENTATION:**

**Introduction and Remarks by  
Eric W. Thornburg, President and CEO of Connecticut Water;  
Gerry Mansfield, President of the Biddeford Saco Water Company;  
Judy Wallingford, President of the Maine Water Company;  
and Maureen Westbrook, Vice President of Customer and Regulatory Affairs**

**“The Biddeford & Saco Water Company is poised to merge with the Maine Water Company, a subsidiary of the Connecticut Water Co., by the end of this year and the plan seems like a wise idea from the standpoint of keeping the area water system in good repair. Few amenities are more integral to the health and prosperity of a community than quality water, so area residents are right to be concerned and interested in the merger. The Biddeford Saco Water Company has a very long history in this area, having been formed in 1881, and maintaining more than 220 miles of water mains, according to its website. The water is drawn from the Saco River and has been kept to high standards through a well-regulated treatment process. The Saco River is the sole source of supply and begins as a small stream high in the White Mountains of New Hampshire and Maine forest and farmland before reaching the Water Company intakes. The majority of the area within its 1,600 square mile watershed remains undeveloped or underdeveloped. It is one of the cleanest rivers in New England. The river is a source of hydroelectric power, a major recreation area, and ultimately, the water supply for many southern Maine coastal communities. According to their website, Maine Water has about 16,000 customers in 17 Maine towns and has been in operation since 1880, so it’s no fly-by-night operation. By combining with Biddeford Saco Water Company, Maine Water will have more than 31,500 customers and be under the helm of the larger Connecticut Water. This increase in size**

will give the company more leverage to fund maintenance and improvements. Such work is important in making sure that customers continue to receive fresh, treated water. And it's not cheap. Replacing water pipelines costs between \$500,000 and \$1 million per year, according to Connecticut Water officials, and with a yearly rate of \$185 paid by only 15,500 customers, the Biddeford Saco Water Company doesn't have a lot of financial clout. It is difficult to get enough capital for system updates due to the company's small size. This merger will help the company fund the expensive water line work that must be done to prevent significant widespread water service outages that occur when neglected pipes fail. Instead of being reactive to breaks, the company will be able to put a more robust schedule in place to keep up with its lines, many of which are 100 years old, or weren't built to last during times of austerity. The main concerns with the merger concern water quality, water ownership and rate increases, and those have been addressed and will continue to be evaluated. Those who use the water system have the added peace of mind knowing that the Public Utilities Commission will have to approve the merger – and their interests lie with the ratepayers. Environmental regulators are watching over the quality of the water, while watchdogs such as the Saco River Corridor Commission are looking out for the local interests. As well, the company plans to create a citizens advisory council after the merger that can address any water concerns. One of the most pressing matters is knowing that the city's water source will not be diminished or damaged by outside interests and the Biddeford & Saco Water Co. Charter is said to prohibit this. The Charter states that only the communities served by the Biddeford & Saco Water Company can use the Saco River as a water source. Rates are not expected to increase during the first year of the merger, if it's approved but they are expected to hit a 15 to 20 percent increase later but the money will be slated to stay local and help improve the area water system. This merger will help insure the future viability of the water system and decrease the changes that large blocks of area homes will "go dry" when unkempt lines break." It was noted that the Connecticut Water Company and its employees are passionate about delivering life sustaining, high quality water service to families and communities while being good stewards of the environment.

**Update on Ballpark Activities by Dana Furtado  
Chairman of the Ballpark Commission**

Dana Furtado, Chair of the Ballpark Commission, gave an outstanding report on the activities of the Ballpark this past summer. There were 83 Baseball Events including the Raging Tide and all the work of Pam and John Gallo who deserve a great deal of thanks for their work and efforts in connection with the Raging Tide. There were two American Legion events which were outstanding and gave a high profile to the Ballpark itself. Later in the discussion it was noted that future appearance of these groups will enhance the visibility of the Ballpark. There was Southern Maine Baseball League and the Babe Ruth League as well as independent teams from Maine and New Hampshire that brought their activities to the Ballpark and was thrilled to have this opportunity. The POW/MIA weekend event was such a success and our thanks to Russ Warriner. There was an enormous fundraising efforts and the Ballpark has been able to secure the revenue to secure activities at the Ballpark. When asked by Councilor Dayton for a financial review, he indicated that this would be in the near future with a Workshop with the Council because he indicated there were issues that needed to be reviewed. He talked about the volunteers and their willingness to spend hours, free of charge, servicing the activities at

the Ballpark. He also mentioned that there was a need for a great deal of repairs and improvements at the Ballpark and this is another issue that will be discussed in a Workshop session. Council gave credit to the Commission and to those who participate, attended and provided services and looks forward to further discussions on the future of the Ballpark itself.

**Update on Comprehensive Plan  
by Community Development Director,  
Jeffrey Hinderliter**

The purpose of this memo is to provide you a brief update regarding the creation of our new comprehensive plan. As you may know, the comprehensive plan is the adopted official binding document for future planning, development and conservation. The plan solicits public comment through meetings and surveys; analyzes existing conditions and trends; describes and illustrates a vision for the physical, social and economic characteristics of our town; and outlines policies, guidelines and goals intended to implement that vision within 10 years time.

The town formally began the creation of a new comprehensive plan during the fall of 2011. Since the effort and work to create a plan can be daunting, the first task was to organize. The comprehensive plan committee developed a schedule that includes three primary tasks to complete work towards creating a first complete draft: 1. Public Process (gathering public comment through surveys and meetings); 2. Inventory and Analysis (analyzing existing conditions and trends); 3. Goals, Policies and Strategies (developing guidelines and goals to implement the comp plan vision).

**1.Public Process (complete winter 2012)**

The initial public process has been complete. This process included four public meeting sessions (one was televised and held on a Saturday) and a survey (mailed to every taxpayer's address, available electronically via the town's website and a service named 'Survey Monkey', available as hard copies at public locations).

Public session feedback and survey response rate was quite good. Overall attendance at the public sessions was approximately 75 and we received 447 completed surveys. What impressed me the most is how much of this feedback was positive and extremely thorough and helpful! Even the criticism was constructive. This truly is a reflection of the terrific people we have in our town. Once we begin creation of the Goals, Policies and Strategies, the survey data will prove to be a valuable resource as it will be a great help to create a vision supported by the peoples input. This is where we translate the results into action.

**2.Inventory and Analysis (complete fall 2012)**

I expect the Inventory and Analysis section of the comp plan to be completed by the end of this month. This is the data heavy, number crunching part of the plan and includes significant narrative. Basically, we take inventory of all that exists in our town and analyze this data. We identify any potential issues through analysis of the inventory. These issues

are addressed in the Goals, Policies and Strategies section of the comp plan. State statute controls much of what goes into this portion of the plan. The Inventory and Analysis includes the following specific sections:

- Population
- Existing Land Use
- Traffic
- Public Facilities
- Fiscal Capacity
- Housing
- Natural Resources
- Cultural, Historic and Archeological
- Local Economy

### **3.Goals, Policies, Strategies (complete spring/summer 2013)**

We'll begin working on the final (and probably the most important) phase of the comp plan, development of the Goals, Policies and Strategies, this fall. This is a critical phase because the real action steps are developed at this time- this is where we truly chart the town's direction for the next 10 years. This phase is where the public comment and data from the inventory and analysis come together to provide our town's goals, policies and strategies for the next 10-years. This is the section that will be considered the most when planning our future direction and one that impacts many aspects of town government and people's overall lives in our community. We will develop Goals, Policies and Strategies for each of the inventory and analysis sections. One of the more important components of this phase is the Future Land Use Plan which includes designating growth, transitional, rural and critical rural areas. Often the Future Land Use Plan leads to zoning ordinance revisions. This will be the primary phase of the comp plan which the State Planning Office reviews (especially the Future Land Use Plan) and will receive the most attention during the implementation phase of the process.

### **4.Next Steps**

Once the Goals, Policies and Strategies are done, the majority of the comp plan work will be complete. The next phase will be preparing a first complete draft, distributing the draft plan for comment and refining the town's vision as we work towards an adopted plan. During spring/summer of 2013, I expect to have a complete draft of the new comprehensive plan available for review and comment.

In order to receive full approval of the comp plan and for it to become an "official" controlling document, it needs both council and State Planning Office approval (note: the state does not "approve" the plan, they determine if it is consistent with the statute that controls comprehensive planning, the Growth Management Act). This is where all our work comes together and is ready for public review as one complete plan. It is unfortunate that some communities comp plans arrive at this phase but never achieved full adoption due to controversial recommendations in the plan, committee member burn-out, personalization of authorship, etc. There will be people who don't agree with some of the comp plan content. It will be important to work with the council, department heads and

public to the best of our ability while recognizing this is a vision for the town as a whole and satisfaction of everyone is nearly impossible.

Below is a summary of the next steps towards development of the first complete draft of our new comprehensive plan:

~Goals, Policies and Strategies~

### Committee Meeting

- Discuss work done to date and any revisits
- Discuss next steps, approach, work assignments
- How to include public comments, survey results, meeting results

### Work on Goals, Polices and Strategies

Work on Goals, Polices and Strategies for each section

- Population
- Existing Land Use (see below)
- Traffic
- Public Facilities
- Fiscal Capacity
- Housing
- Natural Resources
- Cultural, Historical, Archeological
- Local Economy

Work on Future Land Use Plan

- Identify stakeholders who should be included with this discussion
- Committee to review current land use ordinances

Work on Summary

- Findings, key issues, implications of recommendations
- Public release of summary

### Public/Council Meetings, Misc.

Council and Public Meetings

- Present Goals, Policies and Strategies
- Specific presentation for Future Land Use Plan
- Present summary of findings, key issues, implications of recommendations

Identify items that need further committee consideration

~Complete First Draft of Comprehensive Plan~

### Committee Meeting

- Discuss work completed up to date
- Create executive summary
- Create info sheets describing process, key issues, key changes, etc.
- Discuss next steps, approach and how to present draft plan (e.g. in what manner, public hearings v. public info meetings, etc.)

### Create Draft Plan

- Assemble complete draft plan.

### Meetings

#### **Council Meetings**

- Present complete draft to council along executive summary
- Discuss process from here

#### **Public Hearings/Public Info Meetings**

- Present draft through formal public hearings and informal public info meetings
- Present key findings and identify issues that could result in changes to the town.
- Media
- Discuss process from here

#### **Committee Meeting**

- Discuss results from council meetings, public hearings, public info meetings, reconsider/revise
- Identify items that need further committee consideration
- Prepare implementation strategies
- Discuss preparation for final comp plan

### State Planning Office Submission

- Prepare plan and associated paperwork for SPO submission (Note: this does not need to be done last, it can be done once we complete the complete draft)

**ACKNOWLEDGEMENTS: CHAIR QUINN:** It is with sadness that we announced the passing of former employee, Peg Smith on September 22, 2012. Peg joined the Town in the Finance Department in July of 1980 and served through July 31<sup>st</sup> of this year. We offer our deepest condolences to her husband and son.

**COUNCILOR COLEMAN:** It was my honor along with Councilor Dayton and the Assistant Town Manager to join Maine's First Lady, Mrs. Ann LePage, in honoring Maine's Prisoners of War and those Missing in Action. It was an inspirational time as we recognized those who gave so much for all of us. To Russ Warriner, our sincere thanks for all the hard work and hours of planning as well as to OOB365 for joining with him on this important event at the Ballpark. There are many serving our country today for which we should be eternally grateful and it is important for us to remember them often, especially the sacrifices they have made on our behalf.

**ACCEPTANCE OF MINUTES:** Town Council Workshop of September 12, 2012; Town Council Meeting Minutes of September 12, 2012; Town Council Meeting of September 18, 2012; and Special Town Council Meeting of September 24, 2012.

**MOTION:** Councilor Dayton motioned and Councilor Coleman seconded to Accept the Town Council Workshop of September 12, 2012; Town Council Meeting Minutes of September 12, 2012; Town Council Meeting of September 18, 2012; and Special Town Council Meeting of September 24, 2012.

**VOTE:** Unanimous.

**RUSS WARRINER:** The Chairman of the POW/MIA Recognition Weekend, he appeared to thank all who participated and all those who put in hours of work and efforts to see that this was a very successful weekend. He talked about the Huey Helicopter and the emotional involvement he had with those historically part of this helicopters past. He announced that all proceeds from the event fund would be given to the Wounded Heroes and their Families. This National POW/MIA Recognition Day was established to honor Americans held as Prisoners of War to renew our nation's commitment to account for U.S. personnel still missing from our Nation's past wars and conflicts. On this day we honored those men and women who served our Nation as Prisoners of War as well as an estimated 81,864 who are still unaccounted for. He talked about the emotional arrival of the Helicopter under Motorcycle Escort and thanked all those who sponsored and provided donations to make this such a success and plans are in the works for next year. There was a standing ovation in honor of Mr. Warriner for his contribution to this event and acknowledgement of all the groups involving veterans that participated and contributed.

**PUBLIC HEARING BUSINESS LICENSES AND APPROVAL:**

**CHAIR:** I open this Public Hearing at 7:40 p.m.

**CPG Inc. dba/Tom's on West Grand** (307-4-2), 10 West Grand Avenue, Vending Machine.

**CHAIR:** I close this Public Hearing at 7:41p.m.

**MOTION:** Councilor Coleman motioned and Councilor MacDonald seconded to approve the business license as read.

**VOTE:** Unanimous.

**PUBLIC HEARING – SPECIAL AMUSEMENT PERMITS:**

**CHAIR:** I open this Public Hearing at 7:41 p.m.

**HFY Enterprises Inc. dba/Oceanside Grille at the Brunswick** (310-6-1), 39 West Grand Avenue, Music Inside: 11:00 a.m. to 1:00 a.m. and Outside Patio Seasonal – 11:00 a.m. to 12:30 a.m.

There were several individuals from the Brunswick Condominium Association present this evening and the following letter from their Attorney, Sanford Roberts:

**LAW OFFICES OF  
SANFORD ROBERTS, PA  
Admitted NH & ME 117 Bow Street  
PO Box 4608  
Portsmouth, NH 03802-4608  
Tel: (603) 431-0992  
Fax: (603) 431-1915  
sroberts@riverfrontlawyer.com  
www.condolawnh-me.com**

September 28, 2012

Robert Quinn, Chairman  
Old Orchard Beach Town Council  
1 Portland Avenue Old Orchard Beach, ME 04064

Re: Oceanside Grille at the Brunswick

Dear Chairman Quinn,

Enclosed is a report from Eric Reuter, an acoustic consultant, along with his Curriculum Vita. I am sending this to the Council for its consideration concerning the application for Special Amusement Permit by HYF Enterprises, Inc. d/b/a Oceanside Grille that will come before the Council on Tuesday meeting. The councilor's consideration of the information in this report will be appreciated.

Thank you.  
Very truly yours,  
Sanford Roberts  
cc: Clients

## **Eric L. Reuter**

### **Education**

Worcester Polytechnic Institute, BS Electrical Engineering  
BS Humanities and Arts: Music

### **Professional Affiliations**

Institute of Noise Control Engineering – Board Certified Member  
National Council of Acoustical Consultants – Board of Directors  
Acoustical Society of America – Member  
ASTM – Voting Member  
Audio Engineering Society – Member and Past Boston Section Chair

Eric L. Reuter has more than a decade of experience as a consultant and educator in acoustics and audio. Mr. Reuter founded Reuter Associates, LLC in Portsmouth, NH in 2001 to provide consulting services in architectural and environmental acoustics and noise control, and has held the position of Assistant Professor at the Berkley College of Music in Boston since 2000, where he has taught courses in acoustics and audio technology to more than 2000 students. Mr. Reuter is an expert in modeling, field assessment and abatement of environmental noise. He has managed or otherwise contributed to more than 250 environmental noise projects, including construction, telecommunications facilities, power generation facilities, trucking facilities,



quarry operations, highway noise, rail and aircraft noise, building mechanical systems, and recreational facilities. Reuter also has extensive experience in architectural acoustics, including performing arts venues, multifamily dwellings, commercial and industrial workspaces, noise control of building mechanical systems, and speech privacy. Reuter is a Board Certified Member of the Institute of Noise Control Engineering, and serves on the Board of Directors of the National Council of Acoustical Consultants. He is a voting member of ASTM committee E33 – Building and Environmental Acoustics. Prior to forming Reuter Associates, LLC, Reuter was a consultant at Cavanaugh Tocci Associates, Inc. in Sudbury, MA from 1999 to 2001. In 2003, he was hired by the New England Institute of Art in Brookline, MA to design and teach a course in acoustics for its newly-chartered Bachelor of Arts program. He remained an adjunct faculty member until 2005. Reuter has also delivered several guest lectures on architectural acoustics at the Thayer School of Engineering at Dartmouth College and at Worcester Polytechnic Institute.

#### **Recent Representative Projects**

##### **Environmental Noise**

##### **FedEx Ground**

##### **Environmental Noise Modeling**

As Federal Express has expanded their Ground division over the past several years, Reuter Associates has provided modeling of environmental noise propagation for more than two dozen new trucking facilities throughout the United States. This modeling served to project community noise impacts of both trucking and processing noise, and ensure regulatory compliance. Reuter Associates also provided field assessment of existing noise levels for many of these projects.

##### **Thibeault Quarry**

##### **Quarry Noise Study**

Reuter Associates was hired by the North Lamprey Neighbors Association in Raymond, NH to provide guidance to the planning board on the potential noise impacts of a quarry operation. This long-dormant quarry is slated to be reopened, but several new communities have been built since it last operated. Impacts considered included blasting, crushing, loading, and both on-site and over-the-road trucking.

##### **AI Littleton Quarry Expansion Peer Review**

Reuter Associates provided peer review on behalf of the Littleton Planning Board of the noise section of a Special Permit Application for relocation and expansion of processing equipment for the existing Aggregate Industries Quarry. Reuter Associates worked with the planning board, abutters, and applicant to develop a mutually agreeable monitoring protocol to ensure compliance.

##### **USA Springs Bottling Facility**

##### **Peer Review of Environmental Noise Study**

Reuter Associates was hired by the town of Nottingham, NH to review the noise study prepared by the developers of this controversial groundwater bottling facility. Concerns included increased traffic on public roads (including engine braking), truck traffic on the site, process and HVAC noise, and loading-dock related noise. Our review resulted in the reconfiguration of site for lower potential noise impact on residential abutters.

##### **Kahuna Laguna**

##### **Indoor Water Park Environmental Noise Study**

Kahuna Laguna is an indoor water park in North Conway, NH. Abutters were concerned about impact from mechanical system noise. Our work involved measurement of baseline community noise levels, modeling of noise impact from air-handling and process equipment serving the water park, and design of appropriate noise control.

## Verizon Central Offices

### Environmental Noise Impact Studies

Reuter Associates has worked for Verizon on community noise impact studies for more than 20 central office mechanical systems upgrades throughout New England. Security concerns have led to emergency generator upgrades, and the addition of co-locators has led to the need for HVAC upgrades. These projects generally include baseline community noise measurement, modeling of impacts from new equipment, and design of noise control when needed.

### MetroPCS Cellular Antenna Sites

As MetroPCS expands into the Boston market, they are relying on Reuter Associates to provide community noise impact studies for their wireless antenna sites. We have provided studies for 8 sites in the greater Boston area in the past year in a wide range of settings from rural to urban. Many of these sites have up to 5 existing carriers with various equipment configurations, making compliance with state and local noise criteria a challenge.

### Recent Representative Projects

#### Architectural Acoustics

##### The Music Hall

##### Partial Renovation

The Music Hall is a historic 900-seat theatre in Portsmouth, NH. Built in 1878, it is among the oldest operating theatres in the country, and is undergoing preservation and renovation under the National Park Service's "Save America's Treasures" program. The original lobby was very small, and the theatre decided to excavate under the seating bowl and build an expansive lobby. Acoustical concerns included sound isolation between the lobby and theatre above, room acoustics in the lobby, and mechanical and plumbing noise. Sound isolation was usually challenging because of an angled ceiling and curved interior walls. The ceiling system is fully spring-isolated with spray-on acoustical treatment to control reverberant level in the lobby and restrooms.

### Cambridge Community Television New Studios

Reuter Associates teamed up with studio design specialists Sonic-Space to provide acoustical consulting for CCTV's new studios in Cambridge, MA. This facility includes two on-air studios, a large production studio, and several edit suites. The site chosen for the studios suffers from excessive street noise and ground-borne vibration from the nearby subway. Reuter Associates designed sound and vibration isolation solutions, along with HVAC noise control for the critical spaces in the building.

#### The Loft

##### Performing Arts Venue Design

The Loft is a 120+ seat performing arts venue in Portsmouth, NH. This theater, having been built in a storefront space with offices above posed several unique acoustical challenges – low ceilings, lightweight construction of the existing building, street noise, and limited floor space. . Reuter Associates provided consulting on all aspects of this project – room acoustics, sound isolation, mechanical system noise, and sound reinforcement system integration.

### New Hampshire Hall – University of New Hampshire

#### Mixed-use Academic Building Renovation

New Hampshire hall is a century-old brick and steel-frame building that was originally a National Guard Armory. The building now contains both gymnasiums and classrooms, and sound and impact noise isolation have traditionally been a problem. The renovations currently underway involve the addition of laboratory space, renovation of existing classrooms, and division of a large gymnasium space into a combination of athletic and classroom uses. Our services included design of sound isolation systems to separate the gym

spaces from classrooms and labs both beneath and beside it and recommendations for acoustical treatments to improve speech intelligibility in existing classrooms.

#### **Berwick Academy Auditorium Renovation:**

The Berwick, Maine-based Berwick Academy hired Reuter Associates to ensure that planned aesthetic changes to their auditorium would not alter its acoustical characteristics. The acoustical qualities of the auditorium were well-liked by faculty in both the drama and music departments, and it was important that they be preserved. Acoustical measurements of the existing space allowed us to predict the effects of various elements of the renovation, and balance these to leave the space acoustically unaltered.

September 27, 2012

Sanford Roberts, PA  
Box 4608  
Portsmouth, NH 03801

**SUBJECT: The Brunswick – Noise impact analysis**

Dear Sanford,

At your request, I have conducted a study of noise impacts on the residential units in The Brunswick building from outdoor music performances on the patio at the rear of the building. Based on my training and experience, as well as reference to industry standards, and particularly EPA and World Health Organization (WHO) criteria for impacts of exterior noise on residences, I have concluded that the noise levels imposed upon the residences at the Brunswick from the music played on the patio below the residences are likely to adversely affect sleep, speech communication, and general enjoyment of the residents' homes. As detailed below, noise levels measured at the Brunswick over a period of days were, on average, eight to sixteen times louder than limits established by both the EPA and the WHO. While this analysis was based on data measured at the exterior of Unit 210, I expect that impacts on all of the residential units overlooking the patio would be substantially similar. It should be noted that the decks for the 2nd-floor units were not present during the measurements. However, I do not expect that these will have a measurable effect on the noise levels at the residences when they are reinstalled.

#### **Existing Levels**

Monitoring of noise at the site was conducted between Thursday, August 30, 2012 and Tuesday, September 4, 2012. The monitor was located along the north property line at second-story floor level, approximately 10 feet from the doors into the bedroom of Unit 210. This location was intended to provide both the noise level at the property line, and that at the exterior of Unit 210. The instrument used was a CEL model 480, which complies with ANSI S1.4 for Type I instrumentation. The instrument was field calibrated immediately before installation. The attached Figure 1 presents the data collected by the monitor. The descriptor plotted is the equivalent sound level, abbreviated LEQ, which represents the energy-average sound level during the one-hour measurement interval. LEQ is the descriptor most commonly used in the assessment of the impacts of noise sustained over time (i.e. not resulting from short-term events such as aircraft flyovers) on communities.

#### **EPA Exterior Noise Criteria**

In its "Report on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety" (often called the "Levels Document"), the U.S. Environmental Protection Agency (EPA) introduced the use of a "Normalized DNL" to establish criteria for community noise. This measurement, adjusted for location factors, is used to determine the sound levels that could affect human

activity. The EPA suggests a maximum, un-normalized DNL of 55 dBA for “Outdoors in residential areas and farms and other outdoor areas where people spend widely varying amounts of time and other places in which quiet is a basis for use.” The un-normalized DNL (55 dBA in this case) is then adjusted to fit various scenarios, based on the criteria in the attached Table 1 on page 4. These adjustments indicate that sensitivity to noise at this location, due to both its suburban location and the characteristics of the intruding noise, is 10 dB higher than the EPA un-normalized threshold. Accordingly, the DNL should not exceed 45 dBA at this location in order to be considered acceptable for normal human acidity. The average DNL at this site during the monitoring period was 82 dBA. This exceeds the recommended level by 37 dBA.

#### WHO Exterior Noise Criteria

The World Health Organization, in its 1999 publication “Guidelines on Community Noise” provides guidelines for exterior noise levels incident on residences. Instead of using DNL to establish a limit for a 24-hour day, WHO has established separate thresholds for daytime (7 a.m. to 10 p.m.) and nighttime (10 p.m. to 7 a.m.) noise levels, as shown in Table 2.

#### Impact

#### Characterization

#### Daytime

#### LEQ

#### Nighttime

#### LEQ

Serious Annoyance 55 dBA 45 dBA

Moderate Annoyance 50 dBA 40 dBA

Table 2

WHO further recommends a daytime noise level limit of 50 dBA (LEQ) to prevent annoyance?

During the monitoring period, the average exterior daytime LEQ at the Brunswick was 75 dBA. During nighttime hours, the hourly LEQ reached a maximum of 84 dBA, and sustained levels of over 75 dBA for several consecutive hours were common. These exceed the thresholds for “serious annoyance” by 20 dB and 39 dB.

#### WHO Interior Noise Criteria

The EPA and WHO criteria detailed above address noise measured at the exterior of a residence. The WHO guidelines also specifically address interior noise, as it affects sleep disturbance. They recommend that interior noise levels, resulting from exterior sources of sustained noise, not exceed an LEQ of 30 dBA if negative effects on sleep are to be avoided. The guidelines assume a reduction of 15 dB from the exterior to interior, which would limit the exterior level to 45 dBA. The existing range of 75 dBA to 84 dBA at the Brunswick exceeds this limit by at least 30 dB.

#### Conclusions

Humans are generally considered to perceive a difference of 10 dB as a doubling (or halving) of loudness. Existing noise levels incident upon the exterior of the second-story residences at the Brunswick exceed both the EPA and WHO guidelines by 30 to 40 dB. These levels are therefore between 8 and 16 times louder than the recommended thresholds for annoyance and disruption of sleep. Please feel free to contact me with any questions.

Sincerely,

Eric L. Reuter, INCE Bd. Cert.

Principal

Sanford Roberts, The Brunswick – Noise impact analysis Page 4 of 4

\*Missing data between 8 a.m. and 12 a.m. on Sunday, September 2 resulted from a weather-related instrument malfunction.

Figure 1

**CORRECTIONS TO BE ADDED TO THE MEASURED DAY-NIGHT SOUND LEVEL (DNL) OF INTRUDING NOISE TO OBTAIN NORMALIZED DNL**

**Type of Correction Description**

**Amount of Correction to be Added to Measured DNL in dB**

**Seasonal Correction**

**Summer (or year-round operation)**

**Winter only (or windows always closed)**

**Correction for Outdoor Noise Level**

**Measured in Absence of Intruding**

**Noise**

**Quiet suburban or rural community (remote from large cities and from industrial activity and trucking) +10**

**Normal suburban community (not located near industrial activity) +5**

**Urban residential community (not immediately adjacent to heavily traveled roads and industrial areas) 0**

**Noisy urban residential community (near relatively busy roads or industrial areas) -5**

**Very noisy urban residential community -10**

**Correction for Previous Exposure & Community Attitudes**

**No prior experience with the intruding noise +5**

**Community has had some previous exposure to intruding noise but little effort is being made to control the noise. This correction may also be applied in a situation where the community has not been exposed to the noise previously, but the people are aware that bona fide efforts are being made to control the noise. 0**

**Community has had considerable previous exposure to the intruding noise and the noise maker's relations with the community are good -5**

**Community aware that operation causing noise is very necessary and it will not continue indefinitely. This correction can be applied for an operation of limited duration and under emergency circumstances. -10**

