

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL MEETING
Tuesday, December 20, 2011
TOWN HALL CHAMBERS
7:00 p.m.**

A Town Council Meeting of the Old Orchard Beach Town Council was held on Tuesday, December 20, 2011. Chair Quinn opened the meeting at 7:03 p.m.

The following were in attendance:

**Chair Bob Quinn
Vice Chair Michael Tousignant
Councilor Sharri MacDonald
Councilor Robin Dayton
Councilor Michael Coleman
Town Manager Jack Turcotte
Assistant Town Manager V. Louise Reid**

**Pledge to the Flag
Roll Call**

PRESENTATION:

**Fiscal Year Audit Report by
Roger Lebreux from Runyon, Kersteen & Ouellette.**

Auditor Roger Lebreux of Runyon, Kersteen & Ouellette presented the result of the end of the year June 30, 2011 Audit report to the Town Council. He indicated they have audited the financial statements of the governmental activities, business-type activities, each major fund, and the aggregate remaining fund information of the Town for the year ending June 30, 2011. This presentation is intended as a tool to assist the Town Council and management in understanding its financial operating results.

SUMMARY OF SIGNIFICANT CHANGES

Assets

- ❖ **Cash and Investments have decreased over last year by approximately \$2.5 million. This is due to the use of unspent bond proceeds for the new police station.**
- ❖ **Outstanding taxes were comparative to prior year. The collection rate was consistent with that of prior year as well.**
- ❖ **Accounts receivable and inventory remained consistent with prior year. Inventory consists of fuel and trash bags which are held for resale.**

Liabilities

- ❖ **Changes in accounts payable are a result of the timing of payments at year-end.**
- ❖ **Accrued wages represent payroll earned during the fiscal year, but paid in months subsequent to year end. Accrued wages decreased approximately \$115k in FY'11. This decrease represents the decrease in the number of days accrued as compared with 2010.**

- ❖ Deferred tax revenue represents taxes still unpaid 60 days after the end of the year. This amount increased \$161k over 2010.
- ❖ Due to RSU 23 represents amounts due to the school unit as a result of the transfer of the school portion of assets and liabilities.

General Fund - Equity

- ❖ Non-spend able fund balance represents the amount of inventory that is reserved.
- ❖ Unassigned fund balance decreased by \$252k from 2010 to 2011.
- ❖ Assigned fund balance increased from 2010. This represents the amount of current year encumbrances.

General Fund- Revenues

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
Property taxes	\$19,928,106	\$19,799,945	\$(128,161)
Excise Taxes and other	1,626,000	1,621,199	(13,801)
Licenses and Permits	909,100	920,275	11,175
State Revenue Sharing	675,000	596,045	(78,955)
Other intergovernmental	261,000	239,073	(21,927)
Other	20,000	50,654	30,654
Interest	100,000	20,662	(79,338)
Total Revenue	\$ 23,519,206	\$ 23,238,853	\$(280,353)
Utilization of Surplus	1,058,416	--	(1,058,416)
Transfers In	522,000	522,000	--
Total Revenues and Other Sources	\$25,099,622	\$ 23,760,853	\$ (1,338,769)

SUMMARY OF SIGNIFICANT VARIANCES

- ❖ Tax revenues were under budget due to the change in deferred taxes.
- ❖ State Revenue sharing was under budget due mostly to state projections being over estimated.
- ❖ Licenses and permits came in over budget due mostly to higher than expected number of business licenses issued.
- ❖ “Other” came in over budget due to unanticipated FEMA reimbursement as well as a dividend from workers compensation.
- ❖ Interest was under budget due to lower interest rates.

General Fund Expenditures

	<u>Budget</u>	<u>Actual</u>	<u>Variance</u>
General Government	\$ 2,068,205	\$ 1,961,463	\$ 106,742
Public Safety	4,538,001	4,530,704	7,297
Health & Welfare	102,990	106,693	(3,703)
Recreation, Culture & Agencies	629,849	636,436	3,523
Education	9,303,600	9,399,388	(95,788)
Public Works	1,546,329	1,460,841	85,488
Sanitation	1,739,670	1,708,383	31,287
County Tax	777,785	777,785	—
Abatement, Write	100,000	25,736	74,264

Debt Service	2,314,495	2,154,389	160,106
Capital Outlays	1,978,698	1,228,394	750,304
Total Expenditures	\$ 25,099,622	\$ 23,980,102	\$ 1,119,520
Transfer Out	—	(25,000)	(25,000)
Total Expenditures and other financing uses.	\$25,099,62	\$23,955,102	\$ 1,094,520

SUMMARY OF SIGNIFICANT VARIANCES

- ❖ General government was under budget due to the vacancy in the planning department. The position was vacant for half the year. There was also unused contingency account for approximately \$11K.
- ❖ Debt service was under budget due to budgeting for a debt payment for the new police station, the timing was off.
- ❖ Capital outlays came in under budget. These represent large on-going projects as well as amounts being spent from fund balance. A detail of the individual projects are listed on page 48 of the financial statements.

