

**TOWN OF OLD ORCHARD BEACH  
TOWN COUNCIL MEETING  
TUESDAY, JANUARY 6, 2009 - 7:00 P.M.  
TOWN HALL CHAMBERS**

A Town Council meeting of the Old Orchard Beach Town Council was held on Tuesday, January 6, 2009 in the Town Hall Chamber. The Chairman opened the meeting at 7:01p.m.

**Pledge to the Flag and Roll Call:**

**Present:** Chair Sharri MacDonald  
Vice Chair Robin Dayton  
Councilor Mike Tousignant  
Councilor Shawn O'Neill  
Town Manager Steve Gunty  
Assistant Town Manager V. Louise Reid

**Absent:** Councilor Laura Bolduc

**EMERGENT ITEM:**

**MOTION:** Councilor Tousignant motioned and Councilor Dayton seconded to add Agenda Item 5104 following Agenda Item 5103: Discussion with Action: Include in Town Council Rules and Procedures a Town Manager's Report as part of Regular and/or Special Council Meetings as needed.

**VOTE:** Unanimous.

**ACKNOWLEDGEMENTS:**

**COUNCILOR TOUSIGNANT:** He expressed appreciation to our Public Safety employees and our Public Works Department for the excellent attention given to our community during the recent ice and snow storms and for their quick reaction to emergency situations. He also expressed appreciation to all who participated in the Lobster Dip for the benefit of Special Olympics even though it was one of the coldest days in OOB history. To all those who participated and gave our sincere appreciation.

**Presentation and Discussion:** Saco Bay Working Group Report to the Legislature's State and Local Government Committee by Gary Lamb, Old Orchard Beach Planner

The Planner sent a concise memo to the Council printed below before making a presentation to the Council but also provided at the beginning of the presentation a short historical of the Marina issue and how it materialized.

**MEMO TO OOB TOWN COUNCIL RE: SACO BAY WORKING GROUP REPORT  
(From Town Planner Gary Lamb December 31, 2008)**

I am pleased to present the report from the Saco Bay Working Group to the State and Local Government Committee of the Maine Legislature. This report is the culmination of numerous public meetings and much work between these meetings.

Our goal was to create a short report dominated by facts and short on opinions. Hopefully this report gives the Town Manager and Town Council a starting point as upcoming discussions with Saco officials unfold. The text of the report is only four pages long. The appendix is some 30 pages and contains reference documents, letters from attorneys, legislative text, maps, etc. For your Jan 6<sup>th</sup> meeting, at the very least please read the four page report and the Chris Vaniotis letter dated Dec 8 2008 in the appendix. After my short presentation of the report, I would hope you would also hear brief comments from any Working Group members or legislators in attendance. The OOB citizens appointed by the Council have been a class act to work with and I thank them for their considerable efforts. They have defended OOB interests, asked tough questions and helped create a very professional debate over difficult issues.

There is still much work to be done on this issue. Despite some areas of agreement, significant differences exist between Saco and OOB regarding municipal jurisdiction and town boundaries. Some in Saco still want to state they own their portion of Saco Bay...but most who have actually studied the issue agree the State of Maine is the owner of the mud, water and air above Saco Bay waters below low tide.

Please remember that jurisdiction is a completely separate issue from ownership. Jurisdiction is tied directly to municipal boundaries which can be changed with legislative acts known as Private and Special Laws. OOB has obtained several Private and Special Laws, most notably to move the OOB town boundary out 1000 feet from low water to allow OOB police officers to have proper jurisdiction at the end of the Pier. At that time, all parties assumed that Saco's jurisdiction extended seaward of the OOB town line (low water), and no questions were asked at that time about the validity of Saco's jurisdiction over Saco Bay waters.

Our recent research, while not 100 percent conclusive, indicates the strong possibility that no municipal jurisdiction exists past the Saco and OOB seaward town boundaries (low water for Saco and 1000 feet out from low water for OOB). If this proves to be accurate, Saco Bay submerged lands (but not islands) are not only state owned but are without any municipal jurisdiction and are an unincorporated area of the State of Maine. Please know that Saco does not accept this contention now and may not accept this situation if it proves to be true. Saco is planning on pursuing their own new Private and Special Law to adjust their seaward boundary to match Map #1 included in the Working Group report. If such

legislation is proposed, much debate between Saco and OOB Managers and Councils and legislators will occur...because I doubt the Legislature will change a boundary unless both communities agree to the change. The State of Maine may also resist strongly to such a boundary change since they are reluctant to give up control of State waters. The Council and Town Manager need to decide how best to protect our interests in such a debate and what OOB will accept or demand for boundary changes.

