

**TOWN OF OLD ORCHARD BEACH
SPECIAL TOWN COUNCIL MEETING
Thursday May 26, 2011
TOWN HALL CHAMBERS
7:00 p.m.**

A Special Town Council Meeting of the Old Orchard Beach Town Council was held on Thursday, May 26, 2011. Chair Quinn opened the meeting at 7:05 p.m.

The following were in attendance:

**Chair Bob Quinn
Councilor Robin Dayton
Councilor Sharri MacDonald
Town Manager Jack Turcotte
Assistant Town Manager V. Louise Reid
Finance Director Jill Eastman**

**Absent: Councilor Shawn O'Neill
Vice Chair Michael Tousignant**

Roll Call

EMERGENCY ITEMS:

MOTION: Councilor Dayton motioned, with regret, and Councilor MacDonald seconded to Remove without Prejudice Agenda Item Number 5416: Discussion with Action: Approve the Special Event Permit application from the Towing & Recovery Association of Maine to host a Trade Show on First Street and Memorial Park on Friday, September 9th, from noon to 6 p.m., Saturday, September 10th, 8 a.m. to 5 p.m., and Sunday, September 11th, 2011 from 8 a.m. to 5 p.m. Parades on September 9th at 7:30 p.m. and September 11th at 10 a.m. Insurance listing the Town of Old Orchard Beach as additionally insured to be provided to the Town Clerk's Office at least one week prior to the event. A request from Public Works not to park on the grass at Memorial Park.

VOTE: Unanimous.

MOTION: Councilor MacDonald motioned and Councilor Dayton seconded to add Agenda Item 5418 to the Agenda, following Agenda item 5417 – Discussion with Action: Change the name of the business license, special amusement permit and liquor license from Oasis Bar & Grille Inc., to Ernesto's Dockside Restaurant & Lounge, (306-5-3), 8 East Grand Avenue, and all other information remaining the same.

VOTE: Unanimous.

PUBLIC HEARING BUSINESS LICENSES AND APPROVAL

CHAIR: I open the Public Hearing at 7:08 p.m.

Aaron Boppel (104-3-5-B5), 26 Walnut Street, Unit B5, one year round rental;
Donna & John Silverio (204-3-15), 19 Birkdale Circle, one year round rental;
Lawrence S. Walters, Jr. (210-2-53-1), 16 Smithwheel Road, #1, one year round rental; and **W. Todd & Carol Bassett** (315-10-1), 42 Park Avenue, one year round rental.

CHAIR: I close the Public Hearing at 7:09 p.m.

MOTION: Councilor Dayton motioned and Councilor MacDonald seconded to Approve the Business Licenses as read.

VOTE: Unanimous.

NEW BUSINESS:

5412 Discussion with Action: Approve the Special Event Permit application from OOB365 to host the Spirit in America Hot Air Balloon Festival/Smokin' at the Ballpark State Championship BBQ Festival, on June 24th through June 26th, 2011 from 4:30 a.m. to 10 p.m. each day in the Square and Memorial Park, on the beach, and at the Ballpark. Request for a Beer Garden at the Ballpark. Caterer to provide liquor liability insurance listing the Town of Old Orchard Beach as additionally insured to the Town Clerk's Office at least one week prior to the event; a request for a banner in the Square; and a request to waive the fee in lieu of a donation to the Ballpark.

Councilor MacDonald expressed disappointment that it appeared that there would not be the vote to bring this forward and that she hoped that citizens who support what the OOB 365 has been doing in the community will show up at the next Council meeting to express their support.

MOTION: Councilor MacDonald motioned, but their being no seconded she removed her motion and Chair Quinn motioned and Councilor Dayton seconