

**TOWN OF OLD ORCHARD BEACH  
REGULAR TOWN COUNCIL MEETING  
TUESDAY, FEBRUARY 19, 2013  
TOWN COUNCIL CHAMBERS  
7:00 P.M.**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, February 19, 2013. Chair MacDonald opened the meeting at 7:00

**Pledge to the Flag**

The following were in attendance:

Vice Chair Bolduc  
Councilor Coleman  
Councilor Dayton  
Councilor Furtado  
Chair MacDonald  
Councilor Mailhot  
Councilor Quinn

**ACKNOWLEDGEMENTS**

Chair MacDonald was in Augusta for a bill vote. The Bill was about the concealed weapons. She stopped after to see the OOB High School Girls Basketball Team win their game.

**ACCEPTANCE OF MINUTES**

Special Town Council Minutes of January 30<sup>th</sup>, 2013. Councilor Mailhot brought up the fact that Quarterly Reports were to be reflected in the minutes. Councilor Dayton said that was just for the Library to supply. Councilor Dayton said that the minutes should also reflect that the Library agreed to supply quarterly reports. Chair MacDonald said that was a good point. So the minutes need to reflect that there will be quarterly reports from the Library and that the Library agreed to that.

**Councilor Mailhot motioned with that change being included and Vice Chair Bolduc seconded to accept the minutes. Vote was 6-0-1 with Councilor Quinn abstaining as he was not in attendance.**

Town Council Minutes of February 5, 2013

**Councilor Mailhot motioned and Councilor Quinn seconded to accept the minutes. Vote was 5-0-2 with Councilor Furtado and Chair MacDonald abstaining as they were not in attendance**

**PUBLIC HEARING BUSINESS LICENSES AND APPROVAL**

Michelle & Derek Leffler (205-19-18-32), 47 Milliken Street # 32, one year round rental;  
Philip Kelly (206-3-5), 106 Saco Avenue, one year round rental; Paul Weinstein (210-1-20-19), 39 Smithwheel Road Unit # 19, one year round rental; Pamela Golarz (308-4-1), 2 Washington Ave, two year round rentals; Alison Case (313-2-4-3), 15 Bay Avenue, Unit # 3, one year round rental; and Julian Leon (313-2-4-4), 15 Bay Avenue, Unit #4, one year round rental.

**Councilor Coleman motioned and Councilor Mailhot seconded to approve.  
Vote was unanimous 7-0**

**PUBLIC HEARING SPECIAL AMUSEMENT PERMITS**

Dimitri Inc. d/b/a Jimmy the Greek's (211-9-1), 215 Saco Avenue, Bands, DJ's, Comedy, & More (amplified) Outside and Inside 12:00 pm- 1:00am; Surf 6 Inc d/b/a Surf 6 Restaurant & Lounge (306-2-9), 2 Courtland Street, Bands & D.J. Outside and Inside 12:00 pm- 12:00am; and Fly by Night Inc d/b/a Mr. Goodbar (306-5-2), 6 East Grand Avenue, Live Band/ Karaoke/ D.J. Inside 7:00pm- 1:00am.

**Councilor Quinn motioned and Councilor Coleman seconded to approve.**

**Vote was unanimous 7-0**

### **TOWN MANAGER'S REPORT**

- He gave multiple tours to companies of the town hall for the Town Hall RFP. We received five bids for the Town Hall and they were opened Monday the 11<sup>th</sup> at 3:30 in the Council Chambers. The bids were due Friday the 8<sup>th</sup> but because of the storm we had to postpone. Bids for Payroll, Legal and the Police Garage/ Storage facility were opened Friday the 15<sup>th</sup>.
- He met with the Library Board of Trustees and Finance Director. (Feb 7<sup>th</sup>)
- He met with some private citizens that had some concerns.
- He met with John Duncan of PACTS and the Maine Department of Transportation on February 13, 2013 at 9:00 a.m. to discuss the costs and final plans for the intersection lights at the corner of Saco Avenue and E. Emerson Cummings Boulevard. He is trying to get things back on budget since the cost is coming in higher
- He went to a roundtable meeting at the RSU # 23 on February 11, 2013 on the State and local budget considerations and issues. (Location: Saco City Hall Council Chambers) Also attended another roundtable meeting at the RSU # 23 on February 13, 2013 dealing with School Security where the officials of Old Orchard Beach participated in. (Location: Saco Middle School)
- He had budget meetings with a number of departments and will continue to build the FY 2014 Budget

Chair MacDonald asked when they would see the results of the RFPs. The Town Manager said he would provide them in whatever format the council would like them. He could provide a spreadsheet. The Chair said for the Town Attorney she would want to see all the details but for the Time Clock and the Payroll you could do a spreadsheet. The Town Manager said that would be doable for this week.

Councilor Dayton asked if the Police Chief could check the lights as it appears someone leaned up and turned them off. All but Councilor Dayton agreed to continue the meeting.

### **NEW BUSINESS**

#### **ITEM COMMENTARY NUMBER: 5828**

**AGENDA ITEM:** Discussion with Action: Consideration of the litigation and proposed settlement in the matter *Town of Old Orchard Beach v. Harleysville Insurance Company*, and consideration of authorizing the Town Manager on behalf of the Town to accept the offered settlement of the claims in the amount of \$18,000, and to execute on the Town's behalf settlement documents related thereto in content and form acceptable to the Town Attorney.

Councilor Quinn disclosed that he had a son employed by the insurance company but not in the specific area of concern. Planner Jeffrey Hinderliter spoke about the performance bond issue. He said Acorn Village had a bond taken out by the developer and the town would release money once shown things were done. The Developer has to keep to the plans for Acorn Village. Sometime after 2007 the worked just stopped or at least slowed down. After 2010 it did stop completely. At that point the town pursued either getting the work done or getting the money back from the bond insurance. He did consulting our town attorney. Councilor Quinn asked why we would be settling for \$18,000 and that the amount owed is closer to \$20,000. Jeffrey explained that the lawyers said that if we sought more it would most likely be eaten up in lawyer fees. Vice Chair Bolduc asked what the legal fees were and what account the money would be put into. The Town Manager said he didn't know the amount of the legal fees and that the council would need to tell him what account they would want the money put into. If no direction, he would have it put into the unanticipated revenue line. Jeffrey said to put the money in the condo fund for the Acorn Escrow account so they can continue to make improvements. Councilor Quinn asked for clarification that the town would not be held responsible for the difference in the \$18,000 and the actual amount. Jeffrey said we would not be responsible. Discussion was scheduled for the 5<sup>th</sup> of February but the agenda didn't allow for it. The Chair said some folks from Acorn Village wanted the discussion moved to this meeting so that they could attend. Councilor Dayton asked if this obligated the town to finish the project. Jeffrey said no.

**Councilor Coleman motioned and Vice Chair seconded with the addition of the Town Manager letting the Council know what account the money would go in for the Acorn Escrow and that amount would be less the legal fees which would go into the unanticipated revenue line in the budget.**

**Vote was unanimous 7-0.**

**ITEM COMMENTARY NUMBER: 5829**

**AGENDA ITEM:** Discussion with Action: Approve Liquor License Renewals of Fly by Night Inc., dba/Mr. Goodbar (306-5-2), 6 East Grand Avenue, m-s-v in a Class A Lounge; Dimitri Inc. d/b/a Jimmy the Greek's (211-9-1), 215 Saco Avenue, m-s-v in a Restaurant/ Lounge; Surf 6 Inc d/b/a Surf 6 Restaurant & Lounge (306-2-9), 2 Courtland Street, m-s-v in a Restaurant.

**Councilor Coleman motioned and Vice Chair Bolduc seconded to approve.**

**Vote was unanimous 7-0**

**ITEM COMMENTARY NUMBER: 5830**

**AGENDA ITEM:** Discussion with Action: Approve payment to Ted Berry Company in the amount of \$13,000 from Account Number 20161-50342 – Waste Pumping Expense; with a balance of \$13,600 for the removal of inorganics (grit sand).

**BACKGROUND**

The OOBWWTF does not have any automated equipment to remove grit/sand/textiles as it enters the WWTF. Instead of removing the textile items, they are 'shredded' by inline grinders. A portion of the grit/sand settles in tanks and wet wells at the WWTF and pump stations. The OOBWW department must periodically clean out the various tanks, channels and wet wells manually. Cleaning is normally performed twice a year. Some of the cleanings require the staff to divert flow, bypass a portion of the treatment process and perform permitted confined space entry(s). This makes some of the cleaning 'time sensitive'. All debris is taken to Eco-Maine in Westbrook for final disposal.

