

TOWN OF OLD ORCHARD BEACH, MAINE
ADMINISTRATIVE BOARD HEARING
Tuesday, May 14, 2013
4:00 p.m.

An Administrative Review Board Hearing was called to order at 3:00 p.m. on Tuesday, May 14, 2013 in the Town Council Chamber to consider administrative review.

The following were in attendance:

Town Manager Robert Peabody, Jr.
Assistant Town Manager, Louise Reid
Code Enforcement – Jim Butler
Planner – Jeffrey Hinderliter
Tina Morrison
Marc Bourassa
Fire Chief John Glass
Police Chief Dana Kelley

Absent: **Kenneth Lafayette**
 Gary Curtis
 Ken Lafayette

The schedule this afternoon includes several businesses. The Administrative Review Board meeting is triggered by either one written complaint to the License Administrator pertaining to Business License/Code/Ordinance violations or three or more disturbances verified by the Police Chief. Each of the businesses coming before the Board today fit into those classifications.

The Town Manager, Robert Peabody, Jr., opened up the Review at 3:00 with the following business owners in attendance:

3:00 p.m.	Weekend at Bernie's Beach Club
3:30 p.m.	Sea breeze Motel
4:00 p.m.	Kate's Butter
4:30 p.m.	Landing by the Sea
5:00 p.m.	Grand Beach Inn and Café

At 3:03 p.m. a discussion was held with the owners of the Bernie's Beach Club (307-3-1). And in attendance were Bernard L. and Jane Orne. The Orne's were very proactive and willing to do anything required to make the noise situation better. They have hired a Security firm this year to handle the number of issues that happened during the past year including intoxication, assaults, illegal smoking area, urination in public, etc. Unfortunately, like other businesses, if there are issues outside the establishment, when complaints are made they are affiliated always with the business at the site. They have made an attempt to turn the speakers in the direction causing the least amount of noise complaint. They have approximately twelve staff members and training has been given to each of them. The Orne's made it very clear of their desire to conduct their business in an orderly and law-abiding manner.

The Administrative Review Board Meeting regarding Bernie's Beach Club concluded at 3:45 p.m. with a motion made by Marc Bourassa, seconded by Tina Morrison, and unanimously approved.

At 3:45 p.m. a discussion was held with King Weinstein, owner of the Sea Breeze Motel (205-5-2) and the Grand Beach Inn and Café. Discussion began on issues related to the Sea Breeze Motel. King Weinstein has a long history as a business owner to the issues that are related to renting to winter rental clients. He has attempted to improve the situation by developing credit check programs that make it easier to review beforehand possible problems that could arise if they were provided housing. A great deal of time was spent discussing the possible approach that the Bar & Restaurant Association (BRASS). They have established a system in place where when an issue arises they have a contact list where immediately they can let another business know of the problem whether it be an intoxicated patron or an individual causing a disruption by their behavior. King also indicated that he has made some long term changes but it needed to be recognized that he is limited by laws relative to asking questions about sexual preference, ages of children, etc. Some of the issues they deal with are domestic problems between family members. The established of firmer occupancy rules was a suggestion by the Board; also a procedure or policy of extended stay as it is almost impossible to evict someone without legal intervention, cost and a time line issue. King Weinstein was positive in his approach and that he would continue to make policies and procedures to lessen the opportunity for police calls as he recognized that these cost the police department as well as the citizens.

The Board asked that the scheduled 5:00 p.m. time line for the Grand Beach Inn and Café (202-3-5) discussion, be moved up to this time period. Mark Bourassa made the motion to do so and Tina Morrison seconded. In discussing the issues relative to the Grand Beach Inn and Café, it was noted that as before were related to the capacity of the hotel and because of the number of rooms it attracts a variety of clients from the winter rentals, to the construction worker who is here only during the week but leaves on the weekend, etc. King Weinstein suggested that he might make a one day credit check rule as that credit check sometimes will give you a heads up on issues that might develop. He also mentioned as others have that some of these complaints come as a result of things happening outside the motel but because they are the only business in that area are noted to be the recipient of the complaint to the Police. Again, many of the complaints such as disturbances, disorderly contact, loud noise, domestic issues, are all related to the clients that use the motel particularly during the winter months. Smoking is no longer allowed in the building so it does occur out on the decks. The Board felt that Mr. Weinstein was making an effort to limit the number of calls to the Police Department and the Board expressed their appreciation for this.

It was recommended by the Board that King Weinstein consider (1) joining with a group like BRASS to formulate a plan of continued support with our motel owners to avoid the types of situations with clients that many of the motels renting in the winter seen to have; (2) attempt a marketing campaign to attract some college students from the UNE (possibly medical students who usually bring more experience to a position); and consider delaying a day before renting until the credit check comes back which will give you information on the clients that you are dealing with.

