

**TOWN OF OLD ORCHARD BEACH  
TOWN COUNCIL MEETING  
TUESDAY, MARCH 16, 2010  
TOWN HALL CHAMBERS**

**A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, March 16, 2010. Chair MacDonald opened the meeting at 7:03 p.m.**

**The following were in attendance:**

**Chair Sharri MacDonald  
Vice Chair Michael Tousignant  
Councilor Shawn O'Neill  
Councilor Robin Dayton  
Town Manager Jack Turcotte  
Assistant Town Manager Louise Reid**

**Absent: Councilor Laura Bolduc**

**Pledge to the Flag  
Roll Call**

**ACKNOWLEDGEMENTS:**

**COUNCILOR DAYTON:** The Loranger Middle School Student Council sold “houses for Haiti and I wish to congratulate the 100 students who participated. The houses had a magnet on the back for mounting and were sold for a minimum donation of \$1 and they came in several varieties. All the proceeds will go to the victims of the Haiti earthquake. The student’s chose to sell houses because the earthquake victims lost their houses. All proceeds will be donated to the Konbit Santi organization which is composed of doctors who volunteer their time and travel at their expense to administer medical care to those in need in various countries. The first day alone they raised \$160 dollars and sold more in the next two day. I have a connection to Konbit Santi as I worked for Nate Nickerson, the Director of Konbit Santi during the time that he was the Director of Public Health in the City of Portland. He hired me as the Operations Director. He is an incredible man, dedicating his entire life’s work to helping others when they are sick. I just want to thank our young people and school staff for their commitment to this organization and for remembering our overseas neighbors in need.

**TOWN MANAGER:** I was pleased today to attend, along with the Assistant Town Manager, a presentation of the Excellence Award by Eco Maine to our Recycling Committee. John Weaver, Recycling Chair, accepted the award on behalf of the Recycling Committee whose members include Fred Dolgon, Cris Hudson, Jacqui Deveneau, William Farley, Suzanne Scalise and Megan McLaughlin. We wish to thank them this evening for all they have done over the past year to begin a recycling program that is successful and benefiting the community. I would also like to thank Chair John Weaver for the two hours he spent with me recently educating me on the subject of recycling. He is very knowledgeable and it was very helpful.

**ACCEPTANCE OF MINUTES: Town Council Minutes of March 2, 2010.**

**MOTION: Councilor O'Neill motioned and Vice Chair Tousignant seconded to Accept the Minutes of March 2, 2010.**

**VOTE: Unanimous.**

**BUSINESS LICENSES: Donna Avallone-Cervolo (108-1-6-26), 131 Temple Avenue, Unit 26, one year round rental; Pamela Given (210-2-51), 2 Ocean Park Road, two year round rentals; Florence Chiariello (301-6-1-301), 191 East Grand Avenue, Unit 301, one year round rental; Elizabeth Bray (307-1-7-23), 2 Fernald Avenue, Unit 23, one year round rental; John J. Schena and Elizabeth A. Haire (311-18-2), 36 Evergreen Avenue, one seasonal rental; Dale C. Tarbox dba/Sunset Bar & Grill (307-1-6), 6 Fernald Street, Victualers with Prep/Alcohol on premise; and CHA Builder, LLC ( 107-3-1-M19), 19 Macintosh Lane, one year round rental.**

**MOTION: Councilor O'Neill motioned and Councilor Dayton seconded to approve the Business Licenses as read.**

**VOTE: Unanimous.**

**LIQUOR LICENSES: Dale Tarbox dba/Sunset Bar & Grill (307-1-6) 6 Fernald Street, s-m-v in a Restaurant; and The Taste of Thai Orchard LLC dba/The Taste of Thai Orchard (205-3-1), 32-34 Old Orchard Street, s-m-v in a Restaurant.**

**MOTION: Councilor O'Neill motioned and Councilor Dayton seconded to approve the Liquor Licenses as read.**

**VOTE: Unanimous.**

**SPECIAL AMUSEMENT PERMITS: Dale Tarbox dba/Sunset Bar & Grill (307-1-6), 6 Fernald Street, Live Music – small band and comedy, Outside – 4:00 p.m. – 10:00 p.m.; The Taste of Thai Orchard LLC dba/The Taste of Thai Orchard (205-3-1), 32-34 Old Orchard Street, Karaoke Inside: 3:00 p.m. – 10:00 p.m.; Fly By Night Inc., dba/Mr. Goodbar (306-5-2), 6 East Grand Avenue, Live Music, DJ, Karaoke, Comedy, Dancing, Inside, 6:00 p.m. – 1:00 a.m.; and Dominator Golf, LLC dba/Dunegrass Golf Club (105A-1-200), 200 Wild Dunes Way, Club House, Live Music, Piped in Outside/Inside, 6:00 a.m. – 1:00 a.m.**

**MOTION: Councilor O'Neill motioned and Councilor Dayton seconded to approve the Special Amusement Permits as read.**

**VOTE: Unanimous.**

**TOWN MANAGER'S REPORT:**

- 1. Attended a Chamber of Commerce program in conjunction with Rotary.**
- 2. Had meetings with Tom LaChance regarding the Ballpark Development.**

