

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
Tuesday, September 18, 2012
TOWN HALL CHAMBERS
7:00 p.m.**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, September 18, 2012. Chair Quinn opened the meeting at 7:03 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**

EMERGENCY ITEM:

CHAIR QUINN: We have a request to add an Emergency Item to the Agenda:

MOTION: Councilor Coleman motioned and Councilor MacDonald seconded to add the following Emergency Items pursuant to Charter Section 404.1 - Business Licenses – to the Agenda – Agenda Item Number 5746 to follow Agenda Item 5745: Discussion with Action: Approve a Blanket Letter of Approval for Games of Chance for the Veterans of Foreign Wars (VFW), Post 7997, 76 Atlantic Avenue, from January 1, 2013 to December 31, 2014.

VOTE: Unanimous.

ACKNOWLEDGEMENTS:

COUNCILOR MACDONALD: We encourage everyone to put on their calendar the dates of September 21 through 23, 2012 at the Ballpark where we will celebrate with great respect the Prisoner of War and Missing In Action Recognition Weekend. Hosting are the OOB 365 Committee, the VFW7997, the AMVETS (State, Biddeford and Service Foundation) who will join with this important event bringing the Autumn Festival this weekend as well. Loads of important and exciting events including Exhibits, food, activities for all ages of the family and an opportunity for everyone to show their respect for those who have served our country. A banner of 559 names of Mainer's who are still missing in action will be displayed at the Ballpark and also in the program booklet. This is an opportunity for us to renew our nation's

commitment to account for United States personnel still missing from our nations past wars and conflicts. There are still 81,864 still unaccounted for. The COBRA (helicopter) which served in the Vietnam War from 1968 to 1973 will be escorted down the Cascade Road by motorcycle groups around 3:45 p.m. on Friday, September 21, 2012. We thank Russ Warriner for the hours and hours of energy, effort and commitment that he has put into bringing this program forward. On Saturday, September 22nd there will be three Ceremony Segments beginning at 10:00 a.m. and ending at 3:30 p.m.

ASSISTANT TOWN MANAGER: Our congratulations to our Town Clerk, Kim McLaughlin, on her election as the President of the Maine Town & City Clerk's Association Kim was honored today at a luncheon in Waterville. We know that whatever Kim does, she does well so we wish her good luck in her position as President. She has been a diligent office holder in this Association over the years so we are not surprised that she is now the key individual.

CHAIR QUINN: The Chair encouraged all citizens to consider possible membership on several of the Town Committees and Boards that have available opportunities for serving.

ACCEPTANCE OF MINUTES: Town Council Meeting Minutes of September 4, 2012; Town Council Workshop of September 5, 2012; and Administrative Board Minutes of September 5, 2012.

MOTION: Councilor Dayton motioned and Councilor Coleman seconded to Accept the Minutes as read.

VOTE: Unanimous.

PUBLIC HEARING BUSINESS LICENSES AND APPROVAL:

CHAIR: I open this Public Hearing at 7:10 p.m.

Stanley Pasieka (205-16-3-#8D), 9 Cascade Road, Unit 8D, one year round rental; and Don Tardif & Tami Westbrook dba/Tami Lyn's Place (315-15-2), 126 West Grand Avenue, Victualers with Preparation with Beer, Wine and/or Liquor – off premise.

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

MOTION: Councilor Coleman motioned and Councilor MacDonald seconded to Approve the Business Licenses as read.

VOTE: Unanimous.

TOWN MANAGER'S REPORT: We have had two Administrative Review Boards in the last month and this is an opportunity to hopefully work out issues in a cooperative manner. Attended Town Council Meeting and Workshop. Had a very productive meeting with the Edith Belle Memorial Library Board members. Addressed issues relative to Acorn Village. Several meetings with the Human Resource Director on issues of hiring and personnel matters. Meetings with the Superintendent of Waste Water, the Fire Chief.

Police Lieutenant Deluca, the School Resource Officer, the Community Watch Group on important matters. Negotiation sessions with both Public Works and Waste Water are ongoing. I have had several opportunities to be around town and talk with citizens of the community.

During the discussion Councilor MacDonald requested that the Council receive a copy of the Employee Evaluation Form and the Assistant Town Manager was to provide that to the Council.

NEW BUSINESS:

5736 Discussion with Action: Extend the Extreme Clean Contract, Inc., to cover through October 15, 2012 in the amount of \$10,000; through October 31, 2012 in the amount of \$15,000; funding to be determined by the Town Council.

TOWN MANAGER: The Town Manager and the Public Works Director have had discussions relative to the contract of Extreme Clean.

- Will their contract be extended beyond the end of September? If not, BBB will need to get porta-toilets to Memorial Park and the Comfort Station immediately?
- Will there be additional events at the park that will require Public Works keeping the bathrooms open beyond the end of Extreme Clean's contract? Do we need to schedule the Plumber to winterize the bathrooms or is that something Extreme Clean does as part of their contract?

Since 2005 Extreme Clean has held the Downtown and Beachfront Cleaning Contract with the Town. In 2009 they proposed and were granted an extension of their contract terms to include weekdays in the month of September and daily into the month of October. The reasoning was and remains simply that if the Town of Old Orchard Beach wished to be more than a single season or more than a twelve week town, the first step was to be open and to include public restroom facilities as well as general cleaning and trash removal in both the downtown area and along a portion of the beachfront.

There can be no denying that the Beach is the economic engine that drives this town. It is the larger part of the Town's identity. That is not to take away from the many events at the Seaside Pavilion, the Ballpark, Memorial Park, or in Ocean Park. A bus full of senior citizens who are on a leaf-peeping tour of Maine stops by OOB on a week day in late September for some fries, pizza, or a walk on the best beach in the State of Maine and they are greeted with portable toilets next to the Comfort Station on West Grand as there only option for rest room facilities. They will not be anxious to return. There were two proposals suggested: They include an annual painting/maintenance up of the Downtown area to be developed in conjunction with the Public Works Department to keep the public property in this area from developing a shabby/rundown appeared (photos enclosed).

Proposal One: From 8:00 a.m. to 8:00 p.m. coverage, Monday through Thursday, for the balance of September (8 days) and 8:00 a.m. to 8:00 p.m. coverage for seven days a week, October 1-15, 2012.

(23 days – total cost of \$10,000.)

Proposal Two: From 8:00 a.m. to 8:00 p.m. coverage Monday through Thursday for balance of September (8 days) and 8:00 a.m. to 8:00 p.m. coverage for seven days a week through October 31, 2012.

(39 days – total cost of \$15,000.)

This pricing includes all materials and labor necessary to develop and implement an annual painting program for the public property in the downtown area to include, but not limited to, tables, benches, planters, the fountain, trash receptacles, etc.

There was continuous discussion between Council whether this additional work was needed to be done; whether it had been done in the past; what constituted a possible cost for the work. Several Councilors raised the issue of weather related need and the fact that should it be good weather, as in the past there would be complaints if the bathrooms were not open and cleaned. Adam Copeland spoke on behalf of Extreme Clean and during the discussions several Councilors congratulated him on the excellent job his company had done this year as in the past. There were discussions whether the cost was really necessary but again the reasoning of good weather was consistently raised and also the need to make it an available service for the residents who often do not come down to the Town center during the summer months.

MOTION: Councilor MacDonald motioned and Councilor Dayton seconded to Extend the Extreme Clean Inc., Contract to cover through October 15, 2012 in the adjusted amount of \$7,000 with no charges for use of bathrooms; from Account Number 20118-50350 - Contingency, with a balance of \$290,178.

VOTE: Unanimous.

5737 Discussion with Action: Consider placing on the ballot for the regular Town election to be held on November 6, 2012, authorization of a sale of a permanent easement for no more than 1,000 square feet in area to allow for improved pedestrian and motor vehicle access to the rear of the property located at 8 Heath Street, further identified on the Town of Old Orchard Beach Tax Maps as MBLU 206-27-13, the easement area to be located over and adjacent to the boundary of the Town's Memorial Park as shown on the preliminary survey, dated 8/24/2012, on file at the Town Office, and to be sold to the owners of the property located at 8 Heath Street, further identified on the Town of Old Orchard Beach Tax Maps as MBLU 206-27-13, for the sum of Five Thousand Dollars (\$5,000.00) and certain other agreed to landscaping improvements, and to further direct the Town Clerk to place such a referendum on the November 6, 2012 ballot.

TOWN MANAGER: At two previous Council Meetings Stillridge LLC was requesting the Council grant an easement across land located in Memorial Park, west of the tennis courts. The purpose of the easement is to provide delivery truck access to the rear of the existing AZ's Market building so that a new business, Family Dollar, can replace AZ's Market. As I've been told, the proposal cannot move forward unless the easement is granted because the

current turning radius are not in accordance with Family Dollar's engineering guidelines. During the spring/summer of this year, Ellis Commercial Management, representing Stillridge LLC, approached the town requesting acceptance of the easement described above. After consideration of the proposal, staff felt they could not recommend this proposal due, in part, to potential impacts to Memorial Park, no solid plans to improve the immediate area affected by the easement and little documentation to clearly define this proposal. Ellis Commercial Management and Stillridge LLC continued to pursue the proposal and developed a more detailed plan, including complete building renovation, vegetation improvements to replace what may be removed and an overall more defined plan. After meeting on-site and discussing the proposal with Ellis Commercial Management, staff had a more favorable view and recommended they secure a positive recommendation from the Conservation Commission and Memorial Park Committee before it moves forward to Council consideration. Representatives from Ellis Commercial Management meet with both the Commission and Committee and it is my understanding received support; therefore, at this time the proposal has reached a point for Council consideration. The Memorial Park Committee has been in favor of this proposal. The Town's Charter contains various restrictions on the sale of Town owned property. For property which is neither tax-acquired nor surplus such as this proposal, no property may be "offered for any sale, leased for more than three years, or otherwise disposed of without a referendum vote." Section 409.15. The proposed easement in this case to pave a portion of town owned land for truck access for the shopping center is a disposition of a property right in the land that would fall within this restriction. The Charter does allow the Town to lease town-owned land for up to three years, so that could be an option you could pursue if it is of interest to the applicant. Finally, before a portion of the property is potentially sold through referendum or leased, it will be important to check if there are any deed restrictions on the park, i.e. if it was given as a gift or if there are other impediments to disposition."

In reviewing the agenda item for this evening the Planner provided the following 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?
3. Survey. As noted above, we agree that you should obtain a survey that clearly shows the area of leasehold and easement area.
 4. Ballot Question. Regarding the referendum ballot question, we have only a few minor edits. We suggest the following:

“Shall the Town of Old Orchard Beach authorize the Town Council to sell and convey to the owners of the property located at 8 Heath Street, for the sum of \$5,000.00 and certain other agreed to landscaping improvements, a permanent easement area for improved pedestrian and motor vehicle access to the rear of the 8 Heath Street property; the easement area to be no more than 1,000 square feet in area and located over and adjacent to the northwest boundary of the Town’s Memorial Park, with the terms and conditions of the easement and sale subject to review and approval of the Town Council?”

The Town Council discussed this matter at length and the Planner indicated that the Stillridge LLC has gone to every length to provide information as requested by the Town in consideration of this request.

During the agenda item John Bird requested the opportunity to read the following e-mail in the absence of Mark Koenigs regarding his opinion on the issue.

“To the Town Council Chair and Councilors: I will be out of town on business travel today and will not be able to attend the September 18, 2012 Town Council meeting. Agenda Item 5737 - Placing on the 11/6/12 ballot a referendum question authorizing the sale of a permanent easement of Town Owned Park Land to the property owner of 8 Heath Street, MBLU 206-27-13: (My comments are based on the information I've received via emails as a Conservation Commission member and Town Council meetings. Attached is the landscaping plan proposed by Ellis Development.)

1. Precedence. The permanent sale of an easement of open space land that was bequeathed to the Town of OOB for a specific purpose of park land. It seems to me that we are going backward, if we allow paving over the park land for short term economic gain without thought of the long term consequences, actual costs, or worth of the open land; no matter how small the easement area.

2. How did the value of the easement get set as \$5,000.00? I witnessed the Town Council meeting in which the Town Council voted to grant a three year lease. The value of the leased easement was made equal to the performance guarantee amount that the Memorial Park Subcommittee suggested and Mr. Ellis proposed to the Town Council. Performance

guarantee funds were to be returned to the developer once the new plantings were established and accepted by the Memorial Park Subcommittee. These performance funds had a purpose, but they were not the value of the permanent easement to the developer. So what happened to the performance guarantee funds? The ballot referendum question language does not cover this requirement. The developer/property owner seeking the easement should be required to provide performance guarantee funds to insure the work (plantings) are completed and acceptable to the Town (Memorial Park Subcommittee).

3. Please make sure the true value of the permanent easement is appropriated to improvements to Memorial Park in full. These funds shall be appropriated by the Town Council to the Memorial Park Subcommittee for CIP within Memorial Park, not DPW maintenance costs. The true value of the easement is some amount greater than \$5,000.00 for the approx. 700 - 1000 SF (not to exceed 1000 SF is \$50.00/SF). The Town will forever lose open grass lawn area in the park to permanent pavement; priceless.

4. Has the developer submitted a preliminary site development plan for the Family Dollar Store and the easement with park improvements? Has the Council or Town Manager had the developer's plan reviewed for site requirements by the Town Planning Department or Town Planner? Prior to the easement deed being finalized between the property owner and Town, the property owner shall be required obtain all required Town permits for the development and improvements. The proposed site plan should be submitted thru the planning department to the Planning Board for permitting. There should be adequate buffering and screening of the receiving area from Memorial Park. There should be plan notes that restrict plowing snow onto the Memorial Park land (grassed slope and vegetation) at the edge of the easement's paved area. The property owner shall be responsible for spring cleaning of winter debris along the common property line and easement on the Memorial Park landscaped areas prior to April 30th each year. The proposed site plan shall properly address site stormwater drainage, utilities, solid waste disposal, erosion control, pedestrian traffic controls and signage, provide connections to existing paths in Memorial Park or provide new paths.

5. Is the Town paying for the cost of all legal fees and voting fees to draft and place the referendum question on the ballot? Or will the developer be paying for these added costs to the taxpayers for the authorization vote? What are these costs?

6. Who is paying for the official property survey and legal fees to record the easement on the deed of the Memorial Park (Town Owned land)? What are these costs?

I am hopeful that the authorization would still allow the Town Council to negotiate a win-win deal for the Town. I need to know more how this is a good deal for OOB residents, park users and taxpayers, before voting Yes on 11/6/12. Regards, Mark Koenigs.

The Council discussion between themselves continued with concerns that the amount of \$5,000 seemed too small an amount to give up town land but in further discussions the fact that an additional \$50,000 of upgrades to the area of the land will be funded by Stillridge LLC and further support by the Memorial Park Committee as expressed by Mary Beth Robillard, Chair, the general consensus was that this business would be a benefit tax wise and also from a visionary standpoint in the upgrades of the area. Several spoke including business owner, Rich Redmond, who agreed that this would be a pleasant upgrade to the

area and bring in a viable business. Jerome Begart and John Bird continued their questioning of the value of the piece of land and whether the Town was getting the best buy for the money involved.

MOTION: Councilor Coleman motioned and Councilor MacDonald seconded to place on the ballot for the regular Town election to be held on November 6, 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.

5736 Discussion with Action: Approve the Transfer of the Defendant in Rem, or any portion thereof, pursuant to 15 M.R.S.A. Section 5826(6) and accept the seizure money should it be awarded by the Courts.

TOWN MANAGER: This is a housekeeping item in order for funds taken by the courts in seizure can be turned over to the municipality. During the discussions between the Council and comments by John Bird and Jerome Begart, the Town Manager indicated that he would provide to the Council and the public a listing of where this money is spent and the amount that is collected.

MOTION: Councilor Coleman motioned and Councilor Dayton seconded to Approve the Transfer of the Defendant in Rem, or any portion thereof, pursuant to 15 M.R.S.A. Section 5826(6) and accept the seizure money should it be awarded by the Courts.

VOTE: Unanimous.

5739 Discussion with Action: Reconsider former Agenda Item Number 5728 to Amend Old Orchard Beach Free Public Library Association's (Edith Belle Libby Memorial Library) Budget to reflect hiring a part-time bookkeeper/clerical position, with no benefits, in the amount of \$6,000 for the remaining ~~ten (10)~~ months fiscal year, effective ~~September 5, 2012~~ September 19, 2012.

CHAIR QUINN: At a previous Council meeting this request was discussed and failed two to two vote. It is being put back on the Council Agenda for reconsideration. To the job description we have added as requested by Councilor the reconciliation with accounts payable of bank statements and records.

THE EDITH BELLE LIBBY MEMORIAL LIBRARY

27 Staples Street
Old Orchard Beach, Maine 04064

Telephone – 207-934-4351
E-mail: libbylibrary@ooblibrary.org

JOB DESCRIPTION

BOOKKEEPING/CLERICAL

QUALIFICATIONS: Associate degree or equivalent preferred;
High School Diploma;
Computer Skills (QuickBooks a plus); and
Background in business math and procedure required.

RESPONSIBILITIES: Prepare bills for payment;
Record, file and keep records of all financial transactions;
Prepare bi-weekly payroll;
Reconcile with Accounts Payable;
Prepare end-of-year reports to governmental entities;
Assist Treasurer and Library Director in drafting a
yearly budget proposal for consideration by
the Library Board of Trustees; and
Any and all other duties that may arise in conjunction
with any of the above.

WORK and PAY: Twelve (12) hours a week @ \$12.50. No benefits.

SCHEDULE:

Note: The Board of Trustees is the hiring body for this position and
this position reports directly to the Board of Trustees.

Attachments: Detailed daily job description, letter sample and commentary
by Doris Harris, Treasurer, Board of Trustees.

September 2012/dh

The job description which has been developed by the Library Treasurer is detailed and descriptive of what they are asking for in this position, defining the items that this individual will address to move forward in progressive way the workings of the Library operations. This position will require an Associate degree or equivalent preferred, High School Diploma, Computer Skills (QuickBooks, a plus) and background in business math and procedure required. That individual will prepare bills for payment, record, file and keep records of all financial transactions, prepare bi-weekly payroll, prepare end-of-year reports to governmental entities; assistant the Treasurer and Library Director in drafting a yearly budget proposed for consideration by the Library Board of Trustees; and any and all other duties that may arise in conjunction with any of the above. The position will be twelve hours per week at \$12 per hour with no benefits. Doris Harris then also described in detail what each responsibility entails.

From Doris Harris, Treasurer – Board of Trustees

Members of the Town Council – Submitted to you has been a request to reinstate the line item of a Bookkeeper/Clerical position, along with funding, for the Libby Memorial Library. During the budget process, which went by quickly and was somewhat chaotic due to the new Finance Director and her quest, in accordance with the amended Town Charter, to have everyone in a line item budget for the Fiscal Year 2013. The Library was also in a state of chaos following the alleged embezzlement from library funds. Following that news the Town withheld the fourth quarter appropriation of funds to run the library, due to the missing funds, which created concern that the Library might be closed. The change from the Library's budget, as presented for many years, to a line item budget was an enormous challenge and in spite of several meetings and many e-mails with the Finance Director, items were missed, were left out, were zapped, if you will. It did not register with the Trustees or me that the bookkeeper position had been deleted as the bills were paid and the staff paid. I had volunteered to help out with the paperwork in February as our bookkeeper was gravely ill. This offer of helping out began on February 29, 2012 and is still on-going. So the work was getting done and the new system of payables and payroll were being actively pursued in order to comply, to get our bills and staff paid, by the library volunteer, albeit with much angst and with much time spent with the helpful staff at Town Hall. Inasmuch as I found myself deeply immersed in the working of the duties of the Treasurer of the Library Board of Trustees and also have failed to give my all to the Friends this summer due to my "job," I hereby respectfully request that you cast your vote – yes – to reinstate the line item for the bookkeeper as "Bookkeeper/Clerical, with funding, for the balance of this fiscal year and the coming years. Thank you."

After rejecting the request earlier this month, the Town Council voted Tuesday to fund a bookkeeper position for the Edith Belle Libby Memorial Library. The Library, a quasi-municipal corporation, had its own bookkeeper until earlier this year when it was discovered that money had been embezzled from the Library account. The Town has since taken over the Library's payroll and accounts payable. The Council reconsidered this again with Council Coleman explaining why he could not support it because of questions raised about the \$9,735 which the Town Manager said had not been turned over to the Town. Dana Furtado raised the issue of more insurance money coming in above the \$50,000 received by the Library and asked what the intention of the Town was to file for additional insurance since the former bookkeeper was a Town employee. Vice Chair Tousignant indicated that is still under investigation and Council Dayton indicated that the former bookkeeper was not an employee of the Town. The Town Manager indicated that he had met with three members of the Board

of Trustees and it is their request that they have control of that money which represents Pogus money and over- the-counter-change. He also had issues with the Board not going out for a consultant to do such work which he felt would be a better avenue for the Library. Chair Quinn who previously had voted against it said he and Doris Harris had met and had a long discussion on the issue and that he felt controls were very tight. They've reacted to what happened, and they're trying to go forward in a manner that will prevent this type of things happening again. Council MacDonald was passionate said the Library needs to put this behind them and move forward. She said we need to give the Library a bit of their autonomy back. There is just way too much bad karma going on. She also indicated that she had asked for a meeting between the Library and the Council but that she had not had a response to her request. Chair Quinn said that he was more in favor of a ten hour a week position than a twelve hour a week position and that the \$6,000 include other related expenses such as FICA and worker's compensation fees. Vice Chair Tousignant indicated that we need to move on with this issue.

MOTION: Vice Chair Tousignant motioned and Councilor MacDonald seconded to Amend Old Orchard Beach Free Public Library Association's (Edith Belle Libby Memorial Library) Budget to reflect hiring a part-time bookkeeper/clerical position, with no benefits, in the amount of \$6,000 for the remaining fiscal year, effective September 19, 2012 from Account Number 20118-50350 - Contingency, with a balance of \$290,178.

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

In preparation for the three Public Hearings to be held on the 2nd of October, the Planner prepared a synopsis on those presentations which are presented as part of the Minutes and have been provided to the Town Council.

Summary of Changes Relative to the Public Hearings

The Planner has excellently prepared a summary for us of the Ordinance Public Hearing information. His focus on detail is very helpful in the understanding of these Ordinance changes.

SUBJECT: Ordinance Public Hearing Info

The purpose of this memo is to provide the Council with information concerning proposed ordinance amendments. At the 18 September Council meeting, staff is requesting the Council schedule public hearings for the following ordinance amendments:

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).
2. **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.

3. **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**

Below is a brief summary of each of the above-mentioned ordinance amendments:

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.

2. **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.

3. 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
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by the Town Council. These signs shall be removed within 5 days after the close of the event.

5740 Discussion with Action: Set the Public Hearing date of October 2nd, 2012 to 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.

**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 78-1185, 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.

MOTION: Vice Chair Tousignant motioned and Councilor MacDonald seconded to Set the Public Hearing date of October 2nd, 2012 to 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.

VOTE: Unanimous.

5741 Discussion with Action: Set the Public Hearing date of October 2nd, 2012 to Amend Chapter 78 (Zoning Ordinance), 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.~~

MOTION: Vice Chair Tousignant motioned and Councilor Coleman seconded to Set the Public Hearing date of October 2nd, 2012 to Amend Chapter 78 (Zoning Ordinance), Section 78-1023, Conditional Uses, and 78-1268, Child Care Facilities.

VOTE: Unanimous.

5742 Discussion with Action: Set the Public Hearing date of October 2nd, 2012 to amend Chapter 78 (Zoning Ordinance), Section 78-1627, Temporary signs.

**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 1627, Temporary signs, is amended by adding the underscored language, as shown below:

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.

MOTION: Councilor Coleman motioned and Councilor MacDonald seconded to Set the Public Hearing date of October 2nd, 2012 to amend Chapter 78 (Zoning Ordinance), Section 78-1627, Temporary signs.

VOTE: Unanimous.

5743 Discussion with Action: Accept, with regret, the resignation of Michael Russo from the Planning Board; move Maria Pastulovic from a Regular to a second Alternate member of the Community Animal Watch Committee; move Lorrie Moore from first Alternate to a Regular member of the Community Animal Watch Committee; both terms to expire December 31, 2013.

MOTION: Councilor Coleman motioned and Councilor Dayton seconded to Accept, with regret, the resignation of Michael Russo from the Planning Board; move Maria Pastulovic from a Regular to a second Alternate member of the Community Animal Watch Committee; move Lorrie Moore from first Alternate to a Regular member of the Community Animal Watch Committee; both terms to expire

December 31, 2013.

VOTE: Unanimous.

5744 Discussion with Action: Amend the Special Event Permit application, approved by the Town Council on 8/21/12, for the POW/MIA Recognition/OOB365 to hold the POW-MIA Recognition Weekend on Friday, September 21st through Sunday, September 23rd, 2012 at the Ballpark from 8 a.m. to 8 p.m.; to include OOB365's Annual Autumn Celebration.

MOTION: Councilor Coleman motioned and Councilor Dayton seconded to Amend the Special Event Permit application, approved by the Town Council on 8/21/12, for the POW/MIA Recognition/OOB365 to hold the POW-MIA Recognition Weekend on Friday, September 21st through Sunday, September 23rd, 2012 at the Ballpark from 8 a.m. to 8 p.m.; to include OOB365's Annual Autumn Celebration.

VOTE: Unanimous.

5745 Discussion with Action: Approve the Special Event Permit application for OOB365 to hold Woofstock at the Ballpark on Sunday, October 14, 2012, from 7 a.m. (set up) to 5 p.m. (clean up); and a request to waive the fee.

MOTION: Councilor Coleman motioned and Chair Quinn seconded to Approve the Special Event Permit application for OOB365 to hold Woofstock at the Ballpark on Sunday, October 14, 2012, from 7 a.m. (set up) to 5 p.m. (clean up); and a request to waive the fee.

VOTE: Unanimous.

5746 Discussion with Action: Approve a Blanket Letter of Approval for Games of Chance for the Veterans of Foreign Wars (VFW), Post 7997, 76 Atlantic Avenue, from January 1, 2013 to December 31, 2014.

MOTION: Councilor Coleman motioned and Councilor Dayton seconded to Approve a Blanket Letter of Approval for Games of Chance for the Veterans of Foreign Wars (VFW), Post 7997, 76 Atlantic Avenue, from January 1, 2013 to December 31, 2014.

VOTE: Unanimous.

GOOD AND WELFARE:

JOHN BIRD: He discussed the Charter and the Referendum Issues on the ballot and the reasoning behind the Charter Commission bringing forward issues.

JEROME BEGART: He related that as far as the Town Clerks salary issue, the Town could set up a bonus account where money is not considered in determining the Town Clerk's salary and will be separate from the accounts required for consideration.

VICE CHAIR TOUSIGNANT: He asked if there would be consensus to look toward having Consensus Agreement in approving business licenses that come before the Council which would allow for saving time in consideration during the Council meetings and the possibility of it being on the next agenda.

COUNCILOR DAYTON: She asked for further information from the Town Manager on the DEP signing off on the issue that was addressed at the last meeting relative to the 711 Store issue.

DANA FORTADO: He gave an update on the upcoming POW/MIA weekend at the Ballpark and encouraged everyone to attend.

ADJOURNMENT:

MOTION: Councilor Coleman motioned and Councilor Dayton seconded to Adjourn the Town Council Meeting at 9:40 p.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 eighteen pages (18) pages is a copy of the original Minutes of the Town Council Meeting of September 18, 2012.

V. Louise Reid