**Pure Tone or Impulse - No pure tone or impulsive character**

**Pure tone or impulsive character present 0 +5**

**Table 1 20.0 30.0 40.0 50.0 60.0 70.0 80.0 90.0 100.0**

**Noon - 18:00**

**Midnight - 6:00 - Noon - 18:00 - Midnight -6:00 - Noon -18:00 -Midnight -6:00**

**Noon - 18:00 -Midnight -6:00 -Noon -18:00 -Midnight -6:00 -Noon**

**Sound Levels (dBA) Hour Beginning -The Brunswick North Property Line**

**Leq -Thursday- Aug 30 - Friday- Aug 31- Saturday - Sept 1 - Sunday - Sept 2**

**Monday- Sept 3- Tuesday - Sept 4 -**

**Attorney Roberts spoke on behalf of the approximate fifteen to eighteen owners of the Brunswick Association who attended the meeting this evening. He gave a historical account as did the Chairperson of the Brunswick Association, Marsha Kelley who also spoke. Others who spoke and others who attended included Chris Aceton (who spoke), Shirley Cantara, Bill Cantara, Rich Redmond, Gina St. Jean and Fran Murphy (who spoke). The Attorney noted that there are two Town Council agenda items on the agenda this evening including the Renewal of the Liquor License (Item Number 5751) and the Special Amusement Permit - inside Music 11:00 a.m. to 1:00 a.m. and outside Patio seasonal music from 11:00 a.m. to 12:30 a.m. He noted that there are 26 residential units and three commercial units. These folks have been full time seasonal residents for over ten years and part time for over thirty years. They have noticed a dramatic increase in the loud music and constant hollering and screaming coming from the Oceanside Grille at the Brunswick and continuing well past midnight every night. While we are not sure of the reasons for this we have been told that the band has been**

moved from inside the building onto the patio. Whatever the reasons the owners and their guests cannot get to sleep – never mind trying to talk to each other – or have the ability to leave the windows open. This continues until after the bar closes and goes to as late as 2:00 a.m. The noise does not even stop then because people stay in the parking lot or in the downstairs talking loudly and cursing when they walk out onto the beach or into the parking lot. The Association is asking for some considerations such as: Limiting noise produced by amplified music to 65 decibels; limit the amplified music to 10:00 p.m. during the week days and 11:00 p.m. on Friday, Saturday and Sunday; and finally hire a paid attendant for the parking lot to stop the loud music and conversations when the bar closes. Members of Council indicated they did not believe they could adjust the decibels because this is an ordinance change. The Council also suggested that this is a civil matter; not a town matter. Members of Council indicated that it is also an economic impact consideration on the part of the owner of the Grille. Attorney Sanford reminded them it is also a safety and health impact on the lives of those living in the building. Attorney Guy Loranger who represented Tom Lacasse of the Oceanside Grille also spoke and indicated that in previous law suits they won the case so that these issues had already been addressed. Attorney Sanford disagreed and indicated that the case he was referring to was a civil case of personal slander. Attorney Loranger indicated that Tom Lacasse has done everything he could to appease the requests of the residents including just purchasing a \$40,000 new amplification system which he will control and that it would be operational by this weekend. Discussion also revolved around a recent Administrative Review Board meeting that was to reconvene but was tabled indefinitely and the Council agreed that these meetings should continue and that at the request of the Administrative Board the Police Department needs to be involved. Tom Lacasse explained in detail that going to the hours as requested by the residents would mean a severe loss in business and an economic loss for him. The residents in explaining to the Council that they did, indeed, know about the commercial businesses when they purchased, the commercial property was a restaurant only and that over the past six years has increased and the bar enlarged which has been one of the reasons for the complaints. Pat Brown, a resident near the Grille, spoke on behalf of the Grille and also as a resident and part of the Noise Committee which was established a few years ago, indicated that even though they had been asked to participate, no resident of the Brunswick participated in these meetings which resulted in the current Noise Ordinance enacted for the Town. She suggested that once the balconies are repaired and which has been ongoing for much too long a time that would answer some of the noise issues. The residents spoke again and reiterated that they would attest to the fact that the untenable living conditions that they are now enduring did not previously exist. Attorney Sanford Roberts insisted that the State of Maine requirements insist that conditions of records such a repeated incidents of health and safety violations, breaches of the peace, disorderly conduct, vandalism and other violations of law on or in the vicinity of the licenses premises and caused by persons patronizing or employed by the licenses premises are reasons to deny a license and that certainly what has been brought forward is cause for consideration. Attorney Roberts indicated that there was a listing of 19 incidents at the Grille involving Grille patrols creating disturbances between October 2010 meeting at which the Council approved the 2011 Special Amusement Permit and the October 2011 meeting at which the Council approved the Special Amusement Permit for the 2012 season. On both the 2011 and 2012 permit applications the Police Department block is initialed but there are no indications in the Town file that the Police Department notified the Council of the

numerous police calls to the Grille premises that occurred during the prior year. He reported there were 13 incidents between October 2009 and October 2010 when the Council granted the Special Use Permit for the 2011 season. There are police incident reports in the file for the 2004 application but not thereafter. Section 28-A- M.R.S.A Section 653 permits a municipality to deny a liquor license to an applicant for “repeated incidents of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licenses premises and caused by persons patronizing or employed by the licenses premises. Attorney Roberts indicates “The incidents that these police reports document are the kind that endanger the public health, safety and welfare which are one of the required statutory considerations for municipal approval of a liquor license. The public health, safety and welfare are also required to be considered by Section 18-35 of your ordinance before granting the Special Amusement Permit.” When Council made reference to some of the other bars in the area, the residents said – the other bars you have indicated do not have residences living on top of them. Councilor MacDonald indicated that she understood as the Grand Victorian has the same situation with the Myst Restaurant open during the summer months but that people know of this is a summer resort as well and they are living in the downtown area. There was also discussion on the issue of “spot zoning” which is the application of zoning to a specific parcel of land within a larger zoned area when the rezoning is usually at odds with the Town’s Master Plan and current zoning restrictions. The rezoning may be for the benefit of a particular owner, and at odds with pre-existing adjacent property owners. It was noted that all regulations should be uniform for each class or kind of building throughout a district. Courts have ruled certain instances of spot zoning are illegal. The final discussion of the Council was that they go back to the Administrative Board discussions and try to resolve this.

**CHAIR:** I close this Public Hearing at 9:20 p.m.

**MOTION:** Councilor Coleman motioned and Councilor Dayton seconded to Approve the Special Amusement Permit as read.

**VOTE:** Unanimous.

**MOTION:** Vice Chair Tousignant motioned and Councilor Dayton seconded to Move Agenda Item 5751 following the Public Hearing on the Special Amusement permit.

**VOTE:** Unanimous.

**# 5751 Discussion with Action: Approve Liquor License Renewal of HFY Enterprises, Inc. dba/Oceanside Grille at the Brunswick (310-6-1), 39 West Grand Avenue, m-s-v in a Restaurant/Lounge.**

**MOTION:** Councilor Coleman motioned and Councilor Dayton seconded to Approve Liquor License Renewal of HFY Enterprises, Inc. dba/Oceanside Grille at the Brunswick (310-6-1), 39 West Grand Avenue, m-s-v in a Restaurant/Lounge.

**VOTE:** Unanimous.

## **PUBLIC HEARINGS:**

**CHAIR:** I open this Public Hearing at 9:24 p.m.

**Shall We Amend Chapter 78 (Zoning Ordinance), Section 78-1185, Space and Bulk Requirements (Shoreland Zone) and 78-1203, Piers, docks, wharves, bridges and other structures and uses extending over or below the normal high water line or a water body or within a wetland?**

## **BACKGROUND:**

**1. Shoreland Zoning Amendments. Amendments to Old Orchard Beach Code of Ordinances, Chapter 78 – Zoning, Article VI – Districts, Division 17 – Shoreland Zone, Sections 78-1185, 78-1203 (5), 78-1203 (8).**

- This ordinance amendment proposal seeks to relocate already adopted Shoreland Zoning Ordinance standards by removing the standards from a DEP order and placing those standards within the appropriate place in the Shoreland Ordinance. This amendment does not propose new language- it simply takes already adopted language and puts it in its rightful place in the ordinance.
- The council adopted the new Shoreland Ordinance during late spring and summer of 2011.
- DEP conditionally approved the Shoreland Ordinance during July 2011 and documented this through their typical order letter. This order letter included a few amended standards, which are part of DEP's conditional approval letter.
- The town was required to adopt the amended standards and apparently did this by including the entire order letter as part of the ordinance. Only the amended standards within the order letter need to be included within the ordinance.
- To find these amended standards, you first must find the DEP order letter in the ordinance. Then you have to figure out where in the ordinance the amended standards belong.
- Adopting the DEP order letter (in its entirety) as part of the ordinance creates confusion and misinterpretation of the ordinance. Taking the amended standards out of the letter and placing those standards in the appropriate place in the ordinance will clear this up.
- Again, this proposal does not change any already adopted standards. It simply requests that we take the amended standards out of the DEP order letter and place these standards in their rightful place in the ordinance.
- The Planning Board (PB) held a public hearing on 9 August and recommended the changes move forward for Council consideration and public hearing.

### **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 2, 2012, at 7:00 p.m. to consider the following:

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Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, that Chapter 78 (Zoning Ordinance), Section 78-1185, Space and Bulk Requirements (Shoreland Zone), and 78-1203, Piers, docks, wharves, bridges and other structures and uses extending over or below the normal high water line of a water body or within a wetland (Shoreland Zone), are amended by deleting the strikethrough language and adding the underscored language, as shown below:

**78-1185, Space and bulk requirements.**

- 1) Land below the normal high-water line of a water body or upland edge of a wetland and land beneath roads serving more than two (2) lots shall not be included towards calculating minimum lot area.
- 2) Lots located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof after September 22, 1971
- 3) The minimum width of any portion of any lot within one hundred (100) feet, horizontal distance, of the normal high-water line of a water body or upland edge of a wetland shall be equal to or greater than the shore frontage requirement for a lot with the proposed use.
- 4) If more than one residential dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

**Section 78-1203 (5)**

Except for piers existing on May 17, 2011 in ~~Outside of~~ the DD-1 and DD-2 districts, no new structure shall be built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland unless the structure requires direct access to the water body or wetland as an operational necessity.

**Section 78-1203 (8)**

Except for piers existing on May 17, 2011 in the DD-1 and DD-2 districts, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland shall not exceed 20 feet in height above the pier, wharf, dock or other structure. In the DD-1 and DD-2 districts, structures built on, over or abutting a pier, wharf, dock or other structure extending beyond the normal high water line of a water body or within a wetland in existence on May 17, 2011, shall not exceed 35 feet in height above the pier, wharf, dock or other structure.

During the discussions the Council reviewed the material and expressed appreciation that this has moved on to be included in the proper area of the ordinances so that the defining law and regulations are effectively and appropriately accessible. Rich

Redmond of the Pier spoke and raised the question of the impact on the Pier and it was stated that the Pier was excluded from these changes. Councilor Dayton basically clarified that these Ordinances changes do not charge the already adopted language of the Ordinance.

**CHAIR:** I close this Public Hearing at 9:34 p.m.

**PUBLIC HEARING:**

**CHAIR:** I open this Public Hearing at 9:35 p.m.

Shall We Amend Chapter 78 (Zoning Ordinance), Section 78-1023, Conditional Uses, and 78-1268, Child Care Facilities?

**BACKGROUND:** Conditional Use and Planned Mixed Unit Development Changes, Amendments to Chapter 78 – Zoning, Article VI – Districts, Division 14 – Planned Mixed Use Development, Section 78-1023 – Conditional Uses; Chapter 78 – Zoning, Article VII – Conditional Uses, Division 2 – Conditions, Section 78-1268 – Child Care Facilities.

- As a result of a Child Care Facility proposal the PB recently considered, we found ordinance standards did not allow the use to exist even though it appeared to make sense in this area of town.
- During the PB meeting, it was discussed that one way to resolve this issue was to change ordinance language; therefore, it was decided to move forward with proposed ordinance amendments that will allow the use but still keep an appropriate level of regulation in place. One reason is because the use seems to be an appropriate fit in this district. A second reason is the use will require Conditional Use review which will provide a more detailed analysis of each proposal. There is safety in knowing the PB will still be responsible for review and can evaluate each proposal based upon the CU standards.
- The proposed changes are quite simple:
  1. Child Care Facilities will become a permissible use within the PMUD District by adding this use as a Condition Use under Sec. 78-1023.
  2. The access standards of Sec. 78-1268 (b) (2) a are deleted. You may recall the standards mentioned specific roads that Child Care Facilities are required to have direct access to/from.
- The PB held a public hearing on 13 September and recommended the changes move forward for Council consideration and public hearing.

Section 78-1023, Conditional Uses, and 78-1268, Child Care Facilities.

**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 2, 2012, 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 78 (Zoning Ordinance), Section 78-1023, Conditional Uses, and 78-1268, Child Care Facilities, are amended by deleting the strikethrough language and adding the underscored language, as shown below:

78-1023, Conditional uses.

**(19) Child Care Facilities**

78-1268, Child care facilities.

~~a. Access shall be permitted only from the following arterial and collector streets: Ross Road, Cascade Road (Route 98), Portland Avenue, Saco Avenue (Route 5), Old Orchard Road, Ocean Park Road (Route 5), and West Grand Avenue or Temple Avenue in the neighborhood commercial district.~~

One of the reasons this came before the Council is that a really good proposal recently came before the Planning Board and it could not go through because Child Care facilities are not allowed in planned mixed-use districts which includes Cider Hill, Dunegrass development areas, and the Ballpark, even though these facilities appeared to make sense. The Planning Board had proposed that the Town change its ordinance to allow child care facilities in this type of district. Should this ordinance change be passed, child care facilities would still have to go through Planning Board Review. Also included in the Ordinance change was to delete language that requires child care facilities to have access to major roads in the Town such as Ross Road, Cascade Road, Portland Avenue, Saco Avenue, Old orchard Road, Ocean Park Road, West Grand Avenue, and Temple Avenue. Vice Chair Tousignant said this section of the ordinance was created because the Town wanted to crack down on an abundance of day care facilities. Every third house he said on every other street was applying for day care licenses. Since the State has gotten more restrictive on day care licensing requirements, the issue has sparked this section of the Ordinance. Councilor Dayton indicated said she was concerned that the residents of a 55 over facilities and older housing developments needed to be informed that the Town is considering such changes. This discussion drifted away from the fact that this proposal was to permit Child Care facilities in the PMUD District and drifted towards permitting these in Cider Hill. Councilor Dayton asked if we had a Child Care facility proposal for the Ballpark and the answer was that there was not. She also asked where one was proposed and the answer was that there was a proposal for one at Cider Hill. Although the Planner tried to bring it back to the broader issue the emphasis by members of the Council and public seemed to remain on Cider Hill. There was a question on the reason behind the access standards and the Planner said he was unable to find anything of substance. Jerome Begard indicated that the access standards required two access points which reflect the way the State made changes for these types of uses. He also discussed the use of the Cider Hill site for Child Care purposes and that it was a failure of past Planning Administrations, Planning Boards and Comprehensive Plan efforts to not identify this. Vice Chair Tousignant explained the Planning Board required Cider Hill to have part of their development used as commercial use and the reasoning behind the access standards. John Bird explained the Planning Board could not figure out why the access standards existed and thought something seemed backwards with the way

the access standards related to the PMUD ordinance. Councilor Dayton questioned how many properties were impacted by this proposal and was insistent that the abutters be aware of this change. Councilor MacDonald discussed the need to Workshop the issues of the PMUD changes which obviously affect other areas and suggested that the Ordinance Review Committee discuss it but Councilor Dayton said it had been disbanded.

**CHAIR:** I close this Public Hearing at 9:45 p.m. p.m.

**PUBLIC HEARING:**

**CHAIR:** I open this Public Hearing at 9:46 p.m. p.m.

**Shall We Amend Chapter 78 (Zoning Ordinance), Section 78-1627, Temporary signs?**

**BACKGROUND: Temporary Signs associated with events at the Ballpark amendments. Amendment to Chapter 78 – Zoning, Article VIII – Performance Standards, Division 5 – Signs, Section 78-1627 (4) – Temporary Signs.**

- During early July, the Council enacted an emergency ordinance amendment to the sign ordinance (Ch. 78, Art. VIII, Division 5). The Council voted 5-0 in favor of the emergency ordinance.
- This amendment allows temporary signs associated with events at the ballpark. Events include baseball games.
- Before this emergency amendment, the sign ordinance allowed temporary signs only for community festivals, carnivals and special events approved by the Council. It was identified that people who wish to see a baseball game could not locate the ballpark because the ballpark could not legally place off-premises signs. Since baseball games did not qualify as a community festival, carnival or special event, it was determined (after legal consultation) the easiest fix and one that will not jeopardize the intent of the sign ordinance as a whole was to change the temporary sign standard.
- Formal adoption of this ordinance amendment allows temporary signs associated with events at the ballpark to be placed anywhere in town (assuming they have the property owners permission); therefore, temporary signs may be located off-premises.
- Temporary signs are exempt from the size and dimensional requirements of the zoning district, provided the signage does not pose a safety hazard and meet all relevant conditions prescribed.
- Emergency ordinance amendments are in effect for 60 days from the date of enactment. Even though an emergency ordinance may be adopted, it still must go through the appropriate adoption procedure to make it a formal ordinance change. That procedure begins with the PB scheduling and holding a public hearing.
- Please remember this only allows temporary signs for events at the ballpark.
- The PB held a public hearing on 13 September and recommended the changes move forward for Council consideration and public hearing. \*\*\*The PB recommended the Council include the additional language: “These signs shall be removed within 5 days after the close of the event.” The amended standard will now read:

**Section 78-1627 Temporary Signs.**

**(4) Community festivals, carnivals, events at the Ballpark, and special events. Any signage erected by a business, charitable organization, or public organization directly associated with a public festival, carnival, events at the Ballpark or special community event approved by the Town Council. These signs shall be removed within 5 days after the close of the event.**

A great deal of discussion on this subject by Council but more about disagreement of why it was being brought forward. There was a question on how many days after the event the signs should be removed. Five days was suggested as a consideration but Councilor Dayton questioned the five days and suggested three would be better. Towards the end of the long discussion there was discussion on how long signs should be up before events at the Ballpark. Much of the discussion seemed to be about the original intent of the emergency change. Some of the Council thought the changes were only to provide direction to the Ballpark. Others thought all events should be included. The Chair was concerned about the fairness this was to other businesses in Town which resulted in a lot of discussion on the Ballpark being different because it was owned by the Town. Dana Furtado, Chair of the Ballpark Commission, and Jerome Begard, a former member of the Charter Commission, agreed that this is Town property which should be treated as such and it is a revenue source for the Town and having the ability to let everyone know of the events and the directions to the Ballpark is vital. He reiterated that the partnership between the Ballpark and the Raging Tide baseball team and the allowing of these signs will give them the tools to succeed. The signs he said would generate revenue and save the taxpayers money to be used for improvements on the Ballpark facilities. The additional concern raised that it appeared we would allow any size sign anywhere in Town.

**CHAIR: I close this Public Hearing at 10:08 p.m.**

**MOTION: Vice Chair Tousignant motioned and Councilor MacDonald seconded to Move Agenda Item Number 5754 following Public Hearings.**

**VOTE: Unanimous.**

**# 5754 Discussion with Action: Approve adding to the Town's property insurance policy, effective July 1, 2013, the cost of insurance in the amount of \$500 on the Pine Tree Chapter of the American Theatre Organ Society's three (3) manual thirteen (13) rank Wurlitzer Theatre Organ located in the Loranger Middle School from Account Number 20119-50373 – General/Vehicle/Flood Insurance Expense.**

**ASSISTANT TOWN MANAGER: Each year the Town enters into an agreement with the Pine Tree Chapter of the American Theatre Organ Society, a Maine Corporation having a place of business in Maine, and with the RSU23. The Pine Tree Organ Society received this organ which was donated to the Town from the Stanley-Warner Theatre in New Rochelle, New York, together with all the pipes, equipment, console, and accessories necessary for the proper use of the organ. This organ is available for use for school and town functions and other activities in the Auditorium. It is noted that should the Town for any reason decide to discontinue the use of the Organ, title of the Organ would**

automatically be assigned to the Pine Tree Society. Many Sundays and other times during the year the organ is played for the benefit of attendees and it is the Pine Tree Society itself that does maintain the upgrades on the equipment, spending many hours of personally committed energy, expertise and time in keeping it to the highest use. It has been the responsibility of the Committee, small in number, to pay for the insurance from the dues that they have collected and this cost has been difficult to maintain based on the other costs they incur for upgrades to the equipment itself. They are asking for consideration by the Town to include the cost of insurance on the organ on the Town's policy recognizing that the cost would be less than they pay for with an outside insurance company; the cost being around \$500. Vice Chair Tousignant has been a great supporter of the Pine Tree Society, often donating his own time and effort in the betterment of this group. Although it is several months before the budget considerations, this request is asking to be considered.

## **AGREEMENT**

**THIS AGREEMENT** executed in triplicate this 18<sup>th</sup> day of September, 2012 by and between the Pine Tree Chapter of the American Theatre Organ Society, a Maine Corporation having a usual place of business at 121 Dam Road, Porter, ME 04068 (hereinafter referred to as PTCATOS), the town of Old Orchard Beach, and Regional School Unit 23 (hereinafter referred to as RSU23).

**WITNESSETH:**

**WHEREAS** RSU23 owns the premises known as McSweeney Auditorium in Loranger Middle School, which auditorium is used for classes and other activities of the school and is essential to its operation as an educational institution; and . . .

**WHEREAS** PTCATOS obtained and through its auspices has donated to the Town of Old Orchard Beach, a three (3) manual thirteen (13) rank Wurlitzer Theatre Organ from the RKO-Proctor, a Stanley-Warner Theatre in New Rochelle, New York, together with all of the pipes, equipment, console, and accessories necessary for the proper use thereof, all of which are hereinafter collectively referred to as the Organ; and . . .

**WHEREAS** RSU23 and the Town of Old Orchard Beach wish to have the Organ available for use for school and town functions and other activities in the Auditorium, and in consideration thereof, RSU23 is willing to cooperate with PTCATOS, as hereinafter set forth:

**NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS;**

- 1. RSU23 agrees to make available the spaces and areas currently occupied by the Organ and its appendages when necessary to use said Organ as described throughout this agreement.**
- 2. RSU23 agrees that PTCATOS shall have the right to use the Organ, stage area, toilets, parking lot, and passageways commonly used with the stage area, and the auditorium and passageways during concerts, for meetings, practice, maintenance, and rehearsals for not**

to exceed eight (8) concerts per year, and to hold monthly meetings of PTCATOS members in the auditorium, and members of PTCATOS and responsible and competent persons invited by any of the three parties to this Agreement and coordinated by PTCATOS, shall have the right to play said Organ, under the following terms and conditions:

(a) Rehearsals, concerts, and recitals, and the playing of the Organ by PTCATOS members, shall not, in the judgment of the Superintendent, or his or her nominee, disturb or interfere with the classes or other activities or events of the RSU23;

(b) Electricity for lighting and power to operate the Organ shall be provided without cost to PTCATOS;

(c) PTCATOS shall have the sole right to handle tickets for admission to said concerts and recitals, and/or to collect donations at the door subject to any waiver by RSU23;

(d) PTCATOS shall, if and when required by the laws, ordinances, and regulations of the State of Maine and the Town of Old Orchard Beach and the RSU23, obtain permits and licenses for said concerts and recitals. PTCATOS shall observe and comply with all laws, ordinances, and regulations of the State of Maine and/or the Town of Old Orchard Beach and RSU23 applicable thereto.

3. During the term of the Agreement, PTCATOS will, without charge, except for necessary materials and parts as are needed, provide such labor and expertise needed to keep the Organ in good working order, with a goal of First Class operating condition. Necessary parts and materials costs are to be shared by the Town of Old Orchard Beach, and from concert proceeds, and when such proceeds are insufficient, from Town Council appropriation. PTCATOS agrees to encourage and promote the use and enjoyment of the Organ by the Town of Old Orchard Beach and RSU23; and work with school personnel to try and create more student interest in the Organ. Any use of the Organ by school personnel shall be coordinated through the PTCATOS Executive Committee.

4. Responsible persons who are not members of PTCATOS may, with permission of RSU23 and judged to be competent by a member of the PTCATOS Executive Committee, play the Organ, either to practice or play at events cleared through the Superintendent's Office, provided said events are not paid concerts.

5. It is understood and agreed that if the Town of Old Orchard Beach and RSU23 lose interest in, or for any other reason decides to discontinue the use of the Organ, title to the Organ will be automatically assigned to the PTCATOS and authority to remove the Organ and its appendages from the Gymnasium/Auditorium and reasonable time to remove it (at least six {6} months) will be given to PTCATOS. If PTCATOS is unable to complete the removal in the allotted time, the town of Old Orchard Beach, RSU23, and PTCATOS will renegotiate an extended time period to allow for the careful removal of the instrument without damage. If PTCATOS should ever claim title to the Organ under conditions mentioned above, and should sell the Organ, any profits from such sale would be equally divided between the town of Old Orchard Beach and PTCATOS.

## 6. ACCESSIBILITY

(a) A set of keys shall be left in the Town of Old Orchard Beach Police Station for use by designated members of PTCATOS for entrance to the stage area of the auditorium as aforementioned in Paragraph Two (2), for practice, maintenance, and any other activities connected with the Organ, to come and go at their discretion, under the terms and conditions set forth in Paragraph Two (2) and its subsections a, b, c, and d aforementioned. These keys shall be signed out only to persons authorized by the Superintendent and the President of PTCATOS, as listed on the official notification letter to the Police Department, and said keys shall be returned to the Police Station immediately upon leaving the school building. All due and exceptional care shall be taken to ensure the area vacated is secure, lights turned off, power shut off to the Organ blower, doors securely locked.

(b) Access to the organ pipe chambers, the console enclosure on the stage, and the organ blower area shall be restricted to members of the PTCATOS and School Department employees except:

- when a member of the PTCATOS can be present
- when the Executive Committee of PTCATOS or its Chapter Technician agrees that there is no need to be onsite
- when an emergency repair is necessary

The intent of this paragraph is to protect the Organ from intentional or unintentional damage during the course of repairs or renovations to the physical plant.

**7. INSURANCE - PTCATOS agrees to procure and maintain in force during the term of this Agreement a Comprehensive General Liability Policy providing a combined single limit of \$300,000 covering its activities under the Agreement. RSU23 shall be named as an additional insured and shall receive thirty (30) days prior written notice of cancellation or non-renewal. Evidence of this insurance shall be provided to RSU23.**

**8. The Town of Old Orchard Beach and the RSU23 and PTCATOS agree that this Agreement shall continue in effect for 364 days from date of this Agreement, and shall not be terminated before that date, provided all parties comply with the terms and provisions hereof, and may be renewed for successive 364 day periods. Negotiations for renewal shall occur during the month of September or at the convenience of the parties.**

**9. It is further agreed that any and all matters which arise at a later date, and are not covered by this Agreement, will be negotiated in good faith by the parties responsible for this Agreement.**

**MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Approve adding to the Town's property insurance policy, effective July 1, 2013, the cost of insurance in the amount of \$500 on the Pine Tree Chapter of the American Theatre Organ Society's three (3) manual thirteen (13) rank Wurlitzer Theatre Organ located in the Loranger Middle School from Account Number 20119-50373 – General/Vehicle/Flood Insurance Expense.**

**VOTE: Unanimous.**



**TOWN MANAGER'S REPORT:** I would like to express appreciation to Extreme Clean for the excellent job they are doing for us in the painting and repair of the benches and tables at the square and throughout the downtown. The question was asked last time approximately how much money over the last year was awarded to the Town for the transfer of Defendant(s) in Rem and it is approximately \$9,142.51 and is in a separate account which according to the Police Department is used for investigative supplies. Such supplies include purchasing of a vehicle; cameras, drug testing kits, fingerprint products, etc. I have been at the 711 several times over the last couple of weeks meeting with management and those doing the work. I have had meetings with Recreation, the Police, the School Resource Officer, the Community Watch Group, and have been negotiating with Specialized Services on the copier contracts. I have had several meetings on Town issues with our Code Enforcement Officer. I also visited Kate's Butter facilities and met with Dan Patry. Had various meetings on personnel issues with the Human Resource Director. We had several interviews yesterday for the position of Finance Director. Human Resources has set up on line training for employees in order to comply with State Law and also a training computer in the Human Resource Office for new employees as well as upgrading the MUNIS system. You may remember the missing bench downtown – CDBG funds to purchase bench ends. Turns out the vendor was paid in July of 2012 and did not deliver the products. We contacted the vendor in Massachusetts and arranged for not only the bench ends but a donation of other products with an additional value of \$10,000 that will be donated to the Town in a few weeks.

#### **NEW BUSINESS:**

**# 5747 Discussion with Action: Approve the Electrical Service and upgrades to the Waste Water Treatment Facility process building (Alternative 2) in the amount of \$140,000 from Account Number 53002-50846 – Treatment Plant Equipment Expense, with a balance of \$397,609.74.**

#### **BACKGROUND:**

**NOTE:** The amount shown on the Agenda does not include the amount encumbered for the blower project. \$250,000 was encumbered at an earlier Council meeting. The Council will understand that if they approve the \$140,000, it will “wipe-out” the CIP account for Waste Water. There is \$106,000 in the FY13 budget for equipment replacement but that is not carried from year to year.

#### **WRIGHT-PIERCE**

**Engineering a Better Environment**

#### **MEMORANDUM**

**FROM: Ed Leonard PROJECT NO.: 11327C**  
**SUBJECT: WWTF Blower Upgrade Project**

**Addition of "Alternative No. 2" Electrical Upgrade**

During the Town Council Workshop meeting held on 1 August 2012, we discussed several wastewater-related topics including: the Wastewater Facilities Study, the WWTF Blower Upgrade project, and the WWTF Process Building Electrical Service. During that meeting, the Council indicated general concurrence to implement "Alternative No. 2" for the Process Building Electrical Services (as outlined in the 16 May 2012 technical memorandum).

Subsequent to that meeting, the Town and Wright-Pierce met to discuss the best method to proceed with the project given the Council's Workshop consensus. Since the meeting was a Workshop, the Town did not consider the consensus formal approval and determined that a subsequent meeting with the Council was warranted and required. In order to have sufficient information for the Council, the Town directed Wright-Pierce to proceed with the following specific tasks:

1. Meet with the Town and the Electrical Inspector to review the recommended work (completed 30 August 2012).
2. Document the results of that meeting (completed 13 September 2012) and the final scope of the improvements (completed 13 September 2012)
3. Develop the necessary electrical drawings and specifications to include "Alternative 2" in the WWTF Blower Upgrade Bidding Documents (completed 25 September 2012).
4. Develop an updated project cost estimate for the work (attached).

As of this date, we have completed the above listed tasks. Attached please find the drawings and specifications which will be added to the 90% Bidding Documents. The 90% Bidding Documents were provided to you via letter dated 6 September 2012).

If the Town desires to proceed with this approach, the project budget will need to be increased by \$140,000 to cover the additional construction and engineering costs, as well as recommended contingency funds, associated with the work as outlined above.

We are prepared to this information with you, the Town Manager and the Town Council at your convenience. If you have any questions in the meantime, please contact me.

**TOWN OF OLD ORCHARD BEACH, MAINE  
AERATION BLOWER UPGRADE  
W-P PROJECT NO. 11327C  
95% Cost Estimate  
April 2012 (ENR Index 9273)  
PROJECT COST ESTIMATE**

PROJECT COMPONENT	COST W/ELECTRICAL	COST ORIGINAL W/O ELECTRICAL
Construction	\$ 177,200	\$ 60,300
Construct. Contingency [7.5%]	13,300	9,000
Asbestos & Lead Paint		

Abatement		0	0
Aeration Bowers (3)		<u>134,976</u>	<u>134,976</u>
<b>SubTotal – Construction Cost</b>	<b>\$</b>	<b>325,476</b>	<b>\$ 204,276</b>
Technical Services		59,500	32,000
Material Testing	[0.0%]	0	0
Land Acquisition/Easements		0	0
Legal/Administrative	[0.0%]	<u>0</u>	<u>0</u>
<b>Sub Total – Project Cost</b>	<b>\$</b>	<b>384,976</b>	<b>\$ 236,276</b>
<b>Financing</b>	<b>[0.0%]</b>	<b>0</b>	<b>0</b>
<hr/>			
<b>Total Project Cost</b>	<b>\$</b>	<b>385,000</b>	<b>\$ 236,276</b>
<b>Efficiency Maine Grant*</b>		<b>71,427</b>	<b>71,427</b>
<b>Net Project Cost</b>		<b>313,573</b>	<b>164,873</b>
<b>Project Funds Previously</b>			
<b>Authorized by Council</b>			<b>\$ 245,000</b>
<b>Total Funds Necessary for full project</b>			<b>385,000</b>
<b>Additional Funds Needing Authorization</b>			<b>140,000</b>

**Summary:**

**Waste Water Account 20204-50846 – has sufficient funds to cover the \$385,000 (\$315,000 w/grant) - Town Council needs to approve an additional \$140,000**

**Discussion became conflicting between the Council and the issue of why the cost went from approximately \$85,000 to \$140,000 and Wright Pierce representative, Ed Leonard, attempted to inform the Town Council that at a previous Workshop in length and detail he had described the various Alternatives and that it was made clear then that the costs were approximate and that he made it clear at that time that General Contractor, Building and Engineering expenses were not included. There were comments made in favor of proceeding and not proceeding but Council MacDonald reminded the Council that this has been ongoing for some time and that the Superintendent has brought forward his concerns and recommendations. She then encouraged Wright Pierce to see what they could do about bringing in the costs as low as possible as this is a great concern for her.**

**MOTION: Councilor MacDonald motioned and Councilor Dayton seconded to Approve the Electrical Service and upgrades to the Waste Water Treatment Facility process building (Alternative 2) in the amount of \$140,000 from Account Number 53002-50846 – Treatment Plant Equipment Expense, with a balance of \$397,609.74.**

**VOTE: Yea: Councilors MacDonald, Dayton and Vice Chair Tousignant.  
Nea: Councilor Coleman and Chair Quinn**

# 5748 Discussion with Action: Approve the New Salt Road Tide Gate Modification Project in the Amount of \$56,449 from Account Number – 31141-50867 – West Grand Stormwater Bond – with a balance of \$830,189.44.

**BACKGROUND:**

The Public Works Director went out to bid to the following vendors for the New Salt Road Tidegate Modification Project:

D&C Construction	No bid
Risbara Brothers	No bid
Milliken Brothers	\$107,870
Tbuck Construction	\$112,000

The Public Works Director felt that the bids came in too high and has feels that the project can be done under his direction as listed below:

Nova Electric	\$27,717.00
Results Instrumentation	\$11,200.00
CMP service disconnect	\$2,000.00
Inspection by Wright-Pierce	\$4,200.00
Public Works time/material	\$8,900.00
WWTF time/material	\$2,432.00
	<u>\$ 56,449.00</u>

**DPW time/material breakdown:**

Tidegate manual open/close 35 X \$100.00 - \$3,500.00

CB	\$900.00
Pipe	\$750.00
Stone	\$500.00
Pavement -	\$3,050.00
Concrete -	\$200.00

**WWTF time breakdown:**

Given the project is estimated to last six (6) weeks, I will include two hours of OT per day. I don't expect weekend OT unless the project gets delayed, but will throw in two Saturdays of OT in the estimate. We should not have any significant equipment time/usage on the project.

2 hours OT x 5 days per week x 6 weeks = 60 hours weekly OT

8 hours OT x 2 Saturdays = 16 hours weekend OT

Total estimated OT = 76 hours x \$32.00 per hour = \$2,432

The Public Works Director and the Superintendent of Waste Water will join hands in this project and work together which will save the Town a great deal of funds since the bids came in much higher than expected. The Public Works Director discussed the many ongoing projects in the community and answered the Council's concerns regarding the projects. Bill Robertson gave a report on the Washington Avenue/Central Avenue and other streets where new pipes were installed in 17 days and a cost savings. In addition he acknowledged that Washington Avenue will not be fully paved until the New Year since it needs to settle. Questions were answered about the use of

**MOTION:** Councilor Coleman motioned and Councilor Dayton seconded to Approve the New Salt Road Tide Gate Modification Project in the Amount of \$56,449 from Account Number – 31141-50867 – West Grand Stormwater Bond – with a balance of \$830,189.44.

**VOTE:** Unanimous.

**# 5749 Discussion with Action:** Set the Referendum Public Hearing date of October 16, 2012 to Authorize the grant of a permanent easement for not more than 1,000 square feet to the rear and side of Old Orchard Beach Tax Map 206-27-13 adjacent to the boundary of the Town's Veteran's Memorial Park as shown on the preliminary survey dated August 24, 2012, on file in the Town Clerk's Office, in exchange for certain agreed landscaping improvements estimated at \$50,000 and a \$5,000 donation to the Veteran's Memorial Park Committee and payment of the Town's legal fees, which will appear on the November 6, 2012 ballot.

#### **REFERENDUM INFORMATION:**

Our Attorney has reviewed all aspects of this proposal.

1. **Use of the Land.** According to the information you provided to us, the Town's records show that the Town took the land currently used as the Memorial Park by eminent domain for "purposes of a public park and playground" in 1942, and also received a deed from the owner. The statutory provisions in effect in 1942 authorizing towns to acquire land by eminent domain for public parks did not contain any provisions prohibiting a town from subsequently changing the use of the property so acquired, and likewise the deed that the Town received does not contain any restrictions as to future use of the property. The statute in 1942 did contain this language: "Nothing herein shall be held to deprive the former land owners from proceeding to restrain the use of such land for other than public park purposes". Maine R.S. 1942, c. 5, Sec. 110. Thus, although there are no restrictions on further use in either the statute or the deed, there is a possibility that the former land owners could bring an action to attempt to stop such uses other than for public purposes.
2. **Easement Language.** The general form of the proposed easement is fine, but we suggest you consider the following additions. If you agree, you should have the applicant provide a new version that addresses these concerns:
  - a. The lease should have a survey and description showing area of leasehold and easement area attached;

- b. There should be a limitation in both the lease and easement as to use of the property and regarding any limitations on transfer through a sublease;
- c. The lease should provide for security and affirmation to cover cost to restore the property to its existing conditions at the end of lease period;
- d. The lease and easement should contain clear statements of the Town's reserved rights, a requirement of lessee holder to maintain area in good order; allow the Town the right to enter to fix things and assess cost of same to lessee, and the obligation of the lessee to insure and indemnify town.
- e. Will the Town require rights over the land for future uses sewer, water or other uses?

**Survey.** As noted above, we agree that you should obtain a survey that clearly shows the area of leasehold and easement area.

**MOTION:** Councilor Coleman motioned and Vice Chair Tousignant seconded to Set the Referendum Public Hearing date of October 16, 2012 to Authorize the grant of a permanent easement for not more than 1,000 square feet to the rear and side of Old Orchard Beach Tax Map 206-27-13 adjacent to the boundary of the Town's Veteran's Memorial Park as shown on the preliminary survey dated August 24, 2012, on file in the Town Clerk's Office, in exchange for certain agreed landscaping improvements estimated at \$50,000 and a \$5,000 donation to the Veteran's Memorial Park Committee and payment of the Town's legal fees, which will appear on the November 6, 2012 ballot.

**VOTE:** Unanimous.

**# 5750 Discussion with Action:** Act on Warrant and Notice of Election calling a Regional School Unit No. 23 Budget Validation Referendum for November 6, 2012.

This is the requirement to place the Regional School Unit No. 23 Budget Validation on the ballot.

**MOTION:** Vice Chair Tousignant motioned and Councilor Dayton seconded to Act on Warrant and Notice of Election calling a Regional School Unit No. 23 Budget Validation Referendum for November 6, 2012.

**VOTE:** Unanimous.

**# 5753 Discussion with Action:** Amend the Schedule of License, Permit and Application Fees by changing the Video Tape fee cost from \$40 a copy to \$15 per copy for DVD; and to remove the Voter Registration Fees, now set by State Law.

**BACKGROUND:** The Town Clerk has recommended changing the cost of the video taping fee from \$40 a copy to \$15 a copy for DVD as the equipment is available and the cost is more in line with the actual expense. The \$40 fee dates back to the days of VHS tapes. Per the new Town Charter which went into effect July 1<sup>st</sup> of this year, residents can borrow DVD copies of the meetings which are broadcast live on Time Warner

**Public Access, Channel 3. Maine's Freedom of Access Act says meetings, with some exceptions, must be open to the public and a record kept of public proceedings must be open to the public inspection within a reasonable period of time. The law says an audio, video or other electronic recording satisfies the requirements of the law, but it does not say it is required. The law says the records must be available for public inspection and copying and that the municipality may charge a fee, which is limited to the cost of copying and staff time involved. Although the price in Old Orchard Beach is less than half of what it used to be, two residents spoke out suggesting that the \$15 was too much. Nancy Frisco said "those disks cost about ten cents." Jerome Begert said that town had "a sweet little gizmo" where staff can easily make a DVD copy of the meeting in a few minutes and could do other tasks while the DVD is being made. He thought \$15 was very generous on the part of the citizens when they need transparency to review a meeting and that they are paying quite a bit when they are paying \$15. On the issue of removing the Voter Registration Fees which are now set by State Law, she has explained that when someone requests voter information, the Town Clerk is required to use the Central Voter Registration (DVR) – all fees are set up in State Law. The Town Clerk is prohibited from setting our own fees or using a separate system.**

**MOTION: Councilor Dayton motioned and Councilor Coleman seconded to Amend the Schedule of License, Permit and Application Fees by changing the Video Tape fee cost from \$40 a copy to \$15 per copy for DVD; and to remove the Voter Registration Fees, now set by State Law.**

**VOTE: Unanimous.**

**# 5753 Discussion with Action: Accept, with regret, the resignation of J. Philip Denison from the Zoning Board of Appeals.**

**MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Accept, with regret, the resignation of J. Philip Denison from the Zoning Board of Appeals.**

**VOTE: Unanimous.**

**# 5755 Discussion with Action: Confirm the Appointment and Approve the Employment Agreement between the Town of Old Orchard Beach and the Human Resource Director, Tammy Lambert, effective October 28, 2012, at a Salary of \$52,500 from Account Number 20118-50350 – Contingency, with a balance of \$290,178.14.**

#### **BACKGROUND:**

**The Human Resource Specialist has been with us since October 28, 2011 and has done a remarkable job bringing human resources procedures and projects forward. Not having someone in this position before has left the Town in difficult situations relative to legal and procedural levels of administration. She has organized the department, instituted training programs, worked on the performance evaluation reporting, directed personnel issues in the right directions, and began Union negotiations. The request of the Town Manager is**

that she be designated a Department Head and designated Human Resource Director, effective October 28, 2012, at a salary of \$52,500 with the possibility of merit increases determined by the Town Manager and continue all previous provided benefits in the previous employment agreement. She comes with over twenty-five years of experience as the Human Resource Director in Saco, Maine.

The Council spent a great deal of time on moving this forward at this point mostly because of the questions related to the vacation time provided when the first Agreement with the Human Resource Specialist was signed. One of the concerns in the previous Agreement, and assume in the new Agreement, states: “The Town shall provide four weeks vacation to the employee beginning upon the date of hire and the employee shall be entitled to use this vacation with the approval of the Town Manager. Beginning each year thereafter the employee shall have accrued four weeks vacation on her anniversary.” The Town Manager was asked to come back with more pertinent knowledge of what “accrued” means and also the terminology in the agreement is to be more specific. It was pointed out that according to the Personnel Policy each regular employee full-time or part-time employee shall earn annual vacation time with pay in accordance with the employee’s current term of continuous employment and in accordance with the following schedule: At the beginning of employment – 2 weeks; After completion of five years of employment – 3 weeks; After completion of ten years of employment – 4 weeks; and after completion of 25 years of employment – 5 weeks. One of the issues that the Council does not seem to consider in this is that if there is an agreement before the employee is hired and an agreement is signed designating more vacation time than as indicated in the personnel manual; that is noted in the agreement. Vacation leave accrued on a pro-rata basis each month during the year is accrued, commencing on the employee’s date of employment. Accrued vacation time will be reflected on employees’ paycheck stubs. No vacation may be utilized during the first six months of employment.” Again, this is the procedure unless noted differently in the Agreement signed at the time of hire. There are table set ups that represent what each employee accrues each week to reach their expected vacation hours for the upcoming year. In the case of the Human Resource Specialist the former Town Manager approved four weeks upon date of hire; however she was given the ability to accrue time for the upcoming year as this was an incentive to compensate for pay. A major concern expressed by Council members was the Town’s liability in this type of instance. Until the Council understands and can be convinced of how this is accrued, it was suggested it be Tabled to the next meeting – October 16, 2012. The request was also made for the revision to the Letter of Agreement. The question of the merit raise in addition to this raise was brought forward as well for consideration by the Council.

**MOTION:** Councilor Coleman motioned and Councilor Dayton seconded to Table to the next meeting Confirming the Appointment and Approving the Employment Agreement between the Town of Old Orchard Beach and the Human Resource Director, Tammy Lambert, effective October 28, 2012, at a Salary of \$52,500 from Account Number 20118-50350 – Contingency, with a balance of \$290,178.14.

**VOTE:** Yea: Councilors Coleman, Dayton, Vice Chair Tousignant, Chair Quinn  
Nea: Councilor MacDonald



**# 5756 Discussion with Action: Approve the request from owners of 166 Portland Avenue (103-1-12), to waive the connection fee for a single family home in the amount of \$3,300 for hooking up to the Town Sewer.**

**BACKGROUND:**

The citizen requesting this has lived in Old Orchard Beach since 1957 and his family since 1931 and he noted that the Town has received, through taxes, an amount through sewer usage since it was enacted to present day and has not claimed against that money for septic cleaning which is allowed by the Town. He would like to see this money considered as an offset for the impact fee. The citizen has set aside money for the work needed to dig the trench, lay the pipe and make the connection and has enough for both permits needed to start the process. In discussions with the Superintendent of Waste Water he reminds the Council that the current system of taxation means that those who do not use the sanitary sewer system still pay for it. However, there is nothing in the ordinance that would automatically waive the connection fee for such cases. The Town does offer a refund towards the cost of cleaning out the septic tank (up to \$350 every eighteen months). Unfortunately this does not help recover the percentage of property taxes contributed by the citizen towards the maintenance and operation of the sanitary sewer system all these years. The Superintendent, although sympathetically understanding this situation, does not agree that the waiver should be granted as it will open up the stream of other citizens requesting the same provision. Prior 2007 the fee was 1,200.

The Council discussed this issue and the fact that it would open more requests by other property owners. Council MacDonald noted that for the amount of Sewer Fee charges that this individual has paid over the years, she feels it is fair to waive the fee. Councilor Coleman reminded the Council that this exception will cause others to come forward and that fiscal responsibility to the payment of fees is a requirement.

**MOTION: Councilor MacDonald motioned and Vice Chair Tousignant seconded to Approve the request from owners of 166 Portland Avenue (103-1-12), to waive the connection fee for a single family home in the amount of \$3,300 for hooking up to the Town Sewer.**

**VOTE: Yea: Councilors Coleman, Dayton, Vice Chair Tousignant, Chair Quinn  
Nea: Councilor Coleman**

**GOOD AND WELFARE:**

**NANCY FRISCO: Her concerns were about the Edith Belle Memorial Library and the fact that its hours were shortened. She spoke about the value of the Library to the citizens and was concerned that the Town was not funding the Library as needed. The Town Manager addressed concerns by saying that there have been no budget cuts; in fact the Library was just given and additional \$6,000 for the employment of a bookkeeper. He explained how the bill paying is done for the Library and that she needed to address her questions to the Library's Board of Trustees. She also spoke about the entrance ways to the beach and how these need to be maintained in a better manner as they are needed for those entering and leaving the beach and are in terrible disrepair.**

**DANA FURTADO:** He spoke at length about the need to understand the accrued vacation time of employees so there is a fairness to how people are paid. He went on and explained the time given to employees as they remain with the Town for years. He said he was concerned that there is not a fairness issue with those working for the Town for years and those being hired.

**JEROME BEGART:** He spoke again about fiscal responsibility and his comments about FROG. He listed a number of issues of concern to him and a request that the Administration follow up on questions that are being asked.

# 5757 Discussion: Personnel Matters and Legal Matters: (Note: This item discusses privacy issues defined under Title 1 M.R.S.A., Section 405(6) (A), and 405 (6) (E) and the Council anticipates that the discussion portion will occur in Executive Session.)

**MOTION:** Councilor MacDonald motioned and Councilor Coleman seconded to Enter into Executive Session: Discussion: Personnel Matters and Legal Matters: (Note: This item discusses privacy issues defined under Title 1 M.R.S.A., Section 405(6) (A), and 405 (6) (E) and the Council anticipates that the discussion portion will occur in Executive Session

**VOTE:** Unanimous.

**MOTION:** Councilor MacDonald motioned and Councilor Coleman seconded to Adjourn the Executive Session at 12:45 a.m.

**VOTE:** Unanimous.

**ADJOURNMENT:**

**MOTION:** Councilor MacDonald motioned and Councilor Coleman seconded to Adjourn the Town Council Meeting at 12:45 a.m.

**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-four (34) pages is a copy of the original Minutes of the Town Council Meeting of October 2, 2012.**

**V. Louise Reid**