

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL WORKSHOP
Thursday, February 19, 2015
TOWN HALL CHAMBERS
6:30 p.m.**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Thursday, February 19, 2015. Chair O'Neill opened the meeting at 6:50 p.m.

The following were in attendance:

**Councilor Kenneth Blow
Councilor Jay Kelley
Councilor Michael Tousignant
Town Manager Larry Mead
Assistant Town Manager V. Louise Reid
Finance Director Diana Asanza
Tax Collector Deborah Mulherin
Planner Jeffrey Hinderliter**

Absent: **Chair Shawn O'Neill
Vice Chair Joseph Thornton**

The business to be discussed this evening included a discussion on the Policy on Disposition of Tax Acquired Property and followed by a discussion on the proposed gift to the Town of Old Orchard Beach at 206 Portland Avenue (103-1-32).

In discussion of the disposition of tax acquired property it was noted that the policy governs the process by which the Town of Old Orchard Beach disposes of tax-acquired property after the process established under Maine law which automatically confers ownership of properties to the Town by operation of law.

The Town Manager and the Tax Collector explained the process of tax acquired property. Real estate (land and buildings) become tax acquired by the municipality when three events occur:

First: The assessor must properly assess and commit the taxes to the collector.

Second: The tax collector and treasurer must strictly follow the recording and notice requirements in 36 M.R.S.A., Section 942 and 943.

Third: The Period of redemption outlined in Section 943 must expire without the total amount due having been paid. It is not necessary to take physical possession of the property or to send a notice that foreclosure has occurred, or to record a statement in the Registry of Deeds that foreclosure has occurred – it happens by operation law.

Deborah Mulherin, Tax Clerk for Old Orchard Beach, provided her Tax Lien process which is below:

TAX LIEN PROCESS

1. Taxes are committed by the Assessor to Tax Collector (typically in August)
2. Tax Collector proceeds to collect taxes according to Maine State Law.
3. Lien process legally begins by way of 30 day certified notice to owner of record (as of April 1) 8-12 months from Commitment date. This process is the official beginning of the lien process.
4. Tax Liens are filed at the Registry of Deeds if taxes unpaid after the 30 day notice has expired.
5. Treasurer sends out by certified mail 30-45 day impending foreclosure notice to owner of record, any new owner, and mortgage holders.
6. Automatic foreclosure takes place exactly 18 months from the date of Lien filing.
7. Once lien matures and taxes are in "tax acquired" status, the Governing body is responsible for disposition of property.

Tax Collector Notes:

In **May**, I send out reminder (courtesy) notices to owner of record as of April 1.

This is not a process required by law, but I find it to be an effective way to sort out and resolve many issues regarding the sale of property after April 1.
According to Maine State Law, Liens are filed in the name as they are assessed as of April 1.

In **June**, 30 day certified notices are sent out according to Maine State Law.

In **July**, Liens are filed at the Registry of Deeds.

In **December**, 30-45 day notices are sent certified for upcoming foreclosures.

In **January**, automatic foreclosure takes place 18 months from the Lien filing date.

SEE ATTACHED CRITICAL TAX YEAR DOCUMENT FY 2014 AND FY 2015

The Town Manager presented a draft policy for tax acquired property which he is suggesting replace the Town's present policy for the Disposition of Tax-Acquired Property which was enacted on November 26, 2002. Below is the policy (draft) which was discussed in detail and suggested that it be brought to the next Town Council meeting for review and possible adoption. This policy more clearly outlines the Pre-Foreclosure Review and Evaluation of Liened Property. The purpose of the policy is to establish procedure and guidelines for the management and disposition of real property acquired for non-payment of taxes, service charges or fees as provided for in State law under MRSA Title 36, as amended from time to time. Nothing in these guidelines shall limit or restrict the authority of the Town Council to waive these guidelines to manage or dispose of tax acquired property, as granted under Town Charter and State law within the best interest of the Town of Old Orchard Beach.

The proposed policy indicates that at the same time that a Notice of Foreclosure is sent, the Tax Collector will make available for review the listing of pending properties. Said properties shall be reviewed by the Town Administration to include, but not limited to, the Tax Collector, Town Manager, Finance Director, Town Planner, Code Enforcement Officer, Assessor, Police Chief, Fire Chief, and Recreation Director for the purposes of conducting the review of property. The reason this is so important is that it allows the Town the opportunity to decide whether to put into foreclosure a piece of property; and if not put into foreclosure the Town has no responsibility for it. This permits the Town staff to examine properties for factors as situations involving known deposits or exposures of hazardous waste, conditions of properties that might be considered a public safety hazard, health hazard, or a financial burden to the Town, terms and or conditions that might preclude or prevent reasonable foreclosure by tax lien, landlord related claims, market value at time of foreclosure, and any other factors deemed within the best interest of the Town. The review of property shall give consideration to the Town's ability to perfect such liens, and achieve reasonable collection of the next sum of back taxes, interest, and any other direct costs owed. Once the completion of the Review of Property, a list of Properties shall be compiled with a description of said property, location by map and lot, and a recommendation as to why the property should not be subject to automatic tax lien foreclosure.

It was also noted in the policy that the Town Council, may, prior to automatic foreclosure, designate review and action to the Town Manager. Review and Action will determine a final list of Properties that will not expire under automatic tax lien foreclosure processes and properties identified that are acted upon by the Town Council shall be subject to a Waiver of Foreclosure Action. Any properties identified are subject to a Waiver of Foreclosure. The Tax Collector shall prepare prior to redemption of the tax lien the Waiver of Foreclosure form and shall submit the same to the appropriate Registry of Deeds for recording. The Town shall retain all rights as granted by law for continued actions of equitable relief as amended from time to time.

The Town Manager explained that after the above process is done and outlined then the process of forwarding a copy of the list of tax acquired property to the Planning Board, Public Works Director, Superintendent of Wastewater, Director of Public Safety, the Recreation Director, the Conservation Commission and other department heads for their review and recommendations as to what shall be done with these properties. The policy will outline the various determinations of the properties.

It should be noted that during this process there is the opportunity for the property owner to come in and make a tax payment agreement with the Town Tax Collector which indicates payment on the property taxes and applied to the oldest outstanding tax and to all other real

estate taxes on said property. Also due will be additional interest and lien costs. The Town Manager also presented to the Council a copy of the most recent update of properties in foreclosure showing name of the account, property identification, total update, value, square footage and any notes relative to the property as well as the location of the property.

There was a short discussion on the abatement of taxes which was not part of the initial discussion. Usually abatements are given as a result of infirmity or poverty. Again, decision to give an abatement rests first in the hands of the General Assistance Director or Assessor who will then prepare the Board of Assessment Review of the General Assistant Director's recommendation for the Town Council.

Discussion continued between the audience members and the Town Council on what the municipality may do with property that it acquires through the tax lien foreclosure process. One of the concerns is the municipality's potential liability for holding or using tax-acquired property. State law indicates that the municipality is immune from liability for damages arising out of the ownership, maintenance or use of any building acquired for non-payment of taxes until the former owner has given up possession for a period of sixty days. Because the protection is limited to the time of actual occupancy and the sixty day period thereafter, the municipal officers will want to act promptly to insure or sell any properties which are or become vacant. The Town Manager also reminded those in attendance that if property is to be sold it must, according to Charter, go out for sealed bids. The Town has four options for tax-acquired property: The Town can do nothing and leave the occupants in possession of the property; sell the property to a new owner; continue to assess and tax the person in possession and work out a payment plan; or take physical control of the property and use it for municipal purposes. There was further discussion and concern as to what to do with people living on tax acquired properties and everyone agreed that no one wants to put individuals out of their homes. In the discussion regarding categories, some consideration would be given to properties that a primary residential and residential condos because these are Old Orchard residents living in these. On the other hand the category of second homes and rentals and commercials leads to the fact that income is being received from these properties but they are not paying taxes as the normal citizen or business owner would do. The Town Manager noted that from 1994 to 2013 there are 16 primary residence; 10 residential condos; 19 mobile homes; six second homes; four rentals, r commercial and 33 parcels of land (of which 28 are of one owner who is working with the Town on this issue). That is a total of 92 properties for an amount owed of \$930,324 and an assessed value of \$7,922,400. The issue of the taking of mobile homes is a complicated one since the homes are sitting on private property and there is little reason for the Town to have an interest in the mobile homes as most of those are older, do not have much value and are being acquired because of abandonment.

The question was asked several times if the owner is notified and again if there is an owner of record as of April each year that is the individual that gets the notice. The Town Tax Clerk will sometimes learn that the property has been sold and will then contact the new owner but the owner of record as of April is the individual who gets the first notice of foreclosure as well as the mortgage holders. It was noted that the Town has sold three mobile homes; one primary residential home is now possessed by the Town and one piece of land.

There was continuous discussion between the three Councilors in attendance with a desire not only to understand the process but to assure that those property owners in foreclosure are getting notified and given the opportunity to pay down their taxes. That assurance was given by the Town Tax Clerk, the Finance Director and the Town Manager. The Town Manager

thanked the Tax Collector and the Finance Director for the amount of work done to bring this issue forward to the Town Council this evening.

The second issue to be discussed was the proposed gift to the Town of a home at 206 Portland Avenue (103-1-32). In attendance for this workshop were the two developers (Nate Libby and Johnnie Hall) of the 27 acre wooded parcel on Portland Avenue and borders Milliken Mills Pond along the northerly edge. From the beginning of their project, one of the concerns was the possible demolition of the Milliken House. Again, the question being discussed this evening of whether the Town wanted to maintain this building and the pros and cons with that issue. There was an enormous amount of discussion during the evening with comments from not only Council members but John Bird, Kimbark Smith, and Mark Koenigs of the Planning Board. The Planner concentrated on house lot location, road location, trail location, and open space/green space/park location. A map and diagram of the house and land in discussion was presented to the Town Council. There was continued discussion on the use and upkeep of the brick building which has historical significance. It was mentioned that there would be a lot of brick work needed to be done and that the basement of the house was in deep need of repair. Unfortunately the historical house is in very bad condition and need of repair which would be costly which raises the level of concern as the cost factor. An engineering study would be sensible. The subject of septic tank requirement raised another cost factor alarm which could be in the \$10,000 range. There was lengthy discussion on the Eastern Trail Connection and the ability for connecting to this piece of land. There were those who felt the expense would be worth to maintain the historical significance of the property. The three Councilor members, although recognizing the historical significance of the home and the value of the land (although not on the historical roster), indicated that the taxpayers would probably not be in favor of additional expenses in the upkeep of the town buildings. Reference was made to the condition of the Town Hall which the Town Manager since his arrival has been actively addressing with work to be done in the spring.

There were those in the audience including Dan Blamey from the Historical Society, who felt that the home is historical and upkeep would be needed. Although the Historical Society operates on a very small budget, it was noted that there is considerable difference in the amount of work that would be needed to be done at the home on Portland Avenue. Jerome Begart mentioned that OOB 365 might be interested in doing fund raising and raising the money for the work that needs to be done. Councilor Blow indicated that he did not feel that one organization could raise the needed funding necessary for the amount of work that would be required. It was suggested by Councilor Blow that the developers who have extended their support might be willing to sell to a non-profit and that is something that they might want to explore. It was reiterated several times during the discussion that the developers, should the town not want to take the property, would be willing to include in the agreement with the Planning Board to see that the house will not be torn down and that, if sold, would be required to maintain the property and the house in good conditions.

Those speaking on behalf of the town accepting the gift included John Bird, Kimbark Smith, Jerome Begart, Dan Blaney and Mark Koenigs encouraged the Town to accept it for consideration of the conservation and historical nature of the house and the land and the enormous opportunity for access to the pond and the Eastern Trail. At the forefront of their interest was the conservation and historical value of this piece of property.

Town Councilors Blow, Kelley and Tousignant gave their opinion during the evening's presentation and while supporting the value and historical nature of the house and the value of the land and appreciation to the developers for their offer to gift it to the Town, the bottom line is the financial obligation and responsibility of the Town in upgrading and consistently addressing the condition of the home (roof, expensive update for the brick siding, septic issues, etc.) They indicated that although there is no vote this evening, they will not support accepting the gift for the reason that the developers themselves have agreed to not allow the house to be torn down and that if they choose to sell it, the requirements for the upgrades to the house and the continued maintenance of the house would be well established in written agreement.

The Town Manager extended his thanks to those who came out for the workshop this evening and to the developers for their support of the town of Old Orchard Beach. The workshop ended at 8:15 p.m.

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 six (6) pages is a copy of the original Minutes of the Town Council Workshop of February 19, 2015.
V. Louise Reid