The OOBWW department has worked alongside the Ted Berry Company with all aspects of the cleaning over the past few years. The OOBWW department supplies the safety equipment and runs the permitted confined space entry program that is required to access some of the tanks. Ted Berry Company has previous knowledge of the system and has demonstrated a high level of efficiency. OOBWW staff and the Ted Berry Company have reduced the amount of time it takes to complete the cleanings. It is expected that the Ted Berry Company and OOBWW staff will complete the cleanings in three days. I have included three vendor quotes in the packet and a summary below. All prices include an eight (8) hour day on the site;

Walker Industrial Services (Based in Skowhegan, Maine)

- Vactor Truck w/operator, support truck, laborer - \$2100 per day
- Total per day- \$2100 per day

Ted Berry Company (Based in Livermore Falls, Maine)

- Vactor Truck w/operator - \$1925 per day
- Technician - \$380 per day
- Support truck - \$75 per day
- Total per day- \$2380 per day

Hartigan Wastewater Services (Based in Middlesex, Vermont)

- Vactor Truck w/operator - \$1688 per day
- Confined space technician - \$1250 per day
- Support truck – N/A
- Total - \$2938 per day

Christopher White, Wastewater Superintendent, spoke about the matter. Councilor Quinn asked what period this would cover, Chris replied that it would take care of spring clean up. Vice Chair Bolduc and Council Furtado asked about discrepancies in amounts. Chris said there would be variances in loads but he would not exceed what was approved. Vice Chair wanted that included in the motion but Councilor Coleman said the amount was in the Issue so it could not be exceeded. Council Furtado asked about other variances. Chris again said there could be variances but he may have transposed numbers. Councilor Furtado asked about checking other vendors but Chris said it was too chancy with this particular process.

**Councilor Coleman motioned and Councilor Mailhot seconded to approve.**

**Vote was unanimous 7-0**

### **ITEM COMMENTARY NUMBER: 5831**

**AGENDA ITEM:** Discussion with Action: Approve the purchase of a new Server and Software for the Old Orchard Beach Police Department at a cost of \$12,077.51, from Account Number 31143 - 50891, (Police Building Bond Fund), with a balance of \$234,734.

### **BACKGROUND:**

This equipment will replace our current server that is almost full. It had been anticipated, that this item would be replaced when we moved to the new Police Building but was inadvertently not included in the technology package that was purchased for the new building. Bill has recommended that we not purchase any computer equipment that is not compatible with our current rack and equipment, which is all Dell

Police Chief Dana Kelley stated this was for replacement of old server. It was to be done when they moved into the new building but got lost in the shuffle. Chair MacDonald asked about the old server and Chief Kelley said it would be kept at the fire station. Councilor Coleman noted that the quote is 4

months old. Chief Kelley said that a new quote would not be better and that he would look into the tie into the state contract to see if we could get better pricing. Vice Chair Bolduc asked if it was in the current budget and Chief Kelley said it was in the Bond Fund for the new building. He said they were being cautious and didn't want to overspend. This just got overlooked. Councilor Quinn mentioned a possible difference of \$1000. Chief Kelley said he was not sure of the details as the gentleman who put it together was on vacation. Councilor Coleman said it might be for installation costs.

**Councilor Coleman motioned and Councilor Mailhot seconded to approve with the addition of “not to exceed \$12,077.51.”**

**Vote was unanimous 7-0**

**ITEM COMMENTARY NUMBER: 5832**

**AGENDA ITEM:** Discussion with Action: Approve the Special Event Permit application for the Town of Old Orchard Beach to hold the annual Memorial Day Parade on Monday, May 27<sup>th</sup>, 2013 from 8 a.m. (set up in Memorial Park) to 3 p.m. (takedown); line-up on E. Emerson Cummings Blvd at Noon, parade to begin at 1 p.m. Request to waive the fee.

**Councilor Mailhot motioned and Councilor Coleman seconded to approve**

**Vote was unanimous 7-0**

**ITEM COMMENTARY NUMBER: 5833**

**AGENDA ITEM:** Discussion with Action: Accept as a Town Way, Trotter Lane Warranty Deed with Warranty Covenants.

Planner Jeffrey Hinderliter explained the situation to the Council regarding the history of the Item and stated that some deeds had to be cleared up before they could move forward and present it to the Council. Councilor Mailhot asked about the concerns regarding the cost to complete the project. Jeffrey said the neighbors said they would do that. The town might need to do \$5000 worth of work. Jeffrey said the area might be built up and includes some rocks placed there so that folks would not cut across. Councilor Mailhot said she did not want to spend the money. Jeffrey said they would come back after getting an estimate from Public Works. Councilor Coleman asked Chief Glass if fire equipment could navigate the area and was told the department is okay with the plan. There was discussion about street lights and sidewalks and it was decided to add it to the motion that street lights and sidewalks were not included. Councilor Dayton asked if the folks living there could come back later and request those and Jeffrey said yes, just as any other neighborhood could do that.