3. **Police Pre Construction meeting.**
4. **Have participated in numerous inspections at the Ball Park Site.**
5. **Continue to work with individuals regarding waste disposal and recycling.**
6. **Attended an OOB 365 meeting.**
7. **Worked with Bud Harmon of the Chamber of Commerce, and with Planning, Code and Public Works, on the train station requirement to be a year round scheduled stop.**
8. **Attended a York County Town Managers Meeting.**
9. **Met with a representative from Central Maine Power to discuss Ballpark lighting.**
10. **Met with Nanci Boutet of Aquaholics and are preparing to install the beach volleyball nets.**
11. **Met with two representatives of BBI regarding the transfer station to have an update from the Department of Environmental Protection.**
12. **Have started formal contract negotiations with the Public Works Department.**
13. **Met with AT&T regarding our cell phone contract for the Town.**
14. **Met with Al Guerin on the history and future of "Bertha."**

**NEW BUSINESS:**

- # 5419 Discussion with Action: Amend the Special Event Permit for the 6<sup>th</sup> Annual Captain Christopher S. Cash 5K Race on June 26, 2010, and approved on May 19, 2009, to including posting a banner on Saco Avenue from June 11<sup>th</sup> through 26<sup>th</sup>, 2010.**

**MOTION: Councilor O'Neill motioned and Councilor Dayton seconded to Amend the Special Event Permit for the 6<sup>th</sup> Annual Captain Christopher S. Cash 5K Race on June 26, 2010, and approved on May 19, 2009, to including posting a banner on Saco Avenue from June 11<sup>th</sup> through 26<sup>th</sup>, 2010.**

**VOTE: Unanimous.**

- # 5420 Discussion with Action: Approve the Special Event Permit application for OOB365 to hold a Shop n' Swap in the Milliken Street parking lot on April 10<sup>th</sup>, 2010 (rain date April 11<sup>th</sup>), from 8 a.m. to 2 p.m. Insurance pending; and including music.**

**MOTION: Councilor O'Neill motioned and Vice Chair Tousignant seconded to approve the Special Event Permit as read.**

**VOTE: Unanimous.**

- # 5421 Discussion with Action: Approve the Special Event Permit application for the Towing & Recovery Association of Maine to hold their annual Trade Show on September 10<sup>th</sup>, 11<sup>th</sup> and 12<sup>th</sup>, 2010. Request to use Memorial Park parking lot and First Street. Request for a parade on Friday (September 10<sup>th</sup>) at 7:30 p.m. and a parade on Sunday (September 12<sup>th</sup>) at 10 a.m. Request to waive the fee. Insurance pending.**

**MOTION: Councilor Dayton motioned and Councilor O'Neill seconded to approve the Special Event Permit as read.**

**VOTE: Unanimous.**

**# 5422 Discussion with Action: Amend Chapter 18, Businesses, by Amending Article II Licenses, Sections 18-26, 18-28, 18-30, 18-31, 18-33 through and including 18-35, 18-36, 18-38, Article III, Body Piercing, Sections 18-66, 18-68, 18-96, 18-100, 18-102, 18-103, Article IV Tattooing, Sections 18-166, 18-167, 18-204, 18-205, Article VII, Ice Cream Trucks, Sections 18-423, 18-424, Article VIII, Massage Establishments, Sections 18-486, 18-487, 18-488, 18-491, Article IX Campgrounds, Section 18-526, and to Add Article X Victualers, Section 18-581 and 18-582, and to Delete Article III, Body Piercing, Sections 18-69, 18-103, 18-131 through and including 18-138, Article IV Tattooing, Sections 18-168 through and including 18-173, Article VI Performing Arts Facilities Sections 18-286 through and including 18-360, and Article X Auctions, Sections 18-581 through and including 18-585 of the Old Orchard Beach Code of Ordinances.**

**Discussion with the Council and those in attendance at the Meeting were on different areas of the Ordinance with which they did not agree and where wording needed to be stronger; and more defined definition of hours of operations particularly in the area of Massage Parlors, etc. Also Section 18-348 which regulates alcohol beverages at the Ballpark, attendance limits, 18-353 – medical services, private security, sound control, etc. were issues of concerns raised as well. Councilor Dayton requested Mike Nugent come to the podium. She clarified the ordinance change process pointing out that the changes were not made available to the public on the Town website. Mike explained that citizens could request it personally via e-mail to the Clerk’s office or come in person to get a copy which then also incurs a copying fee. Councilor Dayton pointed out that the changes were made available to Council first in January but the Ballpark changes were not ever discussed with Council. “Lets be honest, we never discussed this because we were directed away from it.” Mike Nugent replied that the town attorney had advised this law was not required. Councilor Dayton pointed out that while she appreciated the Attorney’s point of view, he did not live here in town and did not suffer the transgressions of the past visitors. “There certainly is an expectation that the Ballpark is going to be functionally operational this summer complete with music and concerts. That is the perception. It makes little sense to remove all of these regulations just when we are about to open a facility that has been closed for 15 years. These deletions removes ALL regulations at the Ballpark – everything from security, operating hours, serving alcohol beverages, noise control, to police protection – gone.” Councilor Dayton strongly recommended that abutters be made aware of the removal of all of these laws that regulate the use of the Ballpark stating again, that we have not discussed these deletions at all. The Code Enforcement Officer noted that all activities will require a Special Event Permit and the Council would be responsible for approving those Special Event Permits. Councilor Dayton stated that regulating each event via special event permit without any standards, without standard regulations, will cause problems. We have already experienced inconsistency It might be at that time that we develop a new Performing Arts Ordinance. This Council is in charge and is able to impose any restrictions. Councilor Dayton continued with discussion of her understanding of the bigger picture. “Lets look at this altogether. Taken as a whole, the ordinance changes are proposing to give the Planning Dept authority to issue new business licenses for 2 years without Council review or approval and is removing all restrictions on the**

