

**TOWN OF OLD ORCHARD BEACH
SPECIAL TOWN COUNCIL MEETING
And TOWN COUNCIL WORKSHOPS
TOWN HALL
COUNCIL CHAMBERS
April 1, 2013 7PM**

Pledge to the Flag

Those in attendance
Councilor Dayton
Councilor Furtado
Councilor Mailhot
Vice Chair Bolduc
Chair MacDonald

Absent for the Budget portion but came later
Councilor Coleman
Councilor Quinn

1. Discussion: Presentation of the FY14 Municipal Budget.

Mr. Peabody, the Town Manager turned over the presentation to Diana Asanza, the Finance Director. He thanked her and the department heads.

Diana said it was a very preliminary. She has worked with the Department Heads to form worksheets that they could work from. She wants to present a budget that is as accurate, cost effective and close to what the town needs. It is definitely a work in progress. Overall the increase is about 3.5% over last year. The RSU surplus we have right now is \$111,000 which will help offset the appropriation for 2014. Right now that appropriation is \$9,879,042. That is a rough number. There is also a drop in debt service for this year which is over \$500,000. The fiscal year 2008 bond issue has expired. There is a balance but she is not sure of the amount yet but that balance is going to be used for the fiscal payment for the 08 bond issue. The principle payment for the 08 bond issue is \$240,000.

All contracts will be up for negotiations. Waste Water and Public Works expired last year and Police and Fire will expire in June.

She wants to go out for bid for bank fees and make sure Key Bank is giving us their best price. She is also looking at cell phones usage and credit card fees to make sure we have a good handle on that.

She wanted to ask when workshop will start to meet with Department Heads and really start getting into the details. The Chair said each year they get a budget book that covers each department. She asked if that was ready. Diana said yes, it needed to be fine tuned. The Chair said they would need that before they could start the

meetings. Diana said that was possible. She would like a date they would like that. The Chair said generally they would start next week but they could put it off a week. Diana would like two weeks. The Chair said they would like the books by the 12th and could start the meeting the week of the 15th. Diana agreed. The Chair asked if the 3.5% included the trash contract. Diana said yes it does. The Library bond is not in there. Diana said we don't want to borrow money until we need it. The Library hasn't given her a budget yet. The Chair said they should give it to Finance and the Town Manager to go through with them and then present it with them to the Council. Councilor Dayton asked if CMP was included. Diana did not have an answer yet. The super preliminary total is \$23,376,127.36. Councilor Dayton said whatever the outcome it would not be less than the 3.5% increase because two budgets are missing Capital Improvement and the Library. The Chair said they have already gone through the line item budget it won't be a bad as everybody thinks.

Councilor Mailhot made a motion to adjourn Vice Chair Bolduc Seconded

They took a 5 minute break before the workshops started

1) Town-owned property, Map 307, Block 3, Lot 2X, adjacent to 13 Old Orchard St

Jim Bulter created a timeline of history since the Town purchased the land in 1948. In 1991 the town purchased more land which brought the width to about 15'. In 2005 there was a referendum to sell the land but it never went through.

Jim said the reason we are here is that Guy Loranger, who owns "Big Daddy's Bar and Grill" is on the property stated above. In April 2012 several permits were pulled for the rehab. A permit for a hood and an electrical permit. Mark Mitchell had approved the business license prior to the construction being done and Jim got involved when the hood was being installed. Because the business permit was issued before the work was done there was some miscommunication. In June, the former Town Manager Mark Pearson, contact Jim and said he received a complaint about it and want him to investigate it. He issued a notice of violation on October 4, 2012 for Harrisburg LLC to remove the cooler within 30 days and they did file an appeal that. We had a meeting on November 26th but nobody appeared on there behalf so the appeal was denied. This brings us to today. It was on the agenda in December but some other pressing business came forward so it got moved. Jim was looking for permission to proceed with court proceedings per the Town Manager.

Vice Chair Bolduc asked what the timeline was for notifying those concerned of the appeal date and time. Jim said there is no notified process in place due to the fact that when someone appeals they are asking to be on the next agenda. They checked with the attorneys and they said as long as that was standard procedure there was no need to notify anyone.