Councilor Coleman motioned to table this. Chair MacDonald asked the association's attorney to speak. He said that they have released the claim that that be included. He said they could come back later and ask for street lights and sidewalks but that the council could say no. Council Dayton wanted to make sure the record reflects the discussion about the street lights and sidewalks. The Association lawyer said no sidewalk has ever been shown on any plans.

**Council Quinn motioned to accept the street with the condition that the maintenance or construction of street lights or sidewalks is not included. Councilor Coleman seconded.**

**Vote was unanimous 7-0**

**ITEM COMMENTARY NUMBER: 5834**

**AGENDA ITEM:** Discussion with Action: Accept, with regret, the resignations of Karen Brozek and Arlene Dolgon from the Community Animal Watch Committee.

**Vice Chair Bolduc motioned and Councilor Dayton seconded with sincere regrets to approve**

**Vote was unanimous 7-0**

**ITEM COMMENTARY NUMBER: 5835**

**AGENDA ITEM:** Discussion with Action: Appoint Debbie Anischik as a regular member of the Community Animal Watch Committee, term to expire 12/31/2014.

**Councilor Coleman motioned and Councilor Quinn seconded to approve.  
Vote was unanimous 7-0**

**ITEM COMMENTARY NUMBER: 5836**

**AGENDA ITEM:** Discussion with Action: Appoint George Shabo to the Recreation Board as the representative of the teachers from the public schools operated in Old Orchard Beach, term to expire 12/31/2013.

**Vice Chair Bolduc motioned and Councilor Dayton seconded to approve.  
Vote was unanimous 7-0**

**ITEM COMMENTARY NUMBER: 5837**

**EXECUTIVE SESSION:** Discussion with possible action: Personnel Matters (Note: This item discusses privacy issues defined under Title 1, M.R.S.A, Section 405(6) (A), and the Council anticipates that the discussion portion will occur in Executive Session.

**Chair MacDonald asked that this be moved to after Good and Welfare**

**GOOD AND WELFARE**

**Jerome Begert** gave his opinion on people quoting the Charter when they haven't taken part in writing them.

He commented on the Charter and/or State Law regarding:

- Council's Powers
- Hiring and Dissolving Contracts
- State Law regarding these issues
- Town Council approvals (for Job Candidates)

**Dave Francore** wanted his for the written record and provided a copy but he did not read all of it at the council meeting. What he did refer to is mentioned below and his whole document is attached as an FYI.

"I would like to refer to an article in the Portland Press Herald article on Saturday February 15<sup>th</sup>. The article stated that Mr. Robertson claimed that Mr., Pearson accused him of threatening to shoot him. The article further stated, Mr. Pearson would not comment, on it because it was a personnel matter. I am concerned with the seriousness of this statement if it did occur. Threats should not be taken lightly.

At the time of the administrative leave, Mr. Pearson was on vacation thus making it very improbable for the action to be related to something Mr. Pearson said or did.

I am concerned with the seriousness of this statement if it did occur. Threats should not be taken lightly. The State Police looked into the issue and nothing came of it. Just because the state declines to prosecute, doesn't mean the allegations were unfounded. There was nothing there to substantiate it. We don't know if it is a true statement or not. We can't be having this behavior in our town, it is unacceptable.

**Robin Dube** spoke about supporting Bill Robertson. Bill has done a wonderful job. 5 things Mark has brought up against Bill are high school crap. He gets things done. As far as him

threatening to shoot someone she can not see that happening. She also commented on how she wanted no more behind closed doors.

**Councilor Coleman** brought up confidentiality. He is not aware that Mr. Robertson has waived confidentiality. He has only seen what is in the newspaper.

**Councilor Dayton** interjected that she wanted to know how things got leaked to the newspapers.

**Mark Beaudoin** said he thought no threats should be allow and that the investigations based on self interest or self preservation. He thought about coming to the meeting in a Puritan costume because this is a witch hunt.

**Kathy Smith** said she was tired of living in a circus. She was upset by the signs and thought there was an ordinance against that. She was especially upset by councilors having signs out in their yards. She is tired of things getting leaked out into the public.

**Pat Brown** has supplied the following that she read and asked it to be for the record.

Submitted by Patricia Brown, Old Orchard Beach 2.19.13  
For the written record

“When I first read the write-up for the executive session scheduled to follow this meeting, I cringed at the thought that this was focused on the Town Manager again. But then I read a Facebook posting that made me understand it was not about the Town Manager. However, it caused me to cringe again. Why? Because in that Facebook post I learned not only that the executive session was about the Public Works Director, but also that he was on Administrative Leave and supposedly had been given a letter of termination. Why am I cringing? This Facebook post revealed confidential information about a Town employee and that post was made by a Town Councilor. A newspaper article this weekend referenced a report supposedly produced by a private investigator. When asked about releasing the report, this same Councilor stated she was not authorized to release it. I strongly believe the proper response is the one that the Town Manager has been stating whenever asked questions relating to this situation. “I cannot discuss it.” Stating not being authorized to release the report once again divulges confidential information by confirming there is such a report.

Everyone is focused on the Public Works Director tonight, but I am focused on a much larger issue. I am here to speak about the Town being placed at risk of legal action, yet again. Caused by the severely inappropriate handling of confidential information by a Town Councilor. There are very strict Laws, both State and Federal, to protect the private information relating to employees by people in authority. Blatantly breaking these Laws puts the Town at severe risk of legal action that could cost the taxpayers thousands of dollars to defend. The last fiasco in December cost the taxpayers well over \$8,000 just in legal bills alone.

If Council is meeting regarding the Public Works Director, I feel compelled to point out to all of Council two potential conflicts of interest. First, one Councilor’s domestic partner works closely with the Public Works Director and that same Councilor has been given contracting jobs by the Public Works Director, and a second Councilor has a sibling that has been awarded multiple contracting jobs by the Public Works Director.

These 2 Councilors need to recognize these potential conflicts of interest and recuse themselves from taking any action in this matter. Not doing so once again puts the Town, and the taxpayers, at risk of legal action.

I close with a request of this Town Council. Since November, there has been one major dramatic scene after another in Council Chambers. Our Town is being continually embarrassed by newspaper articles focused on all the negative issues. Using Facebook or the media to inappropriately release confidential information does two things. It puts our Town at risk of being sued and divides the people who live here. There are many things that can cause a Town to become divided, one is by creating prejudice. I refer to Old Orchard Beach as "our Town" because I feel I've worked hard to help this Town be the best it can be. But when I hear the term "Townie", it hits me deep. What hit me deeper were the words of lifelong resident and Old Orchard Beach ambassador, the late Lucien Huot right here in these Council Chambers. He said "I see a lot of people here today I didn't know just a few years ago. Even though you are late arrivals, in my book, you've been here forever."

His words told me he understood that someone didn't have to be a "Townie" to share similar life experiences and strong family values; that all contributions to Town and opinions are equally important and significant.

It's time for people to stop using terms like "Townie", and making references to "prominent" versus "regular" people.

Tonight I ask Council to:

- Stop the drama
- Stop undoing all the good that's been done by this Town Manager and others in this Town
- Stop putting the Town at risk for legal action
- Stop inappropriate use of Social Media
- Stop the high school type antics
- Stop using terms and creating situations that only serve to pit resident against resident
- Stop creating situations where you force people to choose between doing the right thing and having to say something that may hurt a person or organization they really like
- Stop this nonsense

Focus on creating news that reflects the image of a place people want to live and do business rather than the laughing stock these inappropriate actions are causing our Town to become."

**Councilor Dayton** asked if there was someone else who would like to speak as Jerome Begert had already spoken. Council Dayton said "We are going to be here all night"

**Jerome Begert** talked about the town attorney

It is wrong to consult one person and not the town council. The Council should not be circumnavigated. Town attorneys are expected to know the Charter inside and out. How can things be done without Town Council knowledge.

**Shawn O'Neil** Council Rules of Order say people can speak once and for five minutes. He said the he said she said needs to stop. The Council has the ultimate power. I am not speaking for either Mr. Pearson or Mr. Robertson. I am speaking of the conflict of interest. Over 40



applicants and no interviews took place. The Chair did her own research on Robertson and supported him. I would hope she would reconsider the conflict of interest in her case on this. I believe there is confusion on this. I think a lot would be cleared up if we knew what the Executive Session was for.

**Chair** asked for a motion to go into executive session

Motion made by Vice Chair Bolduc and seconded by Councilor Furtado to go into executive session.

**Town Manager lawyer Richard Hornbeck** from Moncure Barnicle Attorneys at Law asked to make some comments.

He doesn't think public or executive session is appropriate.

The Town Manager is the CEO of the town. He has the powers to hire and terminate. He has certain powers given under the Charter. Section 411 says the involvement of the Council is limited. It does not want the Town Council to meddle in employment issues. The title of that section is "Town Council not to interfere in appointments and removals." There are some exceptions but this is not such a case tonight. Bill Robertson was not terminated, his contract expires April 5th. His contract says the town may elect not to renew the contract without any cause and the employee may not be entitled to any hearing. The Town Council does not have the authority to change the Town Manager's decision. The Town Manager has exercised his authority.

**The Chair** said there is a motion and a second to go into Executive Session.

**Council Dayton** asked why the town attorney was not present. The Chair said he was not asked. Councilor Dayton said she doesn't believe that is true. Councilor Quinn said he sent an email to the chair that he thought we should find out if they had jurisdiction in this matter. He wanted to check on who has what authority and also on the non renewal of the contract. Section 502-1 was the section he referred to. It was not clear to him who had authority.

**John Bird** said he was confused, he commented that he thought they should go into Executive Session to discuss thing amongst themselves. Had any disciplinary action been taken? If there was no action taken and this is not a termination then this is a case of non renewal. There is a need to decide which is correct... disciplinary action or non renewal of contract.

**The Chair** called for a vote to go into Executive Session

Councilor Dayton No  
Councilor Furtado Yes  
Councilor Mailhot Yes  
Councilor Quinn No  
Councilor Coleman No  
Vice Chair Bolduc Yes  
Chair MacDonald Yes

At least five (5) votes are needed, therefore the motion failed.

**The Chair** said if we don't go into executive session, we should discuss it in public.

**Councilor Coleman** stated the motion failed

**Neal Weinstein** lawyer for Bill Robertson

The contract on a non renewal states that OOB may elect not to renew. Not the Town Manager. As far as the termination letter is concerned it has the right if appeal.

Pat Brown, Councils Coleman, Dayton and Quinn want this embarrassment out in the open because they don't want to give Mr. Robertson a chance for appeal. The Town Manager is behind this whole fiasco. State Police found no issues and private investigator found no issues. The second one was authorized by the town Manager without Council knowledge.

Mr. Weinstein said, Shawn O'Neil read from both supposedly confidential investigative reports. Who gave those to him to read? Which Council member of the three or the Town Manager gave him those reports.

There is no reason not to allow the Executive Session to happen unless you want a law suit. He congratulated Town Manager Pearson on his election to a 3 year term on the School Board in New Hampshire. This is a personnel issue and Mr. Robertson is entitled to a hearing. He said the council should motion to rescind the non renewal. He was also not sure why the Town Manager needed to have his attorney here. The motion to rescind should be made and that is not able to be appealed by the town Manager.

He asked why the town Manager's attorney was there. He said it is shameful behavior for the three councilors who said no to the executive session.

**Vice Chair Bolduc** asked the councilors to reconsider going into executive session. She pointed out that there were discrepancies in the letters and that alone would be reason to go into executive session.

**Councilor Coleman** said he doesn't believe the Council has jurisdiction. It is non renewal. A non renewal is not reviewable by the Council. He also said he was dismayed that the Town attorney was not there.

**Vice Chair Bolduc** said that the Council didn't listen to the attorney the last time he was there.

**Councilor Coleman** said legal advice is legal advice. He mentioned that both Bill and the Town Manager had attorneys there but no one was there representing the town. No one for him to get advice from. Before he discussed this he wants the town attorneys present. The fact that they weren't invited itself was a travesty. Why didn't the Chair invite the attorney?

**Town Manager lawyer Richard Hornbeck** said neither public nor executive sessions are appropriate. He said there were two examples in the past (2009 and 2013) when the town attorneys said personnel matters are in the hands of the Town Manager.

**Marie Turner** Why was Bill put on administrative leave? Was there any meeting to discuss why he was put on leave? Is the town Manager sole authority? This is not a dictatorship.

**Chair MacDonald** said she wanted to explain why this was a personnel matter. Councilor Dayton said this was only the Chair's opinion.

It is a personnel matter and that's why the town attorney is not present. Mr. Robertson has the right as does every other employee to sit and talk to us. He is employed until April 5<sup>th</sup>. She said as soon as she heard on the street about this she called the town attorney. The Chair said she checked with the town attorney and he said they should not talk about anything as the employee has the right to appeal to Council. He said to allow the Town Manager to do his thing. We waited and waited months until February 1<sup>st</sup>, we received a letter from Attorney Weinstein. No communication from the administration what-so-ever. If anyone on this Council received any information please raise your hand. (No one raised their hand). Council Dayton interrupted and asked if the Town attorney told her who put him on administrative leave. The answer was the Town Manager and the Assistant Town Manager. Councilor Dayton said it was done on the advice of the town attorney. Written as a personnel matter, Bill has the right to appeal. Every town employee has that right.

**Marie Turner** if you do not give him hearing. The Town Council is violating Mr. Robertson's right.

**Councilor Furtado** read Charter 502 He then read Personal policy 5.3. Prior to a final decision an employee has a right to a meeting. A removal by the Town Manager needs to be ratified by the Town Council. He asked the ones who said no to an executive session to reconsider as it violates the Charter and Personnel Policy.