Ballpark property which now considered a facility. So, the Planning Department would in effect have the authority to place a new business in the Ballpark without Council approval. Is that about right?" Mike Nugent explained that private businesses as proposed would not come to Council but anything on town property has to come before the Council. Councilor Dayton said these are valid concerns and went on to raise questions about vendors operating from ice cream trucks, push carts, street vendors and kiosks. Councilor Dayton stated that if this ordinance is passed as written, she doubted these types of businesses would come to Council for approval. Councilors gave their input as well as Planner Gary Lamb, Code Enforcement Officer Mike Nugent, Citizens King Weinstein and Pierre Bouthiller. Councilor Dayton asked that in the agenda items each meetings changes be addressed each time so that there is a follow up documentation path that we can follow. King Weinstein indicated that permitting new rentals without going to the Council would save not only time and effort but make it more attractive for new businesses to come to our town and try this new ordinance change for a year and see how it works for the Town. Vice Chair Tousignant indicated that the first license application should be done by the Council. After the first one he indicated he did not have a problem. The first one should be heard by the Council. He also raised again the hours of operation for massage parlors. He realized it would come before the Council but felt there should be a restriction known to those applying. The three strike rule would always stay in process.

The Code Enforcement Officer indicated the closing times for massage parlors are in the ordinance. Councilor Dayton indicated that she would like to have public discussion of Ballpark hours, alcohol, etc. Chair MacDonald again indicated that the Council has full control over all special event permits. King Weinstein again asked if the Council might consider rental agreements to come out of that ordinance and that it does create a lot of extra work but he didn't know how difficult it would be for staff. Again Council seemed to indicate that the first time before Council is the scenario that we have addressed. Having liquor licenses come before the Council is still to be retained. Pierre Bouthiller agreed with what King Weinstein was suggesting and the shorter process would make a big difference for some owners of real estate.

**MOTION:** Vice Chair Tousignant motioned and Councilor Dayton seconded to Table Item Number 5422 until the next meeting of the Council.

**VOTE:** Unanimous

# 5423 Discussion with Action: Amend Chapter 2, Article IV, of the Old Orchard Beach Code of Ordinances, by Adding Division 8 – “An Ordinance Creating a Ballpark Commission.”

**CHAIR MACDONALD:** She read into the record the following hand written changes to the original Ballpark Ordinance presented to the Council at a previous Public Hearing.

#### ORDINANCE CREATING BALLPARK COMMISSION

Be it hereby ordained, by the Town Council of the Town of Old Orchard Beach, Maine, in Town Council assembled, as follows:

**Sec. 1. Ballpark defined.**

**For purposes of this Ordinance, the term “the Ballpark” means the municipal facility located on E. Emerson Cummings Boulevard, commonly known as the Ballpark, consisting of approximately 49 acres of land improved with a stadium, playing fields and parking areas.**

**Sec. 2. Ballpark commission formed.**

**Pursuant to Sec. 409.4 of the Charter, there is hereby created an agency of the Town by the name of the “Ballpark Commission.”**

**Sec. 3 Appointment, vacancies, term.**

**The Ballpark Commission (“Commission”) shall consist of seven members appointed by the Town Council for a term of three years each commencing on the date of appointment, except that of those first appointed, three shall be for a term of three years, three shall be for a term of two years and one shall be for a term of one year. Any vacancy in the membership of the Commission shall be filled by the Town Council for the unexpired term. Members whose terms expire shall continue to serve until their successors are appointed and qualified. Members of the Commission serve at the will of the Town Council and may be removed by vote of the Council at any time for any reason.**

**Sec. 4. Powers and duties.**

**Subject to Town Council oversight, the Commission shall be responsible for the improvement, maintenance and operation of the Ballpark. In order to carry out that responsibility, the Commission shall have the following powers and duties:**

**Undertaking maintenance of and improvements to the physical facilities, subject to appropriation of funds therefore by the Town Council and subject to the Town’s established purchasing and procurement procedures.**

**Scheduling events, subject to issuance by the Town Council of special events permits under Chapter 42, Article IV, Division 5 of the Town Code.**

**Raising funds to be used exclusively for the improvement, maintenance and operation of the Ballpark through the sale of advertising or other promotional activities and through soliciting and accepting donations on behalf of the Town, all in accordance with the Town’s established finance and accounting procedures. All such funds received by the Commission shall be remitted to the Town Treasurer for deposit in a dedicated revenue account denominated “the Ballpark Fund.”**

**Soliciting, supporting and organizing the efforts of volunteers to assist in the improvement, maintenance and operation of the Ballpark as a community facility.**

**With the approval of the Town Manager, obtaining the assistance of Town employees in connection with the improvement, maintenance and operation of the Ballpark.**

**Performing such other duties and responsibilities and exercising such other powers as the Town Council may, from time to time, by order, assign to the Commission.**

Sec. 5. Meetings.

**The Commission shall establish a schedule of regular meetings, which shall provide for at least twelve meetings per calendar year. The Commission shall meet at least monthly during June, July, August and September. The Commission Chairperson may call special meetings as he or she deems necessary.**

Sec. 6. Quorum, procedure, officers.