Neil Weinstein said he filled out the application for appeal and was told they would be notified. They were never notified nor were the abutters. If they had known about it they would have been at the meeting.

Jim said they have meetings every month. He is aware that they were not aware of the meeting.

The Chair pointed to the cooler in question in a photo and Jim said that was the concern but there is other stuff back there. The Chair asked if other businesses with items back there were notified of the violation. Jim said no. He was only advised to address the cooler. He said all the other stuff was already there. The Town Manager saw the cooler as a permanent structure. Neil asked if the Town Manager instructed Jim to do this and he said yes. Councilor Dayton said the cooler is definitely not on wheels. She asked how much it weighed and said it was not moveable. Neil said it comes apart and is moveable. It is in a wood frame, there is no foundation. Neil said there have always been coolers and gas tanks going back to the fifties. The land can't be used for anything because it is too close to the tracks. He said they are only asking for an easement for the property much like the new store going in the old IGA area. Jim said there was not official easement for the propane tanks but they were okay as the town had allowed it. Neil said this represents 40 or 50 jobs down there. Neil's client, Harold, would be willing to clean it up put new fences in plus he is willing to pay for the use of the easement.

Guy said the electrician he used worked for the town and the permit he pulled was to cover everything. Neil said there is no new wiring. Jim pointed out that they had a picture of what they were talking about and Guy said they also were emailed a picture of the old compressor. Guy said others in town had coolers and they were considered temporary structures that no permit was need for. Guy said he has been in business for 14 yrs. He is not trying to pull a fast one on the town. He grew up here and has seen the area messed up and now it is super clean. Dunkin Doughnuts and Rocco's do a great job. Guy doesn't want to change the scope of his business. He doesn't want to own just a bar. He wants it family friendly. He feels this may stem from more politics and anything else.

Councilor Dayton asked how a big cooler could be covered by a permit for fixtures and lights. Neil tried to explain. Councilor Dayton asked if the person who took the application was given a full description. Jim said it only said outlets and lights. He said inspectors usually go out but the inspector did not go out to the site. He also said if the permit included anything on the cooler it should have been stated in the application.

Councilor Dayton asked when the inspector went out. Jim said no inspector went out; it was the Town Manager that reported it (the cooler) to him. Councilor Dayton proceeded down the timeline and insisted everyone knew about the appeal meeting. Neil said no they didn't. She asked if they could go back the Board of Appeals. Jim said they could but the next normal step would be to go to court. Jim said even if it went back to the Board of Appeals it would end up on the Council plate. Councilor Dayton said she thinks it should go back to the Board of Appeal with the lack of descriptions and communications. Guy said an inspector did come out for a final approval but he is not sure that was before he got his permit to operate. The Chair noted that he had operated for a year with the cooler out there. Jim said the fellow that signed off on the business license didn't really grasp the process. He signed off on it before inspecting it. Since then we have changed the process. Jim said the application in question was not processed correctly for their business/electrical license. Councilor Quinn asked if the inspector would even know to look outside since the paperwork said bar and grill. Jim said he wasn't there but others were there and said he went outside. He doesn't know.

Councilor Furtado asked about the business license application because it says zoning and land use and it is also signed off by Alan Berg on 4/24/12. Jim said that is not a physical inspection it is just check the zone it is in. Guy cleared up that the reference to the bar and

grill is to the name of the place not the physical bar and grill. This issue has come up before and unless it is solved it will come up again. Everyone knows what the land has been used for by that building. It has always been done.

Councilor Dayton questioned him on why he thought it would come back to the Council if it went to Zoning. She asked if Guy had talked to them already. Neil addressed the history again about the approval to sell the property 4-1. The Town never went through to sell the property. They don't want to buy it. They just want an easement.

Vice Chair Bolduc asked if the Town owns that land would selling it or having an easement allow the cooler? Jim read from the deeds. He said it states nothing other than fences would be allowed. The second deed talks about other things there.

Councilor Coleman questioned the same wording and asked if this sounded like a restrictive covenant. Jim said yes. Councilor Coleman has one other concern and that is public safety. Could the area be accessed if necessary? Guy said even without the cooler you couldn't get a vehicle back there. Councilor Coleman asked if the easement was granted would Harold indemnify the town. Vice Chair Bolduc brought up the reason not to sell being that a group wanted to build a walkway above the tracks. Guy said coolers are all over the place. He said there were several reasons given for the issue to begin with. One being someone wanted to buy the land and the other that there was a violation.

Councilor Dayton went back to the application again. She wanted to know how to go from outlets and lights to the cooler. Guy explained that the needed electrical included for the cooler. The permit had nothing to do with the cooler specifically but was for the entire renovation.

Councilor Mailhot was disturbed at the lack of notification process. She said Guy had renovated the property into a beautiful facility. It is a great family establishment. When she sees the cooler on wood pallets denotes to her it is not a permanent structure. The issue needs to be dealt with not pushed off. We need to move forward. She suggested looking at an easement.

Vice Chair Bolduc said the box on the application says addition and alterations. She suggested the department could revisit the descriptions. Jim noted that is covered below. She suggested that they notify people of the appeal dates. Jim agreed. He is going to look at the Ordinance. There was discussion that that will be looked at and corrected.

Mr. Peabody said it was important to notify folks and that he would sit down with the Code Enforcement Manager and develop an internal procedure. It is helpful to bend over backwards to help people. Councilor Quinn said he served on several boards and the meetings were always at the same time. He said he is concerned that the abutters were not notified. Jim said in this case that was not necessary. The Chair asked why this was the only structure questioned when there are so many others there before and currently. Jim said he was instructed to focus on this one. He agreed that there were many other things on the land in question but they looked like they were moveable.

Jerome Begert said many might not think all this is important but it is a case of public safety. He said if this is about the deed then perhaps the AZ easement should be reversed. There was a covenant on that property also. Councilor Quinn asked if the cooler was all on town property or partially. Jim said partially. The Chair asked if it was surveyed because of this issue and Jim said yes. Neil asked if the Council was aware of that. Jim said he was authorized by the Town Manager. Councilor Dayton asked why getting a survey would be an issue. The Chair said she was just asking. Neil said it sounded like a vendetta, Councilor Dayton said it sounded like the proper thing to do. Councilor Coleman said it appears Guy went on some logical assumption and the cooler is not a cheap piece of

equipment but we have a deed that says don't put anything on it. Guy noted others have coolers all over town. Councilor Coleman agreed. He doesn't think there was any wrong doing on Guy's part. The Chair read part of the deed and said if we applied a cost to the easement it would benefit the town and therefore not break the deed. Neil said his client would be happy to write up a hold harmless agreement against anyone saying the deed was not being followed. Since it was done before for IGA, the Chair, thinks they could do it the same way. Neil does not think it needs to go out to referendum. Jim said the previous referendum only mentioned a partial part of the current land in issue. They all clarified that it was referring to all structures not just permanent ones. Vice Chair Bolduc asked if the pallet the cooler was on had wheels would it be consider a permanent structure, Jim said no.

John Bird brought up the fact that the old IGA easement area has been gone over the original size and would like that addressed. He said there is such a thing as adverse possession. That means if you use land after a while the courts can say it is your land. The town should defend its property.

Guy said he wants what is good for him and the town. Councilor Dayton pointed out that the old deed does not expire with the new deed.

Vice Chair Bolduc read a part that says the town is the owner and can do what they want. Councilor Furtado said he believes there has to be an implied easement in place that grants the public utilities access to the property. Jim agreed.

The Chair asked Jim if an easement would be appropriate. Jim said Guy runs a very good business in town and he has tried to comply with everything. He thinks an easement would work if the deeds allowed it. His business needs the cooler to do business. And also if he isn't allowed to use it, the town would need to look at all the properties in that area and that would not be a good thing to do. He is sure it can be done.

Councilor Quinn asked if we knew how much money had been incurred in this process. Jim said the survey cost \$1450. Attorney fees were \$1417.50. The Vice Chair asked if we have evidence of an actual potential sale and Jim said yes. But Vice Chair said not the old potential sale but the one last fall, Jim said he was informed verbally per the Town Manager. Originally, he heard it was a complaint but then he heard it was a sale.

Councilor Dayton said she thought they received info about a sale. Neil said his clients would offer triple the \$2500. Councilor Quinn read a letter Louise supplied that states that if the land was sold it would need to be done under the seal bid process authorized by the 2002 vote.

Councilor Furtado would not be in favor of selling the land.

Councilor Quinn said Guy went in and placed the cooler without permission: the IGA area was done up front. The Chair said she would have agreed with Councilor Quinn, if the town had not allowed to open up his business for a year and then said "Oh, you can't do that". She feels there is similarity. Councilor Quinn said he thinks there is wrong on both sides. Guy said he didn't know there was an issue in the first place.

Ms. Copeland from Extreme Clean asked if they could fence off that area due to the foot traffic and drugs.

All agreed is should be secured. Councilor Mailhot said they should move this forward. She is open to an easement and perhaps Harrisburg would be open to putting up a fence. The Chair suggested the staff put their suggestions on paper and perhaps do a proposal for a three years lease and also an easement. Mr. Peabody said that would try for the end of April. They will not hold up the licensing of the business.

2) Parking Meters (Note: Could not hear Neil Weinstein at all on the disc)

Chief Kelley said that Joe would answer questions brought up at the last workshop.

Joe said Cale America Inc. will not offer a lease purchase option at this time. They are willing to delay the payment for two meters until fiscal year 2014. Chief Kelley said they are \$1500 short of being able to buy 3. He would suggest they get 4 and put at least 1 in Memorial Park. The other 3 on Old Orchard. Neil thought Memorial Park would be better. The Chief pointed out that was his thought but after the last workshop, he felt the Councilors wanted to try it out on Old Orchard St. Neil said he thought they could get more use on Old Orchard St and that they could also take out those bricked areas that jet out into the road.

The Chief said there is also the monthly cost (\$55), telephone and the software cost and that they will only charge us for the months we use the meters. Joe said there are 37 parking spaces on Old Orchard St. We also have 18 motorcycle spacing.

Dana Furtado said in the summer people park before we staff the parking lot. The other issue is the businesses on Old Orchard St are getting tired of providing quarters to everyone for the meters. Councilor Coleman said it makes sense to try to get as much cash free as possible.

The Chair said there was also going to be a plan to put more parking through out other areas. Councilor Dayton thought that was for tonight. The Chair and Chief Kelley said there wasn't enough time to do all that. Councilor Dayton said she thought there was consensus to put them all on Old Orchard St. The Chair pointed out that that doesn't not happen in a Workshop. Councilor Dayton said the Old Orchard St way would keep people's jobs. Councilor Coleman said he didn't think they decided to preserve a parking attendant job on the backs of the taxpayers. Councilor Dayton stress that local jobs feed the local economy.

Council Mailhot asked Joe to confirm there were about 300 parking spots in the Milliken St parking lot. Joe confirmed that. And Memorial Park had 53. The get the most coverage it would makes sense to start with Milliken, then Memorial and then Old Orchard St. The only down side the Chief saw was that there might not be as much volume in Milliken as there is on Old Orchard St and Memorial Park.

Councilor Dayton said she would never agree to getting rid of local jobs.

The Chief said they also checked and the pricing could be set to be different for different times of the day.

Councilor Coleman said it would be 14 spaces per machine if you put them on Old Orchard St. If we look at Milliken St it is 100 to 1 if we put three machines there. If we put it at Memorial Park it is 54 to one. He think the best course of action is Milliken with 3, Memorial Park with 1 and then expansion we need to look at First St.

Vice Chair Bolduc was not at the last meeting but said she that having them on Old Orchard St was her first thought like some others but after hearing all this she feels they would be more beneficial at the lots. Joe agreed.

The gate issue came up and Chief Kelley said that while it was up it worked well but the life expectancy is only a few years.

John Bird mentioned that increased revenues could be eaten up by the 5% to 6% bank fees. Chair MacDonald said it would be 2.5%. Councilor Coleman said that the 2.5% will be made up quickly by those arriving early and others staying late.