SUMMARY OF SIGNIFICANT CHANGES

- ❖ The collection rates for the past ten years have consistently averaged between 96-97%.
- ❖ Tax rates in Old Orchard Beach decreased substantially in 2003 and 2006 due to revaluations. Since then tax rates have remained fairly consistent from year to year.

The Auditor provided a tax collection chart comparing Old Orchard Beach to other Cities. He also showed a chart regarding property tax rates showing that since 2002 the tax rate for the most part has fallen. Again he compared our tax rates to other cities; ours being lower than Saco, Biddeford, and Gorham. Windham being lower than Old Orchard Beach's \$13.40. A fund balance analysis was also given depicting unassigned, assigned and non-spend able funding.

Net Assets showed the following:

	In Thousands		
	Inv. In Capital – Net of Debt	Restricted	Unrestricted
Governmental	\$8,053	\$3,023	\$ 2,280
Business-type	326	--	(21)

OBSERVATION

- ❖ Significant GASB 34 adjustments have been made to the fund financial statement to arrive at these amounts. These adjustments include: recording capital assets, eliminating inter-fund balances, eliminating deferred revenue, and recording long term liabilities (debt, capital leases, accrued wages, etc.).
- ❖ Fund balance provides working capital for the Town and enhances its credit worthiness.
- ❖ Credit agencies typically look for a minimum ratio of unassigned fund balance to budget of 20%. RKO recommends one and a half to two months of expenditures which equals 12.5% to 16.66%.

- ❖ Old Orchard Beach issued debt under a sewer revolving loan fund in 2010, but the funds were not drawn until 2011. No other new debt was issued.
- ❖ Debt per capita has decreased slightly through 2008. For the years 2009 – 2011, there has been a slight increase due to new debt issues for the new police station and sewer fund.
- ❖ Bonding agencies typically like this number to be \$2,000 or less.

There were questions raised by the Councilors relative to debt to capital and it was noted that it was not adjusted for inflation. Questions were asked and explained about the process of the fund balance and internal controls as well as internal weaknesses. It was indicated that the question of cross training had been addressed but needed continual follow up in the coming year. The question of purchasing issues was discussed in detail with the anticipation that the approval of a new purchasing procedure will address some of the serious concerns raised by Council. It was noted that there was a letter of concern from the Chair to the Auditor and as a result additional testing was done and will continue to be done in the New Year particularly because of the passage of a new policy on purchasing. In discussion of the budget it was noted that the process of allocating finite resources requires the priority of needs of the municipality and that the administration is encouraged to recognize that it is the legal responsibility of the Council to designate how money is to be spent and to match governmental resources with entity needs. Line item budget is required by the new Charter and as such will be required in the budget process. It is used because it is simplistic and it offers flexibility, detailing historical expenditures and revenues by categorizing organizational units. The Auditor stipulated again that the audit testing and procedures assessed the accuracy of financial assertions and that it provided substantive tests and internal controls.

ACKNOWLEDGEMENTS:

CHAIR QUINN: It was the pleasure this evening for the Town Council to greet members of many of our Boards and Committees and thank them for their service to the municipality and to the citizens of our community. Without their support we would not be able to carry forth the activities of the community which benefit us all. There are some openings for positions on Committees and if there is an interest we would ask you contact our Town Clerk.

VICE CHAIR TOUSIGNANT: We would encourage and invite everyone to participate in the OOB New Year's Eve Celebration at the Square on New Year's Eve starting at 4:30 p.m. We have an enjoyable time including fireworks and a bonfire and the opportunity to greet one another. It is a great activity for our children to participate in this important end of a year and looking forward to a new year. The Town Council wishes all citizens a Happy New Year.

ACCEPTANCE OF MINUTES: Town Council Workshop Minutes of November 29, 2011; Town Council Meeting Minutes of December 6, 2011; Special Town Council Meeting Minutes of December 7, December 13, and December 14, 2011.

MOTION: Councilor MacDonald motioned and Councilor Dayton seconded to Accept the Town Council Minutes as read.

VOTE: Unanimous.

PUBLIC HEARING BUSINESS LICENSES AND APPROVAL:

CHAIR QUINN: I open this Public Hearing at 7:52 p.m.

Dunegrass LLC dba/Dunegrass Golf LLC (105A-1-200), 65 Wild Dunes Way, Victualers with Preparation, with Beer, Wine or Liquor on Premise; Retail; Rental of Merchandise; Kevin Edward Savage (309-4-7), 8 Walden Avenue, one year round rental; Mike Tikonoff (318-8-6-51), 146 West Grand Avenue, Unit 51, one year round rental; and Ronald & Diane Allen (318-8-6-84), 146 West Grand Avenue, Unit 84, one year round rental.

CHAIR QUINN: I close this Public Hearing at 7:53 p.m.

MOTION: Councilor Coleman motioned and Vice Chair Tousignant seconded to Approve the Business licenses as read.

VOTE: Unanimous.

PUBLIC HEARING AMUSEMENT PERMITS:

CHAIR QUINN: I open this Public Hearing at 7:53 p.m.

Dunegrass Golf LLC (105A-1-200), 65 Wild Dunes Way, Live Music piped-in, outside and inside, 8:00 a.m. to 1:00 a.m.

CHAIR QUINN: I close this Public Hearing at 7:54 p.m.

MOTION: Councilor Coleman motioned and Councilor MacDonald seconded to approve the Amusement Permits as read.

VOTE: Unanimous.

PUBLIC HEARING LIQUOR LICENSE:

CHAIR QUINN: I open this Public Hearing at 7:54 p.m.

Dunegrass Golf LLC (105A-1-200), 65 Wild Dunes Way, s-m-v in a Restaurant and Golf Club.

CHAIR QUINN: I close this Public Hearing at 7:55 p.m.

MOTION: Councilor Coleman motioned and Vice Chair Tousignant seconded to approve the Liquor License as read.

VOTE: Unanimous.

TOWN MANAGER'S REPORT:

- 1. As you remember I was able to secure a retired school bus from the RSU. It is in great shape and ready for use. It is still painted school house yellow. I have found a body shop in Arundel that will paint the bus for about \$2,500 – white with blue matching. Some white areas could be big enough for a local artist to paint an Old Orchard sea waves, Ball Park or whatever. Champion Auto will reduce the cost of the project if they can advertise on the bus. I personally know of other people in Town that would advertise if given a chance. Does the Council have any problems with advertising on the bus that would reduce the cost of painting out the school bus yellow? I went down to look at the Arundel Recreation bus painted red and white and it looks sharp. I then talked to Champion Auto and basically got the same deal.**
- 2. We are meeting with bidders who bid on the water proofing of the Fire Station. All bidders suggested exploring a new membrane-like product that would have a twenty-five year warrantee. (We did not spec the product – we only specked a waterproof sealer. The product cost a little more than a normal waterproof product. We asked all three bidders to quote and add an alternative to their original bid. We should have new figures and a bid recommendation for the January 3rd agenda.**
- 3. I have been meeting with the Ballpark engineer regarding the structural concerns as well as different contractors specializing in concrete rest ruction.**
- 4. Met with the RSU administration and the local Survey Company and started the work on the property lines and deeds between the Town and the RSU property.**
- 5. Met several times with the new Financial Director on Financial issues.**
- 6. Have sent out an RFP for propane gas asking for a percent of rack or rail price quotes to be opened on January 26th at noon.**
- 7. I have started discussing and meeting with the Library Trustees looking into the next steps in the building project. I am meeting with the Bond Counsel on January 10th to review the legal processes dealing with construction. The Library Trustees are meeting with me frequently on Wednesday afternoon.**
- 8. Meeting tomorrow on the drafting of an RFP for the Downtown Summer Cleaning Contract.**
- 9. Warming Shelter at the High School.**
- 10. Would like to wish the community, the Council and our staff a Happy Holiday.**

NEW BUSINESS:

5540 Discussion with Action: Approve the Special Event Permit application for the New England Parkinson's Ride to hold their annual Bike Ride on Saturday, September 8th, 2012, from 6:30 a.m. to 5:00 p.m. beginning at Loranger School and ending in the Square. Insurance, listing the Town as additionally insured, to be provided to the Town Clerk's Office at least one week prior to the event. Request to place a banner in the Square on the date of the event; and a request to waive the fee.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Approve the Special Event Permit as read.

VOTE: Unanimous.

5541 Discussion with Action: Council review of the first draft of the proposed Facility Use Agreement and License with Summer Collegiate Baseball for use of the Old Orchard Ballpark for the 2012 season; authorization of the Town Manager, in consultation with staff, the Town Attorney and the Ballpark Commission to incorporate Council changes into the draft and then to forward the agreement to Summer Collegiate for comment and consideration.

TOWN MANAGER: As a result of our last Town Council Meeting, below is the draft Agreement.

BALLPARK FACILITY USE AGREEMENT AND LICENSE

For good and valuable consideration, agreement made this ____ day of _____, 2012 between the Old Orchard Beach Collegiate Baseball Club, Inc., with address _____, a _____ Corporation organized and operating under the laws of _____, ("Collegiate", individually a "Party") and the Town of Old Orchard Beach, a Maine municipal corporation with Town Hall address of 1 Portland Avenue, Old Orchard Beach, Maine (the "Town", individually a "Party", and with Collegiate hereinafter collectively the "Parties") for the purpose of licensing the use of the Old Orchard Beach Ballpark and authorizing certain related activities under the terms set forth herein (the "Agreement").