**Councilor Quinn** said he thought we did need an attorney to figure this out. He said he thought Bill did deserve a hearing and it should be handled in an Executive Session but that the town attorney should be present. He was also offended about the comment made by Mr. Robertson's lawyer that the leak of the investigations was mostly likely made by Town Manager or the 3 that voted no to the executive session.

**Councilor Furtado** In 502.1 Town Manager decisions are appealable as long as it is in writing within 10 days. If Mr. Robertson was suspended he is due a hearing.

**Councilor Dayton** this is not a personnel matter. 411 New Charter-not to interfere in appointment and removals. Her understanding is it is a contractual issue. Not having face to face information from our attorney. She was sure the Chair would know there would be questions. Why isn't our Attorney here? She congratulated Neal Weinstein on his job of confusing the whole issue.

**Councilor Furtado** according to Councilor Dayton we should hire people, suspend them with pay, investigate them, find nothing wrong and then send them a letter of termination.

**Neal Weinstein** said Pearson said it was a personnel matter and he could not comment on it. He referred to that several times in newspapers and on TV. The Town Manager now has the Town attorney doing his work. The investigator was reporting to the town attorney. The town attorney won't provide info. First they had asked for a hearing for the administrative leave with pay. It was changed to sick leave by HR per the Town Manager. HR change administrative leave to sick pay to cut his salary and benefits although Mr. Robertson did not apply for sick leave. He said

they should rescind the non renewal and end this whole issue. When it was the Town Managers job certain councilors wanted it to be public but now they don't want this is be the same.

**Councilor Coleman** wanted to explain one more time the rational of this vote. 411 is trumping 502.1. Since the Town Attorney is not here and we can not rely on anyone else. Again stating that the chair should have had the Town Attorney there. That is the most disgusting thing of all. He said that there are issues of conflict of interest.

**Councilor Furtado** asked about the conflicts of interest and said let's bring it up. He said his domestic partner's working relationship with Mr. Robertson had nothing to do with him. He has never received any work from Mr. Robertson. The work he has done for the town was done through the previous Town Manager. He said that Councilor Coleman needed to know the facts and not open the town up to slander and libel issues.

**Councilor Coleman** said he was trying not to make things personal.

**Councilor Furtado** said that he has nothing to hide and that he wanted an apology from Pat Brown.

**Jerome Begert** said the Council could rescind the Town Managers action and be within Charter and State law.

**Councilor Coleman** said as learned as citizen Begert is he could not depend on his interpretation of the Charter or the law. He needs legal counsel's advice before he would change his vote.

**Marie Turner** said she could call her attorney anytime. She asked if Councilor Coleman could call the attorney.

**Councilor Coleman** said any action would not be happening tonight.

**Councilor Mailhot** said we had received material before the meeting. She has reviewed them thoroughly. Both investigations. She has read the charter and materials pertaining to the issue and is confident that the Council has jurisdiction in this matter. In an effort to allow Mr. Robertson to continue on with his job and not be in limbo, she made a motion to rescind the letter of notice of termination dated February 1st and to immediately take him off of administrative and medical leave.

**Councilor Furtado** seconded the motion

**Councilor Dayton** said the motion was out of order. You can not add an agenda item at the end. It has to be done in the beginning.

**Councilor Coleman** agreed the motion to go into Executive Session failed.

**Councilor Dayton** reiterated that the Chair should know it is out of order.

**Chair MacDonald** said they couldn't get into executive session just like our last meeting. Everything has been done in public.

**Councilor Coleman** said the motion is out of order. It will be easily appealed and thrown out in a superior court.

**Pat Brown** said people are saying that Neal is saying that the attorney is now biased. There is still a very strong conflict of interest with the domestic partnership. The town attorney needs to be asked about both her conflict of interest issues.

**Councilor Furtado** asked her if she knew what a domestic partnership was and provided her with a legal explanation and stated that he does not meet that criteria.

**Pat Brown** said if he was fine with his stand then that was good but that the town attorney needs to be consulted on the rest.

**Marie Turner** said this is not about domestic partnerships it is about a man's job.

**Jerome Begert** agreed that the Town Attorney would need to be there regarding a possible issue of someone forging sick leave papers. Is it a violation of civil and state law to forge sick leave papers?

**Councilor Dayton** tried to make a motion to adjourn

**Neal Weinstein** my client is here and is willing to go into executive session. The only thing holding that up was three councilors who don't want that to happen.