Other questions yet to answer:

- If town boundaries and jurisdiction are found to stop and start at low water and no new Private and Special Laws are passed, will all four Saco Bay towns remain content with only State review of Saco Bay projects...with towns assuming the role of abutters and not reviewers of development proposals?
- In response to the above bullet, do all four Saco Bay towns want to create a zoning entity for Saco Bay that would review development proposals? Saco is definitely interested in pursuing this idea.

The paths of this Working Group's investigation to date have been frustrating and without desired results. Next steps involve submitting the report to the State and Local Government Committee who will hopefully ask the Attorney General for a full investigation and opinion in this matter. Neither town can do much of anything without jurisdictional questions being answered first. Much work remains to reach the point where all Saco and OOB citizens know (and accept) the facts of municipal jurisdiction in and around Saco Bay.

**Report to Maine Legislature from Saco Bay Working Group  
January 6, 2009  
(Draft version 5.0 thru Dec 23, 2008 by GL and BH)**

**Abstract**

As directed by LD 2188, "...a moratorium for 18 months on the processing or issuance of new submerged lands leases for commercial projects by the Department of Conservation, Bureau of Parks and Lands and aquaculture leases by the Department of Marine Resources in any part of Saco Bay..." was signed by the Governor on April 15, 2008. As outlined in LD 2188, the Town of Old Orchard Beach and the City of Saco chose to convene a Working Group to examine municipal boundaries, regulatory jurisdictions and parameters for future development in Saco Bay. Further, representatives of the State Planning Office, the Department of Marine Resources, and the Department of Conservation, Bureau of Parks and Lands and of the City of Biddeford and the Town of Scarborough were invited and have attended meetings of said Working Group.

The Working Group hereby submits a report on its findings related to municipal boundaries, regulatory jurisdictions and parameters for future development in Saco Bay to

the joint standing committee of the Legislature having jurisdiction over state and local government matters.

**Background on the issue is as follows:**

A proposed 200 slip floating marina was endorsed in September 2007 by the Saco City Council, and a formal lease agreement, since terminated ~~expired~~, was signed by both parties. The marina proposed by applicant Spartan Bay Marina, Inc., was to be built 1000 feet seaward of the Old Orchard Beach Pier in coastal waters assumed by the City of Saco to be in Saco's jurisdiction. At the time of the Council vote, there had been no public discussions with the Town of Old Orchard Beach about the project.

In response to the Spartan Bay proposal, LD 2188 was introduced in the fall of 2007 to increase OOB's seaward boundary from the existing 1,000 feet out to three miles. This proposed legislation was changed by legislative committee to an 18 month Saco Bay development moratorium to allow study of Saco Bay jurisdictional issues. The moratorium began on or about July 18 2008. Findings to date are given in this report but further investigation may be required to answer all jurisdictional questions.

The moratorium created by LD 2188 allowed for a Saco Bay Working Group to be formed to "examine municipal boundaries, regulatory jurisdictions and parameters for future development" and to report back to the legislature in January 2009. We have examined these issues using paid and pro bono attorneys, state personnel and municipal staff, in an effort to answer these questions:

- Does municipal jurisdiction end at the low tide mark or extend out over state owned marine waters?
- Are Saco boundaries accurate as shown on Map 1 (attached and produced by the City of Saco)?
- To what extent does Old Orchard Beach have jurisdiction over the portion of Saco Bay shown to be within its municipal boundaries by said Map 1?
- To what extent does Saco have jurisdiction over the portion of Saco Bay shown to be within its municipal boundaries by said Map 1?
- Assuming some level of jurisdictional control over a portion of Saco Bay, does either community have zoning authority over the submerged lands or waters of said portion?

**Findings of which we are all in agreement are as follows:**

1. Pursuant to MRSA Title 1 Chapter 1, all submerged land seaward of the low water mark, the waters above this submerged land and the air above the water are owned and controlled by the State of Maine.

2. Pursuant to MRSA Title 12 Chapter 220 subsection 1801 et al, submerged lands are owned by the state and impressed with the public trust, which gives the public's representatives an interest and responsibility in its development.
3. Four Private and Special Laws describe the geographic boundaries of the Town of Old Orchard Beach, and more particularly the seaward boundary: the original 1883 law creating OOB from the City of Saco, the 1927 law that clarified the boundary description, and two 500 foot seaward extensions in 1977 and 1981.
4. ~~The Town of Old Orchard Beach was created from Saco on Feb 20, 1883 by Chapter 248 of the Private and Special Laws of 1883. That legislation recognized and described the easternmost corner of Saco as the low water mark on the then Saco/Scarborough town line. Neither Chapter 248 nor any other Private and Special Laws discovered to date in our research have described any Saco municipal jurisdiction extending past the low water mark in Saco Bay.~~

#### Separate OOB Positions:

1. The town of OOB contends that beyond the present OOB seaward boundary (1000 feet from low water), no municipal jurisdiction exists unless so described in Private and Special Laws or other legislation.
2. The town of OOB contends that beyond the low water mark in the City of Saco, no Saco municipal jurisdiction exists unless so described in Private and Special Laws or other legislation.
3. Present research conducted strongly indicates that the area seaward of the OOB and Saco boundaries described above in items 2 and 3 is unincorporated area and not part of either Saco or OOB.
4. The Saco Bay Working Group requests that the State and Local Government Committee ask the Attorney General for a formal opinion that specifically describes and justifies where Saco and OOB municipal jurisdiction begins and ends in relation to their seaward boundaries.
5. The Town of Old Orchard Beach was created ~~from Saco~~ on Feb 20, 1883 by Chapter 248 of the Private and Special Laws of 1883 from land that up until that date was within the City of Saco's borders. That legislation recognized and described the easternmost corner of Saco as the low water mark on the then Saco/Scarborough town line. Neither Chapter 248 nor any other Private and Special Laws discovered to date in our research have described any Saco municipal jurisdiction extending past the low water mark in Saco Bay.

#### Separate Saco Positions:

1. Map 1 is an accurate representation of Saco's jurisdictional boundaries within Saco Bay.

2. Accordingly, the City of Saco respectfully requests that the Maine Legislature adopt the boundaries illustrated on Map 1 as being an accurate representation of Saco's municipal boundaries and regulatory jurisdiction.
3. As a means of protecting its interests in the resource that is Saco Bay, the City of Saco will pursue establishing zoning within its jurisdictional boundary.
4. Any development within Saco's jurisdictional boundaries in Saco Bay is subject to site plan review by the Saco Planning Board.
5. The City of Saco drafted and adopted a performance standard, parking requirements and defined terms specifically for the review of marinas on June 2, 2008.
6. A local attorney and Saco Planning Board member, Sandra Guay, did pro bono research on the municipal boundary and jurisdictional issues cited in LD 2188. The resulting Nov. 24, 2008 memo notes that the Legislative actions in 1977 and 1981 apparently occurred due to the Legislature's "...belief that Saco had residual jurisdiction of this marine area, particularly beyond Old Orchard's low water line." Ms. Guay's findings are consistent with the City's understanding of its Saco Bay boundaries and jurisdiction.
7. Existing mechanisms for increased local control of bay management, according to the 2007 "Managing Maine's Near shore Coastal Resources, Final Report of the Bay Management Study" prepared by the Maine State Planning Office and the Maine Department of Marine Resources, include the "Shoreland Zoning Act, Growth Management Act, Municipal Shellfish Conservation programs, Municipal Shellfish Aquaculture permit, and interposal cooperation." The City of Saco either utilizes or is supportive of each of these mechanisms.
8. 38 M.R.S.A. §7 provides municipalities with "...the authority...to enact ordinances to regulate the assignment or placement of moorings and other activities in their harbors." The City of Saco views this as further evidence that the State recognizes that increased local control of resources such as Saco Bay is both appropriate and desirable.

**Separate State of Maine Positions:** (none submitted to date specifically for this report)

#### **Appendices**

- LD 2188 original language
- Chris Vaniotis letters dated August 26, 2008, December 8<sup>th</sup> and 11, 2008
- Ken Cole letter dated April 17, 2008
- Letters dated March 3<sup>rd</sup> and May 5<sup>th</sup>, 2008
- Letter from Saco attorney Sandra Guay
- Map #1 created by Saco staff

#### **Participants**

- Saco City Planner Bob Hamblen
- Scarborough Town Planner Dan Bacon
- Biddeford City Planner Greg Tansley

- Old Orchard Beach Town Manager Steve Guntz
- Old Orchard Beach Town Planner Gary Lamb
- Kathleen Leyden from State Planning Office Coastal Program
- Deirdre Gilbert from Maine Dept. Marine Resources
- Carol Dibello and Dan Prichard from Dept. of Conservation Submerged Lands Office
- Old Orchard Beach Town Council appointed citizen members Dan Blaney, Gary Curtis, Dave Spellman, Phil Denison, Cheryl Pouloupoulos and Bud Harmon
- Matt Nixon, State Planning Office
- Sandra Guay, Saco Resident and local attorney

**REPRESENTATIVE GEORGE HOGAN:** He thanked Gary Lamb and the Committee for the excellent job they did as well as appreciation to Bob Hamblin of Saco. He expressed the necessity to understand where we are at this point and that the question of ownership and jurisdiction needs to continue to be addressed and as a result he has reinstated his bill with the State so that if needed it can be addressed in this fashion. He insisted that no community should have the right to make decisions over the welfare of future of another community and that is what was attempted in this whole situation with the Marina. He indicated that if there's a chance in the future for another offshore development it needs to be controlled by the law and not personal agendas of another municipality. He said that we, Old Orchard Beach, should have the opportunity to say 'yes' or 'no'. Nobody else has that right he indicated.

**PHIL DENISON:** Expressed also his appreciation for the service of the Committee on which he served and indicated that this is a very complicated issue that has to be settled one way or the other and what the Committee has determined and prepared in their report is just the beginning of this project for consideration.

**SHAWN O'NEILL:** I wish to express appreciation to the Committee for the excellent job they have done and I believe we as a Town Council should acknowledge in a resolution the work of the Committee and our support of their findings.

**JAMES (BUD) HARMON:** He as the Executive Director of the Chamber indicated what an important issue this is to the community of Old Orchard and its future. He also encouraged the Town Council to acknowledge this report and provide a resolution to that effect.

**COUNCILOR DAYTON:** She expressed her appreciation for the work of the Committee and the very professionally written report deserves our praise and consideration. I would like to know the cost involved by the people of Old Orchard Beach since as had been indicated Saco has spent nothing on getting the answers to the questions that were asked.

**GARY LAMB:** We have spent about \$4,000 with our attorney and the equal amount of staff time if not more.

**COUNCILOR DAYTON:** I would also include in that the hours that volunteers on the Committee have provided to this work for that indeed is a cost that cannot be missed as well.

**CHAIR MACDONALD:** She expressed appreciation to all concerned and asked the Town Manager to see that a Resolution was prepared for the next Town Council meeting.

**ACCEPTANCE OF MINUTES:** Town Council Minutes of December 16, 2008; Town Council Workshop of December 16, 2008.

**MOTION:** Councilor O'Neill motioned and Councilor Dayton seconded to accept the Minutes of the Town Council Meeting of December 16, 2008.

**VOTE:** Unanimous.

**MOTION:** Councilor O'Neill motioned and Councilor Dayton seconded to accept the Minutes of the Town Council Workshop Meeting of December 16, 2008.

**VOTE:** Unanimous.

**BUSINESS LICENSES:** BIG Properties, Inc. (205-13-9), 39 & 41 Portland Avenue, two year round rentals; Brian & Norma Bulmer (210-2-40), 7 Dewey Avenue, one year round rental; and Stan Defreese (315-20-6), 62 Union Avenue, one year round rental.

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

**VOTE:** Unanimous.

**TOWN MANAGER'S REPORT:** He reported on upcoming issues being addressed by the Town. He mentioned that the day before New Year's the Town Hall's furnace went down and parts needed to be replaced. He mentioned the upcoming workshop on the ballpark committee at which time he will give an update on his presentation of selection of members of this Committee. He also wished to citizens and Council a very successful and prosperous new year.

**NEW BUSINESS:**

**# 5099 Discussion with Action:** Amend the General Assistance Ordinance.

**BACKGROUND:** These are difficult days for our community. The needs of many citizens who have never felt the need to ask for assistance have come to the General

Assistance office already and no doubt the need will continue as a result of our economic situation. There is a combined effort by many organizations within our community such as The Salvation Army, the Methodist Church, St. Margaret's Church, Veteran's organizations, efforts by school groups and individual citizens are making a difference. Our own Council Chair has suggested combined community efforts ensuring that all citizens in need will be assisted in these difficult times. The Administration itself has made a continual effort to make citizens aware of programs for heating and other assistance is available and the means to apply. The State sets standards for assistance but our General Assistance office also provides information and assistance in making sure that all citizens are assisted when in need.

**EXHIBIT: NOTICE OF PUBLIC HEARING  
MUNICIPAL OFFICERS OF THE TOWN OF  
OLD ORCHARD BEACH**

The Municipal Officers of the Town of Old Orchard Beach, Maine hereby give Public Notice that there will be a Public Hearing held at the Town Hall, Council Chambers, on December 2, 2008 at 7:00 p.m. to consider the following:

Shall the Town Council of the Town of Old Orchard Beach amend the General Assistance Ordinance by changing the dollar amounts allowed for Basic Necessities; Maximum levels of assistance, adopting the underscored amounts, as follows:

**Amend Section 6.8 Basic necessities; Overall maximum levels of assistance**

No. in Household	CURRENT WEEKLY	<u>PROPOSED WEEKLY</u>	CURRENT MONTHLY	<u>PROPOSED MONTHLY</u>
1	\$185.00	<u>\$189.75</u>	\$740.00	<u>\$759.00</u>
2	\$220.00	<u>\$225.75</u>	\$880.00	<u>\$903.00</u>
3	\$285.00	<u>\$292.50</u>	\$1140.00	<u>\$1170.00</u>
4	\$359.00	<u>\$368.25</u>	\$1436.00	<u>\$1473.00</u>
5	\$385.00	<u>\$394.75</u>	\$1539.00	<u>\$1579.00</u>

**Amend Section 6.8 a) Food**

No. of Household	CURRENT WEEKLY	<u>PROPOSED WEEKLY</u>	CURRENT MONTHLY	<u>PROPOSED MONTHLY</u>
1	\$37.67	<u>\$40.93</u>	\$162.00	<u>\$176.00</u>
2	\$69.30	<u>\$75.12</u>	\$298.00	<u>\$323.00</u>
3	\$99.07	<u>\$107.67</u>	\$426.00	<u>\$463.00</u>
4	\$126.05	<u>\$136.74</u>	\$542.00	<u>\$588.00</u>
5	\$149.53	<u>\$162.33</u>	\$643.00	<u>\$698.00</u>
6	\$179.53	<u>\$194.88</u>	\$772.00	<u>\$838.00</u>
7	\$198.37	<u>\$215.35</u>	\$853.00	<u>\$926.00</u>
8	\$226.74	<u>\$246.05</u>	\$975.00	<u>\$1,059.00</u>

**Increase Additional persons from \$122.00 to \$132.00 per month.**

**MOTION: Councilor O'Neill motioned and Councilor Tousignant seconded to Amend the General Assistance Ordinance."**

**VOTE: Unanimous.**

**# 5100 Discussion with Action: Affirm the appropriations \$706,058.00 in account 10013/30101, Designated Fund Balance as of June 30, 2008 as follows: Account 21003/50800 - CDBG Grant Town Share \$25,000; 21003/50810 Stormwater West Grand \$10,638.00; 21003/50833 Temple/Manor Improvements Expense \$56,900.00; 21003/50886 Little River/Jones Creek Flood Mitigation \$12,520.00; 21003/50862 Smithwheel Outlet Project \$47,180.00; 21003/50885 PWD Catch Basin/Vac All \$100,100.00; 21004/50871 WWTP Capital \$425,000.00; and 21005/50838 Memorial Park \$28,720.00.**

**21003/50800 CDBG Grant Town Share \$25,000;**

- **The CDBG Grant Town Share is for the match money for Staples St sidewalk.**

**21003/50810 Stormwater West Grand \$10,638.00;**

- **The Stormwater West Grand is the balance of the original \$25,000 appropriated to study the stormwater problem on West Grand Ave. This account ties into the new Bond Issue Project for West Grand.**

**21003/50833 Temple/Manor Improvements Expense \$56,900.00;**

- **The Temple/Manor Improvements is for the project that was completed this summer on Temple Ave. The project had begun at year end, but was not complete.**

**21003/50886 Little River/Jones Creek Flood Mitigation \$12,520.00;**

- **The Little River/Jones Creek Flood Mitigation was originally designated in FY08 for \$93,000. The \$12,520 is the balance in this account that will be spent on small mitigation projects in the upstream watershed.**

**21003/50862 Smithwheel Outlet Project \$47,180.00;**

- **The Smithwheel Outlet Project is funds set aside for intersection work on Smithwheel Rd and the Spur.**

**21003/50885 PWD Catch Basin/Vac All \$100,100.00;**

- **The PWD Catch Basin/Vac All was budgeted in FY 06 to purchase a Truck to clean the catch basins. It was decided to lease/purchase this vehicle, which we did in FY07. The lease/purchase payments are \$34,234.78 per year. We have carried forward the amount in this account each year to pay these payments. When this money is gone, this will be budgeted under Debt Service.**

**21004/50871 WWTP Capital \$425,000.00;**

- The WWTP Capital is money that has been carried forward for about 4 years. During the budget process last year, approval was given to proceed with 2 projects, the SCADA System and the Comprehensive Facilities Study. Any balance left in this account would be used for future projects as they arise.

**21005/50838 Memorial Park \$28,720.00.**

- The Memorial Park money is money that was set aside for the Conservation Commission to use to get the park back in shape during the spring and summer of '08. This work was done throughout the summer.

**EXPLANATION of Item #5075:**

*These are previously Designated Funds from FY08 (past Budget Year) for Capital Improvement / Equipment projects that are in process and anticipated to be done in FY09 (current Budget Year). These are balances at the FY08 year end 6/30/08 that need to be re-designated now for accounting/audit purposes to move them into FY09 consistent with the Budgetary intent. These are not new projects nor do they represent additional money over the current Budget. Once these re-designations are approved by the Town Council, any \$ left in these accounts at year end will lapse into the General Fund unless they are re-designated again in FY10 next year.*

**MOTION:** Councilor Tousignant motioned and Councilor Dayton seconded to Affirm The appropriations \$706,058.00 in account 10013/30101, Designated Fund Balance as of June 30, 2008 as read.

**VOTE:** Unanimous.

# 5101 Discussion with Action: Transfer \$349,900.00 from account 10013/30300, Undesignated Fund Balance to account 10013/30301, Designated Fund Balance as of June 30, 2008 for the following accounts and purposes: 21001/50802 Comprehensive Plan \$10,000.00; 21001 /50856 Computer System-Assessing 21001/50856 \$5,900.00; 21003/50507 PW Road Maint/Improvement Non-Cap \$115,000.00; 21003/50508 Sewer Maint/Improve Non-Cap \$33,000.00; 21003/50826 PW Building Improvements \$35,000; 21004/50871 WWTP Capital \$160,000.00.

**BACKGROUND:**

**21001/50802 Comprehensive Plan \$10,000.00;**

- The Comprehensive Plan money will be used along with the FY 09 budgeted money to begin the process of updating the Town's Comprehensive Plan.

**21001/50856 Computer System-Assessing \$5,900.00;**

- The \$5,900 for the Assessing Department will be used to finish the work that has been started to transfer all Personal Property Tax records from MUNIS to VISION (which is the same program that is used for Real Estate).

**21003/50507 PW Road Maint/Improvement Non-Cap \$115,000.00;**

- The PW Road Maint/Improvement money was for Temple Ave and other small projects around town that were done this past summer.

**21003/50508 Sewer Maint/Improve Non-Cap \$33,000.00;**

- The Sewer Maint/Improvements were for the completion of the Foote St and Imperial St sewer projects.

**21003/50826 PW Building Improvements \$35,000;**

- The PW Building Improvements was for work done at the Sand/Salt Facility and DPW Building.

**21004/50871 WWTP Capital \$160,000.00.**

- The WWTP Capital is to be used for the same type of projects as listed above.

**EXPLANATION of Item #5076:**

*These are Undesignated Funds from FY08 (past Budget Year) in the Operating Budget which were Budgeted for special projects, some of which are not completed but anticipated to be done in FY09 (current Budget Year). These are balances at the FY08 year end 6/30/08 that need to be earmarked (i.e. designated) now for accounting/audit purposes to move them into FY09 consistent with the Budgetary intent. These are not new projects nor do they represent additional money over the current Budget. Once these designations are approved by the Town Council, any \$ left in these accounts at year end will lapse into the General Fund unless they are re-designated again in FY10 next year.*

**Why are dollars needed for projects already done?**

Paid invoices toward completed projects were already coded to the correct account, but it results in a negative balance until the designation or re-designation of that account occurs, which will replenish the particular account from the General Fund Balance (i.e. the Surplus will look artificially higher if this procedure is not done). The authorization to designate or re-designate the appropriate funds is not a request for project approval nor for additional money, as these are already budgeted projects at a specific amount. It merely affects the accounting status of each fund bringing it into alignment with the budget intention. Any projects that might require Council approval will still come before the Council separately as needed for the appropriate approval for any necessary bid awards or expenditure of funds over the \$5,000 threshold (as our purchasing policy stands now).

**If a project has leftover money in its balance, what will that be used for?**

Dollars will be lapsed (i.e. expired for the designated use) and automatically revert to the General Fund Balance, with the source account closed.

**MOTION:** Councilor Dayton motioned and Councilor Tousignant seconded to Transfer \$349,900.00 from account 10013/30300, Undesignated Fund Balance to account 10013/30301, Designated Fund Balance as of June 30, 2008 for the following accounts and purposes as read.”

**VOTE:** Unanimous.

**# 5102 Discussion with Action: Approve a Standing Order Authorizing the Town Manager to Execute No-Action Letters as it regards Mislocated Buildings.**

**BACKGROUND:** The Code Enforcement Officer, Mike Nugent, has provided the information below on this No-Action Letter request regarding Mislocated Buildings.

**October 7, 2008**

**To: Steve Gunty/Town Manager  
From: Mike Nugent/Code Enforcement Officer**

**Re: Mislocated buildings**

From time to time, this office has run into buildings that were inadvertently placed too close to lot lines. We currently have one at 186 West Grand Ave. that was built in 2004 that is only 16 feet from the rear line, when it should be 20 feet.

Because it doesn't qualify for a Variance from the ZBA, we consulted the Town attorney and here was his response:

“These situations are generally driven by the banks and mortgage companies and their colleagues at title companies. Some are satisfied with a no-action letter, some with a consent agreement, and others want the court judgment. In my experience, the insistence on a court judgment is relatively rare. It is a somewhat cumbersome process, and there's no guarantee a judge will sign off on it--particularly if it starts to become a routine request. The only practical difference between a consent agreement and a consent order is that the latter has to be signed by a judge. So I would suggest a kind of sequencing process, where the town first offers a no-action letter, then a consent agreement if the no-action letter doesn't work, leaving the agreed-upon Rule 80K proceeding as the last resort.

I don't think the code enforcement officer should be signing no-action letters, because it is the Council which ultimately decides whether or not to commence enforcement litigation. However the Council could pass a standing order allowing the town manager to execute no-action letters. That's the approach Scarborough took a number of years ago.

If this is a recurring problem, the town might also want to think about putting a kind of amnesty clause into the ordinance, for buildings constructed pursuant to building permits

before a certain date, or in existence for a certain period of time. The subdivision statute, for example, now has a 20 year period after which no enforcement action can be taken.

It seems that the option in bold would seem to make the most sense. Please let me know if you have any questions.”

**THIS WILL BECOME PART OF THE TOWN COUNCIL’S POLICIES AND PROCEDURES AND NOT AN ORDER.**

The Town Council will issue a “no action” letter indicating that the Town will take not enforcement action concerning an existing building located in violation of the setback requirements of the Old Orchard Beach Zoning Ordinance, under the following conditions:

1. The no action letter is requested by or on behalf of a property owner who is selling, financing or refinancing the subject property;
2. The setback violation has not been the subject of any prior notice of violation or other enforcement activity by the Code Enforcement Officer;
3. The Code Enforcement Officer agrees with the issuance of the no action letter;
4. The building has existed in its current location for at least 20 years prior to the date of the no action letter; and
5. No portion of the building extends into the right of way of a public road or onto abutting property.

Date: January 6, 2009

**COUNCILOR O’NEILL:** He indicated that the Council has had this ability and responsibility and saw no need for this agenda item.

**COUNCILOR TOUSIGNANT:** He recommended that a possible “amnesty” clause be included in an ordinance.

**MIKE NUGENT:** He indicated he would work on an amnesty clause in an upcoming ordinance change.

**MOTION:** Councilor Tousignant motioned and Councilor Dayton seconded to include in Town Council Rules and Procedures Authorizing the Town Council to Execute No-Action Letters as it regard to Mislocated Buildings.

**VOTE:** Unanimous.

**# 5103 Discussion with Action: Approve Code Enforcement Officer as Representative to the Town in Initiating District Court Actions under Rule 80K for certain Code Violations without Assistance of Town Attorney.**

**Background: The following information has been provided by the Code Enforcement Officer.**

**RE: Request to represent the Town in initiating District Court action for certain Code violations without the assistance of the Town's Attorney.**

**Court action is always the absolute last resort in settling code violations. Voluntary compliance is always the goal, but in some cases, even after exhaustive efforts, this is not possible. The following is an outline of a fast, inexpensive solution to these challenges.**

**The Maine Rules of Civil Procedure were amended to include Rule 80K. Rule 80K provides a simpler, speedier and less costly procedure for the prosecution of land use violations. The system authorizes certified non-lawyer employees (as well as lawyers) to represent municipalities, the ("DEP") and the Maine Land Use Regulation Commission ("LURC") in the prosecution of land use violations.**

**The Following is a list of the violations that can be handled through Rule 80K:**

- Subsurface wastewater disposal rules adopted by the Maine Department of Health and Human Services;**
- Local land use and zoning ordinances and other local ordinances, e.g., junkyards, automobile graveyards, electrical installations, plumbing, subsurface waste water disposal;**
- The subdivision law;**
- Laws pertaining to public water supplies;**
- Laws administered by health officials;**
- Laws pertaining to fire prevention and protection;**
- Laws pertaining to the construction of buildings for the physically disabled;**
- Local building and housing codes;**
- Shoreland zoning ordinances;**
- Laws pertaining to harbors;**
- Natural resources protection laws;**
- The state junkyard and automobile graveyard statute.**

**I have had this certification for nearly two decades and have represented Maine communities including Old Orchard Beach in District Court. Rule 80K provides a "Summary Procedure," which means it moves faster than other court proceedings. The violator can answer the Complaint orally in court rather than in writing, and the court can decide the main issues of the case with a minimum amount of formality. That reduces the time and expense involved, without sacrificing the due process rights of the person accused of the violation.**

**As we learned with a recent Town case, the Attorneys costs quickly reached \$10,000.00 and the Court awarded about 25% of that to the Town. These costs continue to escalate as the case moves forward. This expense would not have occurred had we used this process. Attached is a copy of my Certification and the empowerment letter that the Town Council signs to authorize my representation in these matters.**

**MIKE NUGENT:** He gave a very thorough reasoning for this agenda item and also the ability of the Town to save a great deal of money on the attorney fees that would be required if the attorney had to handle issues.

**COUNCILOR TOUSIGNANT:** He suggested that this be tabled so it could be brought up at a Workshop.

**MOTION:** Councilor Tousignant motioned and Councilor O'Neill seconded to Table Agenda Item 5103 to Approve Code Enforcement Officer as Representative to the Town in Initiating District Court Actions under Rule 80K for certain Code Violations without Assistance of Town Attorney.

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

**#5104** Discussion with Action: Include in Town Council Rules and Procedures a Town Manager's Report as part of Regular and/or Special Council Meetings as needed.

**Background:** This is a Housekeeping item to add this agenda item as part of the Town Council Rules and Procedures.

**MOTION:** Councilor Dayton motioned and Chair MacDonald seconded to include in Town Council Rules and Procedures a Town Manager's Report as part of Regular and/or Special Council Meetings, as needed.

**VOTE:** Unanimous.

**GOOD AND WELFARE:**

**ROGER PAINCHAUD:** He spoke of having lived in Old Orchard Beach for several years before moving to Biddeford and has always appreciated the excellent school system for not only its scholastic expertise but its musical and athletic program. He talked about the deterioration of the track field and other school properties and encouraged the Council to protect the assets of the school for the future. He indicated that it was his opinion that the schools could be closed in five years. He spoke for a lengthy time repeating often the same information about history and background of the school and the fine program it has presented to this community.

**ADJOURNMENT:**

**MOTION:** Councilor O'Neill motioned and Councilor Tousignant seconded to adjourn the Town Council Meeting.

**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 seventeen (17) pages is a true copy of the original Minutes of the Town Council Meeting of January 6, 2009.  
V. Louise Reid**