**Five members of the Commission shall constitute a quorum for the purpose of conducting a meeting. Any action by the Commission requires a majority vote of those members present and voting. The Commission may adopt additional rules, not inconsistent with this Ordinance, for the conduct of its activities.**

**The Commission shall choose annually a chairperson and a secretary from among its members. The secretary shall maintain a permanent record of the Commission's meetings.**

Sec. 7. Authority to appoint agents.

**The Commission may, with the consent of the Town Manager and the Town Council, designate one or more of its members to serve as the Commission's agents for carrying out the Commission's responsibilities. Such agents may not, however, bind the Town to any contractual or financial commitments unless expressly authorized to do so by the Town Council.**

Sec. 8. Report to the Council.

**On a quarterly basis, starting on the 15<sup>th</sup> of June, 2010, the Commission shall submit to the Town Council a written report on the status of improvements, maintenance and operations at the Ballpark, including a summary of the Commission's activities during the immediately preceding three months.**

Sec. 9. Ballpark is land owned by the public but not considered a park.

**The Ballpark, as defined in this Ordinance, is intended to be operated as a sports/entertainment/events and recreation area and not as a public park subject to the care and superintendence of the Conservation Commission nor shall its operation be considered a recreation program subject to oversight by the Recreation Board.**

**The Ordinance as indicated below was accepted by three of the four Councilors in attendance. The Ordinance defines the Ballpark as a 49-acre parcel including the stadium, playing fields, and parking area and states that the Ballpark is to be operated as a sports, entertainment and events facility and not a public park. She indicated she made changes from the prior draft of the ordinance after hearing comments from the public hearing. The number of people on the commission was raised from five members to seven members as individuals felt they did not think a quorum should be just three people. The number of meetings was raised from eight to twelve per year and the Commission will report to the Council quarterly. She also added wording to define the**

**Ballpark as land owned by the public that is not a park so it was clear that it was public property.**

**COUNCILOR DAYTON:** She strongly urged that Council and the Public should have the opportunity to review, discuss and debate the hand written changes proposed by the Chair before the Council voted on it. Councilor Dayton asked for clarification: “Let’s get this straight. Over the weekend you sent an e-mail with changes on the ordinance, then you sent an e-mail telling Council to ignore the changes, and now you are reading more hand written changes in the ordinance and calling for a vote without providing the changes to Council and the public?” The Chair said yes and called for a vote. Councilor Dayton resolved that this is a very sad and tragic day for Old Orchard Beach. She stated that this type of action is paramount to desecrating the principles of the democratic process by not allowing for any public comment period to such significant changes in the original ordinance. This action completely negates many decades worth of Council precedent and local law regulation; it makes a mockery of the Oath of Office taken as we are sworn in. She indicated “Make no mistake about it; we are violating the Charter.” She continued by taking issue with the 49-acre parcel being called “a facility.” She said that during the Ballpark Steering Planning Process in 2006, all the study groups wanted to have low density recreational use such as walking trails and gardens on the property. At no time during that seven-month-long planning process did anyone to ever once consider that property, the entire property, as a facility. She strongly suggested that this is a very egregious and serious error by Council by not permitting the public to have input with the hand written changes made. Councilor Dayton showed the Alan Holt final report notebooks that contained suggestions from hundreds and hundreds of citizens input. She described in detail the unanimous support by all 14 groups for the top three priorities for the ballpark: 1 – a community center; 2 - undeveloped property; 3 - maintain property as low density recreational use. The definition of low density means trails, open space, etc. All this information is available at the Clerk’s office. At no time during any of that seven month long process did anyone ever once consider that property, entire property, as a facility. They considered it open space.

**COUNCILOR O’NEILL:** There are a lot of facts behind the creation of this Ordinance which will some day come out and will be an embarrassment. Previous Councils had the money spent four years ago to come forward with public input but nothing was done. Councils let it go and we had a group of volunteers come forward and I will not let anyone take the applause away from what they have done. They have done it in a positive way and it needs to be seen that way. Some of you may not like it but it is just a starting point but we have a group of volunteers who has done a lot of work up there. We don’t want to see the direction change. It is a new day, a new council, and we need to move forward. The bickering needs to stop and I don’t understand why it has to continue. I do think it is a good starting point.

**COUNCILOR DAYTON:** This Councilor made several attempts with former Councils to move the planning process forward. It was rebuffed by all of the Chairpersons. It is a very sad day in Old Orchard Beach that the public’s wishes are so easily disregarded.

**CHAIR MACDONALD:** She read a flyer she had made for a fundraiser last June for the Ballpark which referred to an effort to raise funds for a “stadium, ball field and surrounding facilities.” She indicated it was called a facility back then. She indicated that the text was sent to her by a colleague who she said used to be on the same page as the Chair.



**COUNCILOR DAYTON:** She indicated that she was well aware of the words on the flyer that the Chair read because Councilor Dayton wrote them. Councilor Dayton said she did not appreciate her words being twisted and bastardized in such a fashion. She made it clear that the flyer was written for the first fundraiser for the ballpark back in the Spring of 2009 and that she had been referring to the area defined by Notice to Proceed Order written by the former Town Manager, Steven Gunty. The flyer certainly described the stadium proper, the field and surrounding buildings and club house facility. The flyer refers to these specific structures because legally that is what the ballpark group was allowed to work on. Legally we were not allowed to work on anything else. She said that at no time did anyone in the Ballpark group ever express verbally or in writing or even consider the entire 49 acres as a facility.