The Administrative Review Board Meeting regarding the Sea Breeze Motel and the Grand Beach Inn and Café concluded at 3:50 p.m. with a motion made by Chief Kelley, seconded by Chief Glass, and unanimously approved.

At 3:55 p.m., it was decided to move discussion of Landing by the Sea (206-27-10) issues before Kate's Butter discussion. In attendance to discuss the issues were Greg Dayton and Edwin Jackson. The Landing by the Sea is under new ownership and Chief Kelley indicated there has already been a marked improvement in the running of the business. The owners indicated that it is their intent to review applications carefully and assure that the type of individuals to whom they are renting will not cause difficulties that have been experienced in the past. Many of the former complaints were specifically related to drug trafficking, issuance of warrants that needed to be served, suspicious activity, noise complaints, fraudulent welfare checks, etc. These are the types of situations that the new owners said he is determined to avoid by more clearance of those renting; a change in the requirements for the rental of the rooms; due diligence in areas of paperwork being correctly filled out; etc. He said that all the previous tenants have moved out and he is beginning new in the rental process. The Board was convinced that the new philosophy would make the situation of rentals in this business establishment much better. Signed agreements would be needed and background checks would be completed on those renting.

The Administrative Review Board Meeting concerning Landing by the Sea was concluded at 4:15 .pm. with a motion made by Tina Morrison, seconded by Marc Bourassa, and unanimously approved.

At 4:15 p.m., discussion began regarding Kate's Homemade Butter, Inc., 3 Arbutus Avenue (206-17-4). This meeting date was determined by Attorney Timothy J. Bryant, representing the owners of Kate's Butter. It was noted at the beginning of the meeting that neither Attorney Timothy J. Bryant of Prêt Flaherty, nor Luke Patry, was present for the discussion. The Code Enforcement Officer was unable to reach either but was able to reach Dan Patry, Owner of Kate's Butter who was surprised that the Attorney had not told the Town that he was not available. It was determined by the Board that in light of attendance by residents of Kate's Butter area, the meeting should continue. The question was asked if the Attorney and Luke Patry had been informed and the Code Enforcement Officer indicated they had received the e-mail along with the neighbors. The Assistant Town Manager was responsible for notifying only the Committee members.

The following residents were in attendance:

**Edward Dimond – 2 Laurene Drive
Mary Susan Jordan – 2 Shorewood Drive
Astra Bailey - 7 Idlewild Avenue
Bart Harry Bailey – 7 Idlewild Avenue**

There have been several Administrative Review meetings over the years on the Kate's Butter business located at 3 Arbitrus Avenue, a residential community, located in Old Orchard Beach. It produces more than one million pounds of butter a year as well as buttermilk. The major issue concerning the residents is when Kate's Butter will move to its new location in Arundel. Again it was pointed out that this is not a house in a home business but rather a full sized factory worth of production – one million pounds. It was
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anticipated that the move would happen late spring or early summer of 2013 although the Attorney would not define a definite date. The issues over the years that have caused friction between the neighborhood and the business have been issues such as:

- The size of the trucks being used in the neighborhood.**
- The noise associated with the trucks.**
- The scheduling of the trucks being operated.**
- The scheduling of outdoor work activities and the related noise of those activities.**
- The noise associated with outdoor evaporator.**
- The desire to have Kate's relocated to its new place of business in Arundel, Maine, by date certain.**
- Assurance that someone is living in the property as required by Ordinance.**

The question was raised again as it was at our last meeting if anyone was living in the house, which is one of the requirements of a home business. The neighbors and the Code Enforcement Officer indicated that they believe no one is living there. Luke arrives early in the morning but leaves late at night so no one appears to be living there. It was noted that today there was a van in the parking lot of Kate's butter but no one knew the purpose of the van. Previously Luke Patry acknowledges that he had moved out.

The Interim Town Manager, being new, was informed that the Patry family has been making butter in this residential neighborhood off Saco Avenue in Old Orchard Beach for over thirty years. The Administrative Board has the power to recommend to the Town Council that the business license for Kate's could be revoked if a satisfactory solution could not be found to the issues that were raised. It has been noted that the owners have implemented a series of procedures which have brought some resolution to the issues but again at this meeting it was noted that the large trucks are still in the area making it difficult for other cars to pass; the noise level is still an issue; and the disruptive noise and activity coming from the business at all times of the day and night have not been resolved.

The absence of the owner and his attorney at the meeting, particularly since the Attorney for Kate's Butter had selected the date, caused concern among the Board as to the willingness of Kate's owner to make this situation workable. The Code Enforcement Officer noted that he had been informed by the Arundel Code Enforcement Officer that the new Kate's Butter building in his community is far from being available to open and maintain the business. The replacement of the roof has been almost completed but because the building lacked a roof during the winter months and the exposure of the construction material to the weather during the winter, made the requirements for the replacement of construction materials one of the stipulations of the Code Enforcement Officer which will definitely hinder the moving date of the business from Old Orchard Beach. It was also pointed out that issues with the Department of Transportation and Route 111 are additional hurdles to be met in the move to Arundel. It was also noted that Kate's Butter had secured another lease to store some of their products because the lease which was to run out just prior to their move was hindered by the move date not being formulated.

The Proposed Consent Decree was presented by the Attorney at the previous meeting of January 8, 2013, although never signed.

Old Orchard Beach – Proposed Consent Decree (circa 9/26/12)

Based on my notes and the minutes of the meeting sent by Louise Reid, the primary concerns raised by those in attendance at the September 5, 2012 and September 18, 2012 Administrative Hearings were (in no particular order) as follows:

1. The size of the trucks being used in the neighborhood.
2. The noise associated with the trucks.
3. The scheduling of the trucks being operated.
4. The scheduling of outdoor work activities and the related noise of those activities.
5. The noise associated with outdoor evaporator.
6. The desire to have Kate's relocated to its new place of business in Arundel, Maine by a date certain in the future.

There were a variety of suggestions made to address the concerns raised at the meeting. The suggestions included the use of small trucks; limiting outdoor work until after 7am; working with the neighbors to address the noise concerns related to the outdoor evaporator; and setting up a system of communication with the neighbors to address any future concerns.

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 (the "Operator") proposes the following:

1. The Operator will 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. The exception to this rule is the delivery of cream from Oakhurst Dairy, which 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.
2. The Operator will work with Mr. Gregg Kidd to address the noise associated with the operation of the outdoor evaporator. (Since the last meeting Lucas Patry met with the OOB Police Department to measure the noise level of the machine, which was a steady 60-62 decibels. While low, the Operator is still willing to take measures to reduce it further.) Specifically, the Operator shall plant 7-10' tall fully grown arborvitae bushes at the perimeter of its property facing Mr. Kidd's property. And the Operator (within 30 days of the date of this Agreement) shall purchase and install sound board on the inside of the fence surrounding the outdoor evaporator.
3. The Operator, in consultation with the Code Enforcement Officer, shall purchase and attach a portable car garage to its existing garage. The temporary structure will be used to store pallets, pallet jacks and pallets of product that are currently in the driveway. The portable garage will have the dual benefit of acting as a visual and noise barrier for the neighborhood.
4. The Operator will refrain from opening its existing 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.
5. The Operator will make Lucas Patry 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. 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.
 6. The Operator will use its best efforts to complete and move to its new facility in Arundel, Maine. In the interim, the Operator will keep the Town informed (via the Code Enforcement Officer) of its progress on that project. Specifically, on or before the end of each month, starting on October 30, 2012, the Operator will provide the Code Enforcement Officer with a generalized email update of the status of the construction project in Arundel, Maine, which the Code Enforcement Officer will make available to any of the neighbors that request a copy of that report. In addition, the Operator will provide the Code Enforcement Officer with reasonable access, during normal business hours, to the facility it is constructing in Arundel, Maine so he can personally assess the details of the construction project. Although the Operator is sensitive to the fact that some people would like a date certain for the move, there are simply too many variables beyond the Operator's control so the Operator respectfully declines to commit to a date certain to move the business in the future.
 7. The Administrative Board and the Operator agreed to meet again on January 8, 2012 to check in with the neighbors to check on the implementation of this Consent Decree and the status of the construction project in Arundel, Maine. The Administrative Board will only schedule a meeting prior to that date if the Code Enforcement Officer receives and verifies a valid complaint, per the Town Ordinances.

The Operator recognizes and understands this is only a temporary solution to these issues. Obviously, the permanent solution is for the business to move to its new location in Arundel, Maine once the construction project is finished.

The motion was made by Marc Bourassa and seconded by Tina Morrison that a recommendation be made to the Town Council on May 21, 2013 of the license revocation/denial. The motion was unanimously approved.

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.

The Administrative Review Board Meeting concluded at 5:12 p.m. with a motion made by Marc Bourassa, seconded by Chief Dana Kelley, and unanimously approved.

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 Tuesday, May 14, 2013.