Councilor Furtado asked if the town could go to the angled parking on Old Orchard St. His biggest concern was the limited revenue stream they have going forward. If they add more spaces on Old Orchard St and then moved the old meters somewhere else, it would add more spaces to charge for. Whether it be on Staple St or where ever.

Chief Kelley said the meters on Old Orchard St are 2 hours so unless they found areas where they wanted to limit the parking to that they can't use them. As far as diagonal parking that is the way it used to be. He believes it was changed just for esthetics. There would also be an issue with cars backing out.

The Chair said they needed to give the Chief some direction. The Chief said the question they need answered would be are they going to buy 3 or 4 and if so they would need the additional \$1500 plus the \$55 monthly fee for each machine.

Councilor Furtado said that if they have an increase in the lots due to these machines there should be enough to pay for additional units next year.

Chief Kelley said the old meters are getting older. The Chief said he knew they couldn't make a decision but that he would like to know their thoughts. Councilor Dayton asked about the end of life expectancy for the new machines. Joe said there is a service to maintain them and he is going to check and make sure that it a seasonal fee not monthly. Chief Kelley said he would check for Councilor Dayton.

Councilor Coleman said that he would be happy to make a suggestion at tomorrows meeting to purchase two on this year's budget and two on next years to move this forward. The Chief had said April 16th would be soon enough. Councilor Coleman said that was fine with him.

Jerome Begert was concerned if a machine went down it would mean all the areas that machine covered would drop revenue. Also he brought up the issue of credit card fraud. He thinks this is a waste of money. Councilor Coleman said since the Hannaford issue there have been improvements. He knows his data is secure. There are always risks.

Councilor Quinn is not going to worry about breakdowns. He feels this is a testing ground. He is for 3 machines. Councilor Bolduc said it is wise to plan for next year.

The Council will plan of putting this on the Aril 16th agenda. Councilor Coleman said he would put it on for 4 machines. Two to come out of 2013 and two to come out of 2014. Councilor Bolduc suggested they pay the \$30,000 they have this year and then on next years budget pay the \$10,000 for one machine and the \$1500 partial due.

Councilor Furtado asked about Old Orchard St and Vice Chair Bolduc said they could deal with that in the budget process.

3) Police Garage/Storage Facility.

Chief Kelley reference correspondence asking for clarification about bond money being used to build the storage building.

Vice Chair Bolduc said she read the correspondence and she also pulled up the minutes from 2009. The reason for the Police Station was to give them more space (Chief Kelley said that was part of the reason) but now with the new building they don't have enough storage space. Her dilemma is that the referendum says a building. She doesn't have 100% confidence in what the specific attorney is saying. She thinks we need an expert in that area. Councilor Dayton said Geoffrey Holt has always dealt in bonds. Vice Chair Bolduc said yes but he has made errors in other issues. Councilor Dayton said he is not Rob Crawford or Glenn Israel and she certainly agrees on that point.

Vice Chair Bolduc said she was willing to use the \$250,000 for the storage building but wanted to make sure that was in compliance with the bond. (Neil Weinstein made several comments but they were not audible)

The Chair said she was a supporter of this project. The plan never showed another building. She referenced the West Grand Bond issue and Odessa. She said we could do that because it was part of what the people voted on. Chief Kelley said the spirit of the vote was to build for all they needed. The plan they all looked at, never called for an extra building.

Chief Kelley said that was between him, the architect and the builder. The reason the space was not included is that they had to keep the building at 10,000 square feet in order to not have to put in a sprinkler system. We also had ledge problems. The builder said to make a wish list. They would get everything done that had to be done and if there was money left over they would start going down that. They have the money to do the storage building and he is having a hard time understanding why they wouldn't want to fix one of the biggest problems they had. The building would be 2500 square feet.

It is not just about storage. The former Town Manager thought space could be incorporated for Town Hall and Public Works to store records. Chief Kelley said he has spoken to Jerry Plante and DEP and there should be no problems. The building would be on Ballpark property. Councilor Quinn said there might be a problem if the building is used for other storage than Police as the bond says for Police. We keep adding space, when are we going to stop. What about the space at the Fire Department. He thinks a utilization committee should be formed to find out the real needs of the Town before we move forward. He knows the deadline is the end of May.