1. The Facility. The Town owns and operates a public facility consisting of an outdoor stadium facility located at 14 Emerson Cummings Boulevard in the Town known as the Old Orchard Beach Ballpark (the "Ballpark"). The Ballpark consists of a stadium set up for baseball events with stands, a baseball playing field with diamond, bases, fencing, lighting and dugouts; associated parking areas; a clubhouse with offices and locker rooms; restroom facilities and a concession stand. The Town holds certain events at the Ballpark and licenses the facility to various athletic and other groups for purposes of hosting athletic or other outdoor gatherings.

2. Old Orchard Beach Collegiate Baseball Club, Inc. Collegiate is a baseball team [to be formed] and that will participate in the Futures Collegiate Baseball League. Collegiate wishes to establish Old Orchard, Maine as their home community and to enter into a license arrangement with the Town to use the Ballpark as Collegiate's home stadium for the 2012 and 2013 Seasons.

3. Term of the Agreement and Event Scheduling. This Agreement is for two terms, the first term commencing on June 1, 2012 and ending July 31, 2012 and the second term commencing on June 1, 2013 and ending on July 31st 2013. is the terms have been set to accommodate Collegiate's expected 27 regular home games and up to 3 additional and to be determined special events (individually the "2012 Season" and the "2013 Season", as appropriate "the Season", and collectively "the Seasons"). The home game schedule for Collegiate for the Seasons shall be set and approved in consultation with the Ballpark General Manager on or before March 1st preceding the respective Season. Collegiate may request permission from the Town to conduct or sponsor three non-game events during the 2012 and 2013 Seasons. Such conducted or sponsored events shall not conflict or interfere with Town sponsored events and must be requested and before March 1st preceding the respective Season, 2012. The terms may be extended by the Parties or renewed for an additional one year season under the terms of Paragraph 14, below.

4. Non-exclusive Use and Scheduling of the Ballpark. The use of the Ballpark by Collegiate during the 2012 and 2013 Season shall not be exclusive. Town reserves the right, and Collegiate agrees that the Town has the right, to schedule other events at the Ballpark at any time when Collegiate do not have a home game during the 2012 and 2013 Seasons. In addition, the Town reserves the right, and Collegiate acknowledges and approves of the Town's right, to use the Ballpark for the previously scheduled events by other users as set forth in Schedule A, attached hereto, and as may be established by the Town for the 2013 Season.

The Town pledges to cooperate with Collegiate in scheduling other currently unscheduled events at the Ballpark and to attempt to reasonably accommodate the practice days, rain make up days and any post season games of Collegiate. The Town otherwise reserves its right, and Collegiate acknowledge the Town's right, to schedule other events and users for the Ballpark following the Town's receipt and setting of the schedule for Collegiate's home games for the 2012 and 2013 Seasons, (the "Schedule").

5. User Fee, Deposit and Ticket Sale Payments to the Town.

A. User Fee. For the privilege of using the Ballpark as Collegiate's home stadium for the 2012 and 2013 Season, Collegiate will pay the Town a user fee of \$15,000.00 (the "User Fee") for each Season. The User Fee shall be

non-refundable. B. Security Deposit. For each Season Collegiate will also pay the Town a security deposit (the "Security Deposit") of \$5,000.00. The Security Deposit will be used by the Town to address any damages and the necessary repairs to the Ballpark at the end of the respective Season as are a result of Collegiate's use of the Ballpark, the balance will be refunded to Collegiate after the Town deducts the reasonable costs of repairs for any damages to the Ballpark as may have been caused by the direct activities Collegiate or its team members, normal wear and tear excepted. The Town will refund the Security Deposit, less any deductions, on or before September 15, 2012 for the 2012 Season and on or before September 15, 2013 for the 2013 Season

C. User Fee and Security Deposit Payment Dates. Payment in the amount of \$10,000.00 of each respective User Fee and the full amount of the Security Deposit for each Season is due and to be paid to the Town on or before January 15th preceding each Season. . The balance of the User Fee, in the amount of \$5,000.00 is due and to be paid by Collegiate to the Town in full on or before May, 1st preceding the commencement of each Season.

D. Ticket Sales and Ticket Sales Payments. Collegiate shall be solely responsible for all ticket sales. The ticket sales booth shall also be available and open to the Town for its use during Town sponsored events. In addition to the User Fee, Collegiate will pay the Town \$1.00 for each person in attendance at each game or Collegiate sponsored event where the number of attendees exceeds 500 persons. Attendance numbers for each event shall be determined at the entrance gate to the stadium. Collegiate will pay any due Ticket Sales Payment to the Town within a week of the game generating the Ticket Sales Payments as are due.

6. Insurance. During the 2012 and 2013 Seasons, Collegiate agree to carry and keep at all times current, at their sole cost, the following insurance policies with the limits set forth below:

A Comprehensive General Liability Policy insuring liability and property damage against all claims and demands for any personal injury to or death of any person and damage to or destruction or loss of property which may have or be claimed to have occurred at the Ballpark in an amount not less than \$1,000,000, single limit, for injury to or death of one person, \$2,000,000 for injury to or death of more than one person in any single accident, and for not less than \$300,000 for damage to or destruction or loss of property.

During the 2012 and 2013 Seasons and for all times Collegiate have use of or access to the Ballpark, Collegiate agrees that the Town shall be listed on the required insurance policies as an additional co-insured, and further agree to require their insurer to provide to the Town certification of the required insurance and that the Town is a co-insured. Nothing in this paragraph shall

be deemed to waive any immunity available to the Town under any State or Federal law, including but without limitation the Maine Tort Claims Act, codified at 14 M.R.S.A. §§ 8101, et seq.

7. Indemnification. Each Party shall, to the fullest extent permitted by Maine law, indemnify, defend and hold harmless the other Party against all claims, losses, costs, expenses, damages, and liabilities arising from the negligence, willful misconduct or strict liability of such party, or its agents, employees, or contractors, or material breach by such party of any provision of this agreement. Notwithstanding the provisions contained in the sentence immediately preceding, the Town shall have no obligation to indemnify Collegiate for any damages or claims resulting from any act or omission for which the Town is immune under any State or Federal law, including but without limitation the Maine Tort Claims Act, codified at 14 M.R.S.A. §§ 8101, et seq. Neither Party shall be responsible or liable to the other for any claim, loss, cost, expense, damage or liability arising from any claim to the extent attributable to any acts or omissions of the other party.

8. Concessions. Collegiate shall be solely responsible to oversee and operate all of the concessions during the 2012 and 2013 Seasons and shall have the sole right of use of the concessions facility during the 2012 and 2013 Seasons. For all Collegiate events, Collegiate will keep all proceeds from concession sales. For events that the Town sponsors, Collegiate will operate all concessions and the proceeds of concession sales related to the Town event shall be divided so that the Town receives 25% of the gross proceeds of all concession sales. Payment of such concession sale proceeds as are due to the Town shall be made by Collegiate within one week following the event.

Collegiate agrees to honor all existing or future agreements with the Town's vendors serving the Ballpark. For Town sponsored events, the Town reserves the rights to use the services of any vendors, including vendors other than the vendors used by Collegiate.

The security of the concession operations and concession inventory shall be the sole responsibility of Collegiate or their agents. Collegiate may also pursue sales of team items and team souvenirs at third party locations.

Collegiate and the Town shall agree on and list in writing which Town owned equipment will be available to Collegiate for its uses for concession purposes. Such equipment used by Collegiate that needs to be replaced or repaired as a result of use during the 2012 and 2013 Seasons shall be repaired by the Town but at Collegiate's cost.

For the Period commencing January 15th preceding either Season and running to June 1st of each Season, Collegiate shall have the exclusive privilege and may engage in selling sponsorship signage to third parties for placement in the Ballpark. After June 1st of each Season, the Town has exclusive rights to sell signage. Signage currently located or to be located in

the Ballpark which acknowledges contributions or contributing parties will be maintained by the Town. Not included in and exempted from the signage areas that may be sold by Collegiate are the signage areas associated with the Ballpark scoreboard which are reserved exclusively to the Town. The Ballpark Commission retains and shall have final determination of the appropriateness of any sponsorship, the duration of the time period during which sponsorship signs may be displayed, the content and message of the signage and the location of display of any sponsorship signage within the Ballpark. The Ballpark Commission will designate a person with authority to make decisions as to appropriateness, duration, content and message of sponsorship signs, subject to review by the Ballpark Commission in the event of a dispute between the Parties. The proceeds from the sales of sponsorship signage accruing to Collegiate during the period running from January 15th and ending on June 1st for each Season shall be the sole property of Collegiate.

9. The Condition and Suitability of the Facility for the Purpose of Collegiate. Collegiate acknowledges and affirms that the condition of the Ballpark premises as of the date of execution of this Agreement is acceptable and fit for the intended purposes and uses of Collegiate during the 2012 and 2013 Seasons and hereunder. In connection therewith, Collegiate affirms and acknowledges that the Ballpark, though in reasonable repair, is an older facility and that some of the facility's elements may require ongoing maintenance, require replacement or may fail during the term, such as, but not limited to, the Ballpark lighting system and certain stadium elements. Collegiate also recognizes and agrees that the Town may, due to budgetary or other requirements, choose not to repair or replace the lighting or other elements that might become unserviceable during the term. The Ballpark, while currently operable, may therefore not remain at all time serviceable during the terms. In such event, Collegiate agrees to re-schedule its games to best suit the circumstances and in connection therewith, releases and absolves the Town from any losses or disruption related thereto. Subject to the foregoing, the Town pledges and affirms that during the 2012 and 2013 Seasons it will attempt to maintain the Ballpark in a similar or like condition and suitable for the Collegiate home games. Collegiate agrees and pledges they it will not engage in or promote any actions which may cause unnecessary degradation to the current conditions of the Ballpark, normal wear and tear excluded.

10. Use and Maintenance of the Ballpark Facilities. During Collegiate 2012 and 2013 Season home games, and other Collegiate sponsored events as may be hereafter agreed to by the Town, Collegiate shall have the exclusive use of the field and the four offices, training room and two locker rooms located in the clubhouse and the stadium. When other events are scheduled at the Ballpark, the parties holding or participating in such events shall have the full and exclusive use of the Ballpark premises with the exception of the four offices, training room and two locker rooms located in the clubhouse. The areas set aside for use by Collegiate shall be used solely for team purposes.

Collegiate shall be responsible to maintain and upkeep the fields, including prepping and dragging and the replacement of field tarps after each Collegiate game or activity so that the field and facilities are immediately available for the next event or game, whether a Collegiate or Town event; and for the sanitation of the Ballpark immediately following each Collegiate event. As part of these maintenance and sanitation responsibilities, Collegiate shall be sole responsible to supply and for the costs all required or necessary materials, equipment and supplies for such maintenance activities or for conducting Collegiate games or events such as, but not limited to, trash bags, Turface, clay, bases, line paint, related equipment, etc.

Collegiate shall also be responsible to coordinate and oversee removal of trash and for refuse removal and for the recycling of beverage containers. Beverage containers shall be removed by Collegiate from the Ballpark at least weekly; such containers not removed may be removed by the Town and any deposits related thereto will be become the property of and retained by the Town.

Specific details of maintenance and sanitation protocols and standards that Collegiate agrees to follow are set forth in Appendix B

11. Utilities and Other Expenses. The Town shall be solely responsible for maintaining the existing gas, water, sewer, internet and electricity services and utilities serving the Ballpark and paying all costs of the same during the 2012 and 2013 Seasons. Collegiate is solely responsible for all additional costs of utilities, such as propane costs used in connection with food concessions, as Collegiate may choose to use in connection with its activities.

12. Broadcast Rights, Responsibilities and Town Surveys. Collegiate shall be solely responsible for any broadcasting of games and all expenses of the same. The Town shall make available its internet service at the Ballpark to Collegiate but shall not be responsible for any interruptions in internet service or the consequences of the same to the broadcast activities of Collegiate. During the 2012 and 2013 Seasons, Collegiate, at its sole cost, will set up, maintain and update a public ally accessible website to provide information on, scheduling updates and to promote Collegiate games and activities at the Ballpark. For purposes of improving the experience and quality of activities at the Ballpark, the Town may conduct surveys of the public, attendees and Collegiate's players to secure information the experience and impressions of surveyed parties on the Ballpark, activities and all operations related to the 2012 and 2013 Seasons.

13. Early Termination. This Agreement may be terminated by either Party in the event of a material breach or other reason supporting termination. Termination shall take place upon the receipt of notice of termination to the other Party. Such notice shall be in sent by certified mail,

June 23 & 24	BBQ Festival
July 24	Legion Games 4:30 PM (Double Header)
July 26	Legion Games 4:30 PM Double Header)
July 28	Legion Games 10:00 AM to 1:00 PM
August 1-5	State Legion Tournament

The Parties acknowledge that due to these pre-existing commitments the Ballpark will not be available on these dates for exclusive use by Collegiate.

The Parties further acknowledge that, in the event Collegiate are called upon to play in post-regular season playoff or championship games, there will be a need to identify such dates during the time period of August 4, 2012 through August 11, 2012 for each of which a single game can be played by Collegiate.

The Parties agree to work cooperatively in order to schedule such post-regular season games while also accommodating the American Legion Baseball Tournament.

The Town will provide to Collegiate the dates for the activities promoted or authorized by the Town to be held at the Ballpark during the 2013 Season on or before January 15th, 2013.

SCHEDULE B

MAINTENANCE AND SANITATION PROTOCOLS

[TO BE DEVELOPED]

The Council was presented with the above updated contract/agreement which included indications of changes including a two year term; right to ask for additional third year; same user fee of \$15,000, \$10,000 down by January date with \$5,000 security deposit; signage changes, scoreboard area reserved exclusively to Town, sponsorships signs reserved to Town; no more references to “All Americans:” and Collegiate to furnish and update scheduling, promote team, etc. on the website. The attorney indicated he did not believe the Ballpark procedure and Policy needs to be part of the Use Agreement and that we should probably look at contract provisions related to signage before finalized. Still needed is the maintenance protocol terms for Exhibit B and the FCBL gift should be part of another letter of Agreement. Alcoholic Beverages sold at the Ballpark must be subject to State and local regulations and need to be covered separably in another letter of Agreement.

Consideration of adding as the Futures Collegiate Baseball League a sixth franchise team to be based in Old Orchard Beach, Maine. Chris Hall, indicated that the team will be owned and operated by a local group, the Old Orchard Beach Baseball Club. The new franchise will be playing their home games at “The Ballpark” which used to be the home of the class AAA Maine Guides (Philadelphia Phillies, Cleveland Indians). In recent years, the Ballpark underwent major renovations after sitting idle for nearly a decade. The entirety of the renovations was possible only through the volunteer work, donations, and
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determination of the local community. He indicated that "the community of Old Orchard Beach has a passion for baseball as proven by the thousands of hours dedicated to refurbishing the stadium and bringing baseball back to the town. As a league we are excited to have such a devoted group heading up the franchise and we feel that Old Orchard Beach will be an excellent addition to the Futures League." The Old Orchard Baseball Club joins an impressive FCBL owner/operator group that includes Chris Carminucci and the Carminucci Sports Group, who operate the Martha's Vineyard Sharks, Torrington Titans and the Brockton Rox, Drew Weber, who owns and operates the Red Sox short-season class A affiliate Lowell Spinners (Boston Red Sox) as well as the Nashua Silver Knights, Dave Hoyt who owns the Seacoast Mavericks in addition to USA Training Centers in Newington, NH, and John Morrison who owns and operates the newly formed Wachusett Dirt Dawgs in addition to his local business Fosta-Tek. The FCBL provides student-athletes from New England and New England Colleges the opportunity to compete and play with the elite players from across the country and to promote them to MLB organizations. Each roster must have at least half of its players from New England or from a New England University/College. In addition, the Futures Collegiate Baseball League will provide a family friendly, affordable, and fun experience for the communities that we play in, in a minor league style setting. You can visit the league's website at www.thefuturesleague.com.

The Council discussed the necessity of the Agreement coming back to Council if there are any major changes or considerations. Encouragement to pass the Agreement and moving it forward were made by individual Councilors and members of the Ballpark Commission. Concerns were raised about baseball being a viable financial consideration by the Chair and Paul Ladakakus. The encouragement of the Ballpark Commission and its volunteers resulted in comments by Council that without their support nothing would have been accomplished and that the Ballpark itself has become a valuable asset to the Town of Old Orchard Beach.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to review of the first draft of the proposed Facility Use Agreement and License with Summer Collegiate Baseball for use of the Old Orchard Ballpark for the 2012 season; authorization of the Town Manager, in consultation with staff, the Town Attorney and the Ballpark Commission to incorporate Council changes into the draft and then to forward the agreement to Summer Collegiate for comment and consideration.

VOTE: Yea: Councilors Dayton, MacDonald, Coleman and Vice Chair Tousignant.
Nea: Chair Quinn

5542 Discussion with Action: Set a Public Hearing Date of January 3, 2011 to Amend the Code of Ordinances, Division 2, Rules for Advisory Boards and Committees, Section 2-234 – Powers and Duties.

TOWN MANAGER: The Council will consider amending rules for Advisory Boards and Committees as shown:

Sec. 2-234. Powers and duties.

(a) The members of an advisory board, commission, or committee shall perform all of the duties as requested by the town council.

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- (b) Each appointee shall be sworn by the town clerk.
- (c) The alternate members of each board, commission, or committee may participate in a meeting discussion and shall have the ability to vote only if a regular member is not present or there is not a quorum to convene a meeting.
- (d) The board, commission, or committee shall elect a chairperson first from among its regular members **annually by January 31st of each year** who shall be responsible for agendas.
- (e) The committee shall appoint a secretary from its members, who shall be sworn and who shall be responsible to submit minutes of any meeting to the town clerk within 30 days as well as a copy to the town manager.
- (f) **No board, commission, or committee member shall serve as Chair, Vice Chair or Secretary for more than 2 consecutive years.**
- (f) The town manager, department heads or council members shall not be appointed as regular or alternate members, nor may they serve as secretary to any board or committee.
- (g) No meeting shall be convened without a quorum consisting of at least three members. (Ord. of 6-16-1992, art. II, § 1)

The Town Clerk asked the question – “Can the Town Council also term limit the secretary and chair of a committee established by the Charter, or just the committees they create on their own?” Susanne F. Pilgrim, Staff Attorney Legal Services Department of MMA, has provided the following information:

“If you are asking about term limits in the sense of a person being appointed to a board as a member, I do think that term limits would have to be established via the charter. This is because **30-A MRSA § 2526** states that “unless otherwise provided by charter” a person is qualified to hold a municipal office if he/she is a resident of Maine, at least 18 years old, and a U.S. citizen. See 30-A MRSA § 2526(3). I would view a term limit as an additional qualification for office.

THIS IS THE IMPORTANT INFORMATION

However, it sounds as though you might instead be asking whether the Council could limit how long an existing member of a board may hold the designation of “chair” or “secretary.” I took a look at the online version of the Town’s charter and the ordinances that create various boards/committees. It appears that the chair and secretary are usually determined from among the existing membership of the board/committee, and that the “chair” or secretary” is not a separate office to which someone would be appointed. In that case, I do think that an ordinance could limit the number of terms that one member holds as the designated “chair” or “secretary.”

Absent a charter provision to the contrary, I think that a limit on the number of times that a member of a board established via charter could be elected or designated as “chair” / “secretary” could be imposed by ordinance. I reviewed your charter, and while it does establish some boards, it does not deal with the chairmanship/secretary roles at all. Dealing with the chairmanship/secretary of a board is not the same as limiting membership to the board itself. I do think that a charter provision is needed to establish term limits on being appointed to the board itself.

MOTION: Vice Chair Tousignant motioned and Councilor Dayton seconded to Set a Public Hearing Date of January 3, 2011 to Amend the Code of Ordinances, Division 2, Rules

for Advisory Boards and Committees, Section 2-234 – Powers and Duties.

VOTE: Unanimous.

5543 Discussion with Action: Re-appoint the following Committee Members—Design Review Committee - Kim Schwickrath, term to expire 12/31/13; Donald Comoletti, term to expire 12/31/13; Shirley Holt, term to expire 12/31/13—Conservation Commission – Linda Jenkins, term to expire 12/31/14; John Bird, term to expire 12/31/14—Finance Committee- Michael Gray, term to expire 12/31/13—Registration Appeals Board—Jayne Flaherty, term to expire 12/31/15 – Zoning Board of Appeals—Ray Deleo, term to expire 12/31/14—Business License Administrative Board - Ken Lafayette, alternate business member, term to expire 12/31/13; Gary Curtis, alternate citizen member, term to expire 12/31/13—Board of Assessment Review – Michelle Parkinson, term to expire 12/31/14; Margaret Michaels, term to expire 12/31/14; Robert Jolicoeur, term to expire 12/31/14—Community Animal Watch Committee—Jacqui Deveneau, term to expire 12/31/13; Paul Niemczyk, term to expire 12/31/13—Comprehensive Plan Committee—J. Philip Denison, term to expire 12/31/13; Lou Valentine, term to expire 12/31/13; Winthrop Winch, term to expire 12/31/13; Jean Leclerc, term to expire 12/31/13; Patricia Driscoll, term to expire 12/31/13; Jason Webber, term to expire 12/31/13—Ballpark Commission—Dana Furtado, term to expire 12/31/14.

MOTION: Councilor MacDonald motioned and Councilor Coleman seconded to approve the re-appointments of Committee members as read.

VOTE: Unanimous.

5544 Discussion with Action: Appoint Libby Blackman as a Regular Member of the Recycling Committee, term to expire June 30, 2013.

MOTION: Vice Chair Tousignant motioned and Councilor Coleman seconded to Appoint Libby Blackman as a Regular Member of the Recycling Committee, term to expire June 30, 2013.

VOTE: Unanimous.

5545 Discussion with Action: Consider Abatement Request 11-02 (Note: Pursuant to Title 36, subsection 841, this item is confidential and the discussion and decision will be made in executive session.)

MOTION: Councilor MacDonald motioned and Vice Chair Tousignant seconded to enter into Executive Session to Consider Abatement Request 11-02 (Note: Pursuant to Title 36, C:\Users\kmclaughlin\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Outlook\Y0TT4TNR\12 20 11 minutes.doc Page 17 of 18

Subsection 41, this item is confidential and the discussion and decision will be made in Executive session.)

VOTE: Unanimous.

GOOD AND WELFARE:

COUNCILOR MACDONALD: She reminded everyone that on Sunday, January 15th for the second year there will be a Community Dinner at the Lions Club on Saco Avenue and encouraged as many citizens as possible to attend.

CHAIR QUINN: On behalf of the Town Council he wished all citizens a Happy Holiday Season.

EXECUTIVE SESSION:

MOTION: Vice Chair Tousignant motioned and Councilor Coleman seconded to end the Executive Session.

VOTE: Unanimous.

ADJOURNMENT:

MOTION: Vice Chair Tousignant motioned and Councilor Coleman seconded to Adjourn the Town Council Meeting at 10:15 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 eighteen (18) pages is a copy of the original Minutes of the Town Council Meeting of December 20, 2011

V. Louise Reid