

ADMINISTRATIVE REVIEW BOARD

Wednesday, September 18, 2013

MINUTES

An Administrative Review Board Hearing was called to order at 5:14 p.m. on Wednesday, September 18, 2013 in the Town Council Chamber to consider administrative review regarding Kate's Homemade Butter, Inc., 3 Arbutus Avenue (206-17-4-). At a Workshop held on August 21, 2013 the request was made by the Administrative Board for a date certain for moving of the business from the Arbutus Avenue location to Arundel, Maine. The date of February 1, 2014 was provided by the Patry Family as to when they would move their business to Arundel.

The following were in attendance:

**Town Manager Larry Mead
Assistant Town Manager V. Louise Reid
Planner – Jeffrey Hinderliter
Chief Dana Kelley
Chief John Glass
Tina Morrison
Marc Bourassa**

**Absent: Kenneth Lafayette
 Gary Curtis**

Also in attendance were the following:

Edward Dimond, Mary Susan Jordan, Astra and Bart Harry Bailey, John Bird, Liz Gotthelf, Kate Collins, and representing Kate's Butter, Dan and Lucas Patry.

Larry Mead, Town Manager, indicated that the purpose of the hearing this evening was to attempt to resolve the issue of the date for the moving of the business. The Town Council will hold a Business License Revocation Hearing on October 1, 2013 in accordance with the Town Council motion of June 4, 2013. The Administrative Review Board is charged with making a recommendation to the Town Council with respect to the October 1, 2013 hearing. The Administrative Review Board is charged with making a recommendation to the Council with respect to the October 1st hearing.

It was noted that there have been several Administrative Board meetings over the years with Kate's Butter and that the recent Consent Agreement has, for the most part, been met. The request for an extension to February 1, 2014 from the accepted September 30, 2013 date was the major consideration this evening.

Dan and Lucas Patry in their discussions with the Board commented that they had complied in good-faith with the Consent Agreement and that for the most part the neighbors had agreed. They also strongly indicated to the Board that there was no way they could be out of the present location before February 1, 2014.



Kate's
of Maine
**HOMEMADE
BUTTER**

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Old Orchard Beach Business Review Board,

Over the past week we have consulted with all of our major subcontractors regarding their timeline for completion. The two major contractors include electrical and process cooling but we've also spoken with HVAC, process piping and general carpenters. All of the companies involved agree that February 1st is a date Kate's Butter can stand behind in order to complete the factory in Arundel. We sincerely appreciate the opportunity last week to sit before the new council and discuss the past, present and future of Kate's Butter in Old Orchard Beach. We will continue to operate under the constraints of the consent agreement as we have for the past 12 months.

Sincerely,

Daniel Patry



P.O. Box 79 Old Orchard Beach, Maine 04064 Telephone (207) 934-5134 Fax 207 934-0515
www.katesbutter.com



The Town Manager referenced a motion from the Town Council on June 4, 2013:

VICE CHAIR BOLDUC MOTIONED AND COUNCILOR MAILHOT SECONDED TO:

Be it so Ordered by the Town Council that Kate's Homemade Butter, Inc. (the "Operator") complete and move to its new business operation facility in Arundel, Maine, on or before September 30, 2013; but if unable to move its operation to Arundel, Maine prior to this date, the Operator must notify the Town Council by August 30, 2013 which will set forth a Business License Revocation Hearing on or before October 1, 2013. If there is non-compliance to the Consent Agreement to be approved at the Administrative Review Board Meeting on June 6, 2013, the business license may be revoked. The Operator shall provide monthly updates to the Code Enforcement Officer on the status of the project starting June 30, 2013; and shall provide reasonable access during normal business hours to the facility it is constructing in Arundel, Maine.

VOTE: UNANIMOUS.

The Administrative Board members expressed their opinion that the February 1st date was not acceptable to them and that they felt December 31st was a fair compromise and that the residents had been more than patient. Dan Patry responded that the February 1, 2014 date would not change and was not negotiable. The comment was made by the Administrative Board that he had come with what was considered to be a non-bargain-able attitude. Dan Patry continued his comments by indicating that there was no assurance that they would not continue to do business in the Old Orchard location once they had moved to Arundel. It was noted by the Board that at no time was there any indication during all the discussions that business would continue in the Old Orchard location. Each member of the Administrative Board concurred that this was a new bit of information that had never been shared or even suggested during all the deliberations and that it was not acceptable. Dan Patry indicated that there is a land variance on the Old Orchard Beach property which permits them to do business and to continue to do business at this location. Without a variance Kate's Butter would not have been operational in a residential section of the municipality. Mr. Patry emphasized rather strongly that he had the right to continue doing business there once the move was made because of this variance. Administrative Board members expressed their view that Mr. Patry's comments appeared to be intimidating and threatening in tone.

During the meeting there were comments from the neighbors confirming their frustration and also the sense of animosity that was prevalent in the community itself. There was a desire for the residents of the community to come together and the business operation was just making it impossible. Discussion during the evening also referenced the Consent Agreement which is provided below:

Consent Agreement


In order to temporarily resolve the concerns of the Town of Old Orchard Beach and the members of the General Public, Kate's Homemade Butter, Inc. (the "Operator") hereby agrees to the following:

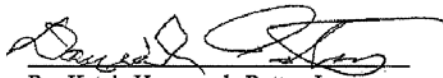
1. The Operator agreed to cease using large tractor trailers to transfer product from the property. The Operator will limit future product transfers to the use of box trucks equal to or less than 24' long. This will likely mean more trips during the day but with the smaller size trucks preferred by the neighbors. There are two exceptions to this rule. First, the delivery of cream from Oakhurst Dairy cannot "load-out" any less than what the tanker holds. The Operator is also limited by Oakhurst Dairy's production schedules and limitations. The Oakhurst Dairy tanker arrives once per week (usually on Thursday evenings) around 6pm and leaves the property by 4pm the next day. Second, in the unlikely event that Operator has mechanical problems with its 24' long truck, it may use a larger trailer truck to transport its product while repairs are being made to the 24' long truck. In such instances Lucas Patry will send an email or leave a voicemail with the Code Enforcement Officer explaining the reason for the need to use a larger trailer truck.
2. The Operator will refrain from opening the outer door on the existing portable garage door to move product out of the house into the driveway earlier than 7am each day. The Operator will also use its best efforts to end its daily work schedule prior to 7pm in the evening, unless there are production related challenges or delays that necessitate work to extend beyond that time in the evening. In the event the work is going to continue beyond 7pm in the evening, Lucas Patry (or his designee) will send an email or leave a voicemail message with the Code Enforcement Officer explaining the reason for the extended hours. In addition, the Operator will not operate its production process on weekends, unless unexpected circumstances arise, such as equipment failure or production issues. In which case, once again, Lucas Patry will send an email or leave a voicemail with the Code Enforcement Officer explaining the reason for the need to conduct the production process on the weekend.
3. The Operator will make Lucas Patry (via the Code Enforcement Officer) available to the neighborhood to address any future concerns. This will provide a way for the neighbors to communicate any concerns that may arise in the future. (In the event the Code Enforcement Officer is unavailable the neighborhood residents are encouraged to contact the Assistant Town Manager in the office or on her cell phone at 284-3652.) It will also provide him with a way to address their concerns and pro-actively inform them of schedule changes or issues that may arise from time to time. It is the Operator's hope that this form of personal communication will help reduce the obvious tensions that have arisen in recent months and reduce the need for them to call the Police Department to address their concerns.
4. The Operator agrees to work with Code Enforcement Officer to address the continued concern of a neighbor regarding noise associated with the operation of the outdoor evaporator to ensure the noise is less than the maximum level permitted by the applicable town ordinance(s). On or before June 15, 2013 Lucas Patry will meet with the Code Enforcement Officer to measure the current noise level. On or before June

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30, 2013, Lucas Patry will work with the Code Enforcement Office to ensure the noise associated with the operation of the outdoor evaporator is less than the maximum level permitted by the applicable town ordinance(s).

The Parties agree and understand that nothing in this Consent Agreement is designed or intended to waive any legal or property rights that either party may have related to the Operator's business located on 3 Arbutus Avenue in Old Orchard Beach, Maine.


By: Town of Old Orchard Beach, Maine
Title: *Interim Town Manager*
Date: *06/13/13*


By: Kate's Homemade Butter, Inc.
Title: *President*
Date: *6/13/13*

The Town Manager and the Administrative Board discussed the process of suspension of license of the revocation of license.

Below is the process for that revocation:

Sec. 18-39. - Suspension or revocation.

(a) The town council, upon notice and after hearing, for cause, may suspend or revoke any license issued pursuant to this article. The term "cause" shall mean the violation of any license condition, any section of this article, any condition constituting a threat to the public health or safety, or the revocation or suspension of any state or local license that is a condition precedent to the issuance of a license pursuant to this article. The term "cause" shall also include any of the grounds for denying a license application under [section 18-35](#).^{*} Licenses may be temporarily suspended without prior notice and hearing if, in the judgment of the building inspector, the town manager or the town council, the continued operation of the licensed business or activity constitutes an immediate and substantial threat to the public health and safety, provided the licensee receives written notification of the suspension and the reasons therefor, prior to its taking effect, and a hearing is scheduled as soon as possible thereafter.

^{*}Notwithstanding anything to the contrary in 1 M.R.S.A. [§ 302](#), this amendment shall apply to any actions or proceedings pending on the date of its enactment.

(b) Before the town council conducts a hearing on a suspension or revocation, the town manager will convene an administrative board consisting of the town manager; the police chief; the fire chief; the license administrator; a member of the town business community appointed by the town council; and a citizen of the town, not an employee of the town, appointed by the town council, to discuss with the licensee the situation giving rise to the possible suspension or revocation.

(c) The purpose of the administrative board will be fact finding with the goal of resolving the situation by proposing a consent agreement with the licensee. If the licensee fails to appear before the administrative board or fails to accept a consent agreement proposed by the administrative board, the license administrator shall recommend to the town council that the license be suspended or revoked, as appropriate.

(d) Action undertaken by the administrative board will be viewed as advisory to the town council. The town manager will place recommendations on the agenda for the next regular meeting of the town council. The town council will act upon such recommendations in the same manner as used for license hearings.

During the discussions Section 18-28 – Violation and Penalties was reviewed by the Board and presented to the Kate’s Butter owners.

Section 18-28 (a) – Any person who operates or conducts any business or activity for which a license is required under this Article without first obtaining such license commits a civil violation and shall be subject to a fine not to exceed \$100 for the first day the offense occurs. The second day the offense occurs; the fine amount shall not exceed \$250,000. The third day and subsequent days, thereafter, the fine amount shall not exceed \$500. Each day such violation continues shall be considered a separate violation.

Motions were made by Marc Bourassa and Tina Morrison related to setting a date of December 31, 2013 but then their motions were removed when the neighbors indicated that they did not have issues with the February 1, 2014 date as long as that was a firm determination of the business being out of the location. The Town Manager stated, that in light of the position taken by Mr. Patry that he had no intention of relinquishing the variance that runs with the property, it was his opinion that there was no incentive for the Town to work cooperatively with Kate’s Butter to facilitate an orderly transition to the Arundel facility. Rather, he would support a recommendation to the Town Council that it revoke the business license immediately. At some point Dan Patry and Lucas Patry conferred with each other and it was noted that they were willing to consider discussing with their family an agreement to be out of the facility by February 1, 2014; not to renew their license as of May 1, 2014; and legally give up the variance on the property as of that date. The neighbors were asked if this would be an acceptable arrangement and all those attending the meeting indicated that it would be acceptable.

MOTION: Tina Morrison motioned and Chief Dana Kelley seconded to Amend the Consent Agreement for Kate’s Butter to complete and move to its existing business production operations in Arundel, Maine, on or before February 1, 2014; not renew their Business license after April 30, 2014; and give up the variance on the property to the Town of Old Orchard Beach upon expiration of the business license.

VOTE: Unanimous.

The Town Manager thanked all those who attended for their efforts in bringing this issue to a resolution.

Respectfully Submitted,

V. Louise Reid
Secretary to the Administrative Board

I, V. Louise Reid, Secretary to the Administrative Review Board of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of seven (7) pages is a true copy of the original Minutes of the Administrative Hearings held on Wednesday, September 18, 2013.