**COUNCILOR O'NEILL:** He verbalized the need to move on. There are events planned for this summer and we need to move forward with the organizational structure. He indicated that it is unfortunate that the recommendations made at the time of the Ballpark Steering Planning that we did not move forward but that is past history and hopefully we can move forward but lets not stop the process by delaying a vote on this agenda item.

**VICE CHAIR TOUSIGNANT:** He reminded everyone that any additional requests for programming at the Ballpark still have to come to the Council so there is no limitation to moving forward on other areas of programming.

**MOTION:** Councilor O'Neill motions and Vice Chair Tousignant seconds to Amend Chapter 2, Article IV, of the Old Orchard Beach Code of Ordinances, by adding Division 8 – “An Ordinance Creating a Ballpark Commission,” as read into the record.

**VOTE:** Yea: Councilor O'Neill, Vice Chair Tousignant and Chair MacDonald  
Nea: Councilor Dayton

# 5424 Discussion with Action: Approve the Liquor License Renewals for Thomas Humphreys dba/Tom's Restaurant (306-4-4, 15B East Grand Avenue, s-m-v in a Restaurant; New Pier Pizza Corp. dba/Pier Pizza (306-6-I-1), 2 Old Orchard Street, m-v in a Restaurant; Richard Payette dba/The Landmark Restaurant (306-5-6), 28 East Grand Avenue, s-m-v in a Restaurant; Fly by Night Inc., dba/Mr. Goodbar (306-5-2), 6 East Grand Avenue, s-m-v in a Class A Lounge; and Dominator Golf, LLC dba/Dunegrass Golf Club (105A-1-200), 200 Wild Dunes Way, s-m-v in a Restaurant.

**MOTION:** Councilor O'Neill motioned and Vice Chair Tousignant seconded to Approve the Liquor License Renewals as read.

**VOTE:** Unanimous.

# 5425 Discussion with Action: Request to waive all fees including Planning Board, Building, Plumbing, Electrical Permit Fees and Sewer Impact Fees for the New Police Station.

**MOTION:** Councilor O'Neill motioned and Vice Chair Tousignant seconded to waive all fees including Planning Board, Building, Plumbing, Electrical Permit Fees and Sewer Impact Fees for the New Police Station.

**VOTE:** Unanimous.

**#5426 Discussion: Televising Committee/Board Meetings.**

**BACKGROUND:** With citizen interest in the various Committees and Boards related to municipal functions, the ability to be able to televise is being discussed this evening. The limited space and staff is a consideration as well in the weekly televising requests. The Council will discuss this evening requests and possible solutions to requirements. The Charter Commission has already been televised and the Ordinance Review Committee and also the Planning Board will be having their meetings televised. Councilor Dayton questioned if the RSU would be televised and that she understood there were difficulties. Vice Chair Tousignant indicated that he had contacted the RSU and they had no problem with this and those meetings will be televised a shown. He also indicated that we need to find other individuals to tape the programs.

**# 5427 Discussion with Action: Set a Special Town Council Meeting for March 30, 2010 at 7:00 p.m. for the Presentation of the FY11 Municipal Budget.**

**CHAIR MACDONALD:** The Charter requirement for the budget to be presented to the Council by the end of March is a requirement for setting this Special Meeting date and time.

**MOTION:** Councilor O'Neill motioned and Councilor Dayton seconded to Set a Special Town Council Meeting for March 30, 2010 at 7:00 p.m. for the Presentation of the FY11 Municipal Budget.

**VOTE:** Unanimous.

**GOOD AND WELFARE**

**TOWN MANAGER:** He gave an update on the anemometer and the change in location.

**PIERRE BOUTHILLER:** He agreed with the Town Manager that this is the best location and that in essence this has worked out even better for the project than previously planned.

**ANDREA BERLIN AND SCHOOL HEALTH CARE COORDINATOR JACKIE TSLEKIS:**

Members of the Conservation Commission appeared before the Council during Good and Welfare to request again their support for reconsideration of a community garden on the Ballpark property. The garden proposal is a joint effort between the schools and the Conservation Commission. School Health Care Coordination Jackie Tsleakis said originally the project was going to be school garden but there were a lot of people in the

community who were interested in being involved and it was decided that a community garden would be appropriate. Again it was mentioned that it was not appropriate to have a community garden on school property and the Ballpark property was accessible to the schools. Conservation Commission members indicated they had signed signatures on petitions from Citizens requesting the Council reconsider the proposals. Conservation Chairman Andrea Berlin presented the names of those who signed and indicated that she hoped the community members who supported this would make their wishes known to the Council. Feeling that the Council may not have had enough information about the garden she had presented information below to them for consideration. She said the proposed project is a great opportunity to have the schools and the community involved together. The area could also be used to grow dune grass which could be used for replenishment of the Town's dune grass. The argument that the Ballpark should not just be used for baseball was raised again. It was argued that the garden would benefit people of all generations and could be an education program for students and provide an opportunity for people to grow food in these tough economic times. She also suggested that the Conservation Committee would have workshops on things such as canning and cooking. Councilor Dayton again indicated that she felt the location in her opinion is just perfect. There's no shade; it's an easy walk from the school and the idea of a community garden at the Ballpark is not new and people have been talking about it for four or five years. Several times it has been mentioned that in 2006 a series of community workshops were held regarding desired uses for the Ballpark property and workshop participants broke out into teams and a common desired use for the property including undeveloped use of low intensity recreational use which included community gardens and walking trails. Council Dayton again stated that every single team supported this concept, every single one. It's only natural to have a community garden. She reiterated that this is public land and it belongs to the people. She also indicated that the ballpark is located in the center of town and is an ideal location. The Chair again indicated that she supported the community garden but felt they needed to finish one project (the Stadium) before something else is started. She felt the garden should be started at the school for the first year to introduce the idea. Jackie Tsleki again appealed to the Council giving the disappointment of the school children and also our seniors who hoped that this would come together. Andrea Berlin asked the questions if the Ballpark would be locked and Vice Chair Tousignant assured her that it would not be locked.

Below is the document presented to the Council prior to the meeting detailing the garden progression.

#### **GARDEN CULTIVATION**

- 1. TIMELINE:** Gardens are to be cultivated (soil turned over in preparation for planting) by Memorial Day, planted by mid-June, and tended throughout the season (i.e., planted, weeded and produce picked). Gardens must be "put to bed" by Nov 1 (i.e., fencing and stakes taken down, all plants removed and generally tidy. Stakes are to be left neatly in a designated area.
- 2. ORGANIC GUIDELINES:** Synthetic fertilizers and pesticides are prohibited. Allowed substances include compost, compost tea, manure, blood meal, bone meal, ground rock (phosphate rock, agricultural lime, greensand, gypsum, etc.), wood ash, seaweed, insect barriers, straw, non-PVC plastic mulch, non-colored newspaper containing soy-based ink, Bt, diatomaceous earth and deterrent sprays from nontoxic materials such as garlic, soap, hot pepper or seaweed. Botanical insecticides like rotenone, pyrethrum and neem are not

permitted as they harm earthworms, fish and beneficial insects. No smoking or tobacco products in the garden or parking area. Tobacco mosaic virus, which can be carried on people's hands, is a serious threat to tomatoes and other plants. No pets are allowed in the garden.

**3. USE OF PLOTS:** Garden plots cannot be sublet or used for any commercial purposes. No produce may be grown for sale. Extra produce may be grown for donation to the Salvation Army Food Pantry or any other Food Pantry of the gardeners' choice. Acceptable plants in the

community garden include fruits, vegetables, herbs, perennials and annuals. Because of the difficulty of managing potato beetles, potatoes are prohibited. Trees are prohibited.

Gardeners should consider the effect of shading on neighboring plots when planting tall crops such as corn or sunflowers, and locate plants appropriately. Children are welcome in the garden but must be monitored to avoid damaging garden plots.

**4. GARDEN MAINTENANCE:** Gardens must be tended regularly and visually display greater numbers of intended plantings than weeds, as determined by Garden Review of the Board (see #12 below). Gardens must not look overgrown, unkempt or abandoned. Trash such as unused plastic pots, unused fencing, etc., may not be left in the garden during the planting season.

**5. NURSERY AREA:** Donated or extra seeds or seedlings, or other unwanted plants may be left there for pickup by other gardeners.

**6. AMENDMENTS:** Manure, compost and straw are free for use when available. Mulching is encouraged to deter weeds and help retain soil moisture. Black-and-white only, soy-ink newsprint is allowed as mulch. Paper or other unsightly organic materials used as mulch must be covered with soil, compost or straw. Limited use of black plastic to mulch hot weather crops or to prevent weed growth is permitted, but must be removed immediately after use. Bark mulches are not allowed because they inhibit growth and should not be turned into the garden beds. No treated lumber or other objects that are treated or painted with toxic materials may be used in the garden. Garden signs must be painted with non-lead paint.

**7. COMPOST:** All organic refuse from the garden is composted. Sticks, plastic, string and diseased or infested plants should be excluded from these bins and placed in the rubbish-no exceptions. The compost bins are for non-diseased plants and organic household garbage, such as vegetable material, fruits or coffee grounds. NO animal products or fat should go in the bins at anytime.

**8. PATHS:** Paths and perimeters (around all sides of your garden) are the responsibility of each individual gardener. They must be kept weeded and trimmed with clippings removed. Adjacent gardeners share mutual responsibility for shared paths. Mulches are not allowed in the paths.

**9. PERIMETER STAKES:** Posts with blue tips mark the outside border of the garden and also major pathways, which are wide enough to allow easy wheelbarrow and water hose access. Please do not remove the perimeter stakes or expand your garden into pathways or beyond the outside border. You will be required to reverse any expansions into these areas.

#### **Garden Review and Help**

**10. GARDEN BOARD:** At the spring meeting gardeners will select a Board consisting of Chair, Vice Chair, Treasurer and Secretary. The Board will be established to review any issues that may arise during the year. They will also share the task of coordinating garden activities. They commit to no less than one year. The tasks of the Board include: attending garden meetings, assigning garden plots, maintaining a waiting list, evaluating the health of the garden including pest monitoring and overseeing task assignments. The Board may delegate any of these tasks to other Gardeners and are available for questions and concerns from the Renters. All money collected from the rental of garden plots will be handed over to

the town finance director Jill Eastman for expenses associated with the maintenance of the community garden.