The Chair said they had put extra money in the perhaps do work at the Fire Department. It would have had to go back out to vote but they had put it in for that reason.

Chief Kelley said the project is not done yet as they don't have any storage.

Neil sees this as playing games and it is a design issue. Council Dayton said it stems back to the sprinkler issue which created a design change and resulted in no storage area.

Neil continued mentioning 7 bathrooms. Chief Kelley said as usual Neil did not have the facts straight. As usual he is incorrect.

Neil and Councilor Dayton continued but it is not audible.

Vice Chair Bolduc said her whole reservation was that she got an email saying here is the RFP for the design. That was the first, other than hearsay that she knew about the issue. She said once again she felt like they were putting the cart before the horse. Going out for RFP before the Council knew anything about it. She agreed with Councilor Quinn that we need to look for all that is needed.

Chief Kelley said he would hope to close the kennel which costs about \$6000 per year and have an area in the storage building for the animals. The building would not be heated.

Councilor Dayton asked the Chief to explain what happens to the money if we don't spend it. Chief Kelley said that it would either go to the bond payment or have to go back to referendum. Councilor Dayton wants to make it clear to the public that that is what is going to happen. She interjected that it was reckless. Irresponsible!

Vice Chair Bolduc wondered about being able to go out to referendum. Councilor Dayton interrupted over and over again.

Councilor Coleman said that the money needed to be spent by the date specified or it could not be spent at all. The Chief said Diana said Bond Holders don't look favorable on that process. Councilor Dayton said we have already done that on the West Grand Project. She said "Our bond rating is in serious jeopardy, serious jeopardy and this Council can't figure out what to do. It is reckless."

Councilor Mailhot asked if they had seen specifics. It seems like there have been some cost basis figured out and permitting has taken place. Can we hear what that is?

Chief Kelley said last summer a builder came and gave them a rough estimate on a steel building with a cement foundation. That price came back at about \$130,000 without electricity or anything. The stuff at the Ballpark would be moved into it also. The current RFP would need to be sent out with changes as there was confusion between the Chief and former Town Manager.

Councilor Furtado said the storage is needed. He doesn't like last minute stuff but it needs to be done. He talked about the cement foundation and perhaps paving more of the property for storage. Chief Kelley said DEP won't allow it. He said Public Works would do the site work for it.

The Chair said if they looked at other areas to put the building that this was way out of the scoop of what the bond was for.

John Bird asked how much was saved by not putting in the sprinkler system. Chief Kelley said \$80,000. Councilor Quinn asked how much was allocated in the original plan for storage. Chief Kelley said he was told to wait until they got the building designed and then

put it on our wish list. Councilor Quinn said then they really never got to what the needs were.

The Vice Chair commented as to how they could not include it on the design. Chief Kelley said they all were just being cautious.

The other items listed on the wish list were approved by the attorney to buy with this money. They included flammable liquid storage, equipment to repair armory. An air compressor. Additional cameras on the outside of the building. There are problems in the booking and interview areas that need to be addressed. Warrantees have run out on those. The Chief noted that having the gym area eliminates having to pay for memberships per the contracts.

The Vice Chair suggested they be on the April 16th agenda. She said all the work done before the Council was informed just adds to it looking like the Council is not supportive. She noted that she knew this was not the Chiefs call.

Council Dayton said she knew the Town Manager and Chief had tried to bring it up several times last year up until September. She said that this was not an issue with the Town Manager but with information being suppressed by the Council. Council Quinn said he was Chair at that time and he was never requested to put it on the agenda or call for a workshop on it.

The Chair said they would digest the info. Councilor Quinn said he thought they could repay the Bond without penalty and Councilor Dayton said no. The Mr. Peabody said typically you can't but he would check with Diana. He also would check on the bond attorney.

The Chair thanked all who attended.

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 ten (10) pages is a copy of the original Minutes of the Town Council Workshop of April 1, 2013.
Sheila M. Flathers**