**Councilor Coleman** again stated he wanted the Town Attorney present.

**Neal Weinstein** The town attorney was directing the investigation. The Town Council is the highest authority to change Mr. Robertson status back to active work.

**Town Manager lawyer Richard Hornbeck** said that such a vote that was not the authority of the Council.

**Mike Tousignant** The debate over the attorney being here is a shame. He fought before to have attorneys present and those now saying the attorney should be there argued with him that that was a waste of money. Robin don't mock me. Robin, I was always good to you. It is so much he said she said. Is the investigation done? Yes, so we should say that has been done and Bill has been resolved of any implications. Is that correct? Councilor Furtado said both investigation have been complete and there was nothing found. Mike asked if there were any arguments on that. Was everyone on the same page?

**Council Coleman** said that if an investigation on a criminal level is not prosecuted that does not mean that the subject is not innocent. Mike Tousignant said he asked a simple question and did not want a convoluted answer.

**Councilor Coleman** said he was trying to answer thoroughly. If the state decides not to prosecute they are saying the possibility of a conviction is not there.

**Mike Tousignant** said it all stated with the investigation did. Did it clear him or not?

**Councilor Coleman** said there was no conclusion that he read.

**Mike Tousignant** Mr. Robertson has done nothing wrong. If we are there then Mr. Robertson has the right to return to work. Most likely it was a he said she said. It has been resolved and he has the right to go back to work until April 5<sup>th</sup>.

**Vice Chair Bolduc** said the other reason she wanted to go into Executive Session was that the scope of the investigation went beyond the supposed incident and went into performance matters.

**Chair MacDonald** said the report even discussed the license of Mr. Robertson. The report said they could not find information that he had a license in Massachusetts or Maine. All she did was go on line and within 5 minutes had information that he was licensed in Massachusetts. Since 1981 there have been no disciplinary actions taken on his license. We should be thanking him for what he is doing for Old Orchard Beach.

**Councilor Furtado** said the investigative report said they couldn't find a license. That's libel and slander. If we hadn't found it we would have gone under the wrong info.

**Mark Linquest:** I am a tax payer. I have watched for five years the action of the council. The rolling of the eyes, the inappropriate words, the arguing back and forth, the disrespect, I am sick of it and when I go to the polls I will remember each one of your actions. This is a gentleman that has done an incredible amount for our community. I am the last house on a street that has had extensive sewer problems. The guys in the last row have made countless trips to my street and that sewer was in my home and that gentleman (referring to Mr. Robertson) solved the problem. This is the first winter things have not backed up into my home. Also I heard on the street reference made to Bill's disability. No one especially a supervisor has the right to talk about ones disability. Remember we elected you. Respect is about being willing to listen to the opinions of others. I didn't care if the Town Manager elects to live here or not. I wish he would because this is a great community and we want great people living here. If he is a great person he should live here.

**Mark Beaudoin:** A lot of legal jargon being thrown around here tonight, how about some common sense. He is a former Public Work employee. He has watched previous programs and heard people gush about the Public Works Director. His budgeting skills, his work to help fix the infra structure of the town. He is good for this town. He has saved us a lot of money. We have heard over and over in past years that we can't retain good people and now a few of you are willing to let one go. The best thing we can do now is to pay Mr. Pearson to go on his way.

**Chair MacDonald:** We have a motion and a second on the table to rescind the termination letter and remove the Public Works Director from administrative and medical leave.

The Secretary called for the vote:

Councilor Coleman No because he believes the council lacks jurisdiction in this item. He believes this motion was totally out of order because we were attempting to go into an executive session and when that failed the only thing that should have been in order was a motion to adjourn.

Councilor Quinn Abstain due to it being out of order

Councilor Mailhot Yes

Councilor Dayton this motion is out of order there is no question about it

Councilor Furtado Absolutely and welcome back Bill  
Vice Chair Bolduc Yes  
Chair MacDonald Yes

Councilor Coleman wanted to change his vote to abstaining

That motion carries 4-1-2 With Councilor Coleman voting no and Councilors Quinn and Dayton abstaining.

**Jerome Begert** according to the charter the Council's rules of order shall not ever supersede State or the Charter and they both support what just happened.

**Councilor Bolduc** said we should check the legality of the three abstentions or two abstentions.

**Councilor Mailhot** motioned to adjourn and Councilor Furtado seconded

**Respectfully Submitted,**

**Sheila M. Flathers**  
**Interim Town Council Secretary**

**I, Sheila M. Flathers, Interim Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of fifteen (15) pages is a copy of the original Minutes of the Town Council Meeting of February 19, 2013.**  
**Sheila M. Flathers**