**11. GARDEN MEETINGS:** The secretary will be responsible for communication by posing minutes from meeting on the conservation page of the Towns Website. All Gardeners are required to attend at least one garden meeting each year. Gardeners must notify the secretary if they are unable to attend either the spring or fall meeting and are responsible for finding out what happened at the missed meeting. Minutes are generally e-mailed out after the meeting.

**12. GARDEN REVIEW:** Gardens should be maintained according to the standards outlined in these guidelines (see item #4 above). Failure to comply (i.e., gardens falling below the standards set forth) will result in notification to the gardener from the Garden Board. The Gardener will have two weeks from the date of this notification to correct the problem. Failure to correct the problem will result in forfeiture of the garden plot with notification by a letter by the Garden Chair. If the gardener has any questions, it is his or her responsibility to contact a member of the board.

**13. PLOT ASSIGNMENTS:** The Garden Board maintains a waiting list of people interested in the garden and assign plots in the winter. Priority will be given to Old Orchard Beach residents.

**14. GARDEN FEE AND REGISTRATION:** The annual fee for a 10' by 10' garden plot is \$25 for Old Orchard residents and \$30 for non-residents. The fee must be paid at the time of registration. Checks are payable to the Town of Old Orchard Beach. Proof of residency is needed at the time of registration.

**15. VOLUNTEERS:** Plot renters and others may volunteer to help with the many Community Garden tasks including administration, reviewing, site preparation, maintenance and other chores. They may contact anyone on the Board to offer their assistance.

**16. COMMUNICATION:** E-mail is an important means of communication for the Gardeners, and is the preferred method of communicating about garden-wide issues. Important notices are also posted to the Conservation Page of the Town's Web Site. Gardeners and volunteers are responsible for reading all posted material pertinent to Garden business or decisions.

**VICE CHAIR TOUSIGNANT:** The fact is that the vote was three against the Community Garden approval and therefore the item is not able to come before the Council again for a year unless one of those who voted in favor of the Garden would have to be willing to put it back on the agenda and that has not occurred. We made it very clear that the Ballpark will not be locked. We made that very clear before.

**COUNCILOR DAYTON:** When I learned of the petition, I asked the chair to reconsider her vote as can be done by rule as a majority vote. I asked her verbally and in writing. I received no reply. If this is not reconsidered, I believe it is 180 days. I believe it is a rule and I believe we could suspend a rule and move forward. We can suspend our rules. This is not an ordinance.

**VICE CHAIR TOUSIGNANT:** I believe it is a year. Our interpretations may be different but this was voted down.

**COUNCILOR O'NEILL:** It has to be bought back by someone that voted in the majority and I am not going to change my mind. I will throw one more safety issue and that is the Police building structure. I am disappointed in the actions of the Conservation Commission and their agenda item and the emotions that have been raised because of misinformation. I can't describe it. I haven't seen anything like it. I am not going to be the fall guy. The school can proceed with their garden because they have the

grant. None of us said we did not support a garden. We never said that. It comes from vindictiveness.

**ANDREA BERLIN:** We have talked about this for years and only recently talked about this.

**COUNCILOR DAYTON:** I certainly hope that those Councilors who feel we might have a terrible accident while gardening certainly consider how they intend to argue and assure me there would not be accidents with the other events. How can you say you can't have a garden because of safety concerns but you are having other events with hundreds of people? How can you say gardening is dangerous but at the same time encourage all of our students to play physical contact sports such as football, soccer, basketball and baseball? What about those safety concerns? Gardening is so dangerous, how ridiculous. When these special event permits come up before the Council I sure hope we have security and safety issues on the minds of the Councilors who believe gardening is too dangerous.

**JEROME BEGERT:** FROG – Fiduciary Responsibility of Government. You all know the FROG, but some folks don't. Town Council deliberations culminate in votes that are actions with consequences. Town Councilors (all elected officials, Town Manager, department heads also must be law process everything they hear, see, think and do through the filter of fiduciary responsibility even if it rubs against the popularity contest of voters voting on election day. Officials have a legal obligation to taxpayers to not waste money intentionally, via the virtual larceny of self gain or gain by friends in a collusive cult; not to waste money due to a general laxity of mind; not to waste money due to an honest-mistake. Mistakes are neither an excuse nor defenses for failure of fiduciary responsibility. Are not an excuse are just because you like people, who come with a request; not just because you trust them, from their past track record; just because their request emanates from a great heart, good ideas and honest motives; just because they use phrases like, "I assure you." "I assure you" is not in the lexicon (the vocabulary) of lawful, evidence-based government operations. Just because, when fiduciary law compels you to ask questions, they rebut you with "Don't confuse the focus, here, with cross purposes." Especially when these nice people have, themselves, created these exact cross-purposes (by mistake) when they assembled and synergized their honest motives and great ideals, complication the item with unforeseen consequences thus resulting in the Town of Babylon Syndrome wherein people who agree (with most parts of a vision) lost control of the vision process as communication breaks down in the chaos of unnecessary tension. Fiduciary responsibility requires these intangible unforeseen consequences to be flushed out and flushed aside by due diligent questioning. That's not just bottom line numbers, accounting. We never want to be accused of "failure of imagination." Never. Unforseen consequences include human interactions, the unfolding where good ideas meet reality, causing ramifications with law and unintended future costs, financial, but also otherwise. Like for example federal government grants. These are not private sector freebee/gimmees. They are carrot and stick incentive temptations combined with contractually binding legalese/fine print requirements. Federal government grants usually compel the recipient to cough up matching funds. In tough economic times that's like coughing up blood. Matching funds, such as with the East Grand Avenue Road Project (of 1997-1998) or a recent school sidewalk project, which may cause Old Orchard taxpayers to cough up \$200,000 of current money. Such Federal government grants, also, automatically require compliance with federal laws like the American Disability Act as East Grand Avenue

needed to include wheelchair accessible sidewalks causing the transplantation of many utility poles. Community Gardens are not an exception to such rules. Before Town Council can say “yes” to any projects that are particularly funded by a federal government grant, Council and the Town Attorney must read that grant with a magnifying glass. All Grants. Unintended consequences, relevant to law-enactments, public safety, liability – insurance and law suits must be prevented with all due diligence. No failures of imaginations can or ever will be excused. The only guarantee, therewith, is a strong fiduciary-filter and abundant patience. If people get frustrated with the FROG, just wrap your spirit around them and love them harder. For those among us who lose patience, when Town Council does what law requires (for our own well being.) Please do not become combative. Do not disdainfully manipulate fellow citizens or the news media into false perceptions. Bearing false witness is one of the shall nots. It is false to accuse the Council of being unfeasible, unkind arbitrary or attitude. These hard working Councilors must exercise judiciary responsibility as dictated by the law. They are just doing what is right. Biddeford taxpayers are virtual non-owners or land beneath their airport and Biddeford/Saco residents have no say over the polluted air they breathe because past government officials failed them in fiduciary responsibility. Government is not just a popularity contest. Often it is the boring, frustrating act of reading the fine prints.

**FRED DOLGAN:** I am not going to argue about the vote for against an agenda coming back before the Council. I don't know what's going on. I was very involved in 2006 when we hashed out our visions and we even had an architect furnished at each table to help us and helping us understanding of the various pictures of what we saw and could see. We had good intentions but the feeling we got was a rumbling that somebody saw an opportunity in the future to sell off, to privatize some of this land and that was the feeling we got. The last report made by Holt did not even include what we said because he didn't follow any of our instructions so what was the point of it. He was pushing for low density housing and commercial so you got the way some people were thinking and what he was told to come up because he didn't take our inspiration to heart so maybe we had a bad taste in our mouth. I came in with 300 signatures on it from Old Orchard Village for the hauling rates for commercial people. The people that signed that petition paid for garbage pick up where the owner of the facility he had a private hauler picking up the garbage and we paid him for the pick up which was double dipping. I joined the Recycling Committee and that is why I got the signature. I remember a lady came down with a bag of her garbage and she through it on the table of the Councilors and are you going to tell me that it is commercial. So things happened that make us suspicious of what the Council does. I was glad when new faces come in and I told you I voted for you but now I am disappointed. I don't know why the Council is so obstinate of a new entity – the Commission – and it sounded funky. So now you are going to meet more often. Who are going to be on this Committee? Praising all this work as if you recognize good work and volunteerism but let's move on. But what is the big movement. You should move one with these people that did all their work. I don't know what is going to happen to the Ballpark. What if the Town hits a depression? We are all having short falls. We will be in perilous conditions. You are going to use the ballpark as a golden goose. You have a chance now to change it – this is an arbitrary law. We have the power to change things and to be so obstinate – that is not right. I could go on. A lot of people are disappointed in you. There is a recourse – maybe there is a referendum or a recourse – don't think this will be forgotten. A lot of feeling against it.

**DAVID GOYET:** Is there a possibility of getting a Ballpark Workshop next week on budget issues. We had new information for you and we would like to sit down with the Council and talk about these different options.

**COUNCILOR DAYTON:** For what?

**COUNCILOR O'NEILL:** I am out of town next week on business.

**VICE CHAIR TOURISNANT:** We heard a lot tonight about the charette process and I don't believe it was done for nothing. One of the things that was never talked about was about revitalizing the Ballpark and no one ever thought that it would be used as a Ballpark again. That is one of the things changed. People have gone in it and revitalized and see it today and be amazed at it and it appears that we are going to play ball again. I want to make the point. I don't believe the charettes were done in vain. I attended those meetings. It is sad they didn't come to fruition. I believe the door to revitalization of the Ballpark is wide open.

**COUNCILOR DAYTON:** There were at least one or two teams that included baseball in their vision boards. It is a false statement to say it was included in the planning process. In addition, after the planning process was completed, some of you may recall that our industrial arts teacher had our kids build all kinds of models for the park. Our own kids thought of indoor bicycle tracks and built miniature models and brought them to Council. I believe one of those also included baseball. The concept of revitalization was not out of the realm of what we discussed. There are some good things that came out of it. It is the same with the Comprehensive Plan.

**PIERRE BOUTHILLER:** Mr. Tousignant you did make it clear in the past that we can bring ideas to the Council and the Council would be the final authority and you voted for the Garden. It never was exclusively about baseball. I am one of the key donors and workers – hundreds of hours. Many of the Conservation Members are intensely involved. There is not competition between the Conservation Commission and the Ballpark group. We are the same group.

**ADJOURNMENT:**

**MOTION:** Councilor O'Neill motioned and Councilor Dayton seconded to adjourn the Town Council Meeting at 9:25 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 sixteen (16) pages is a true copy of the original Minutes of the Town Council Meeting of March 16, 2010.  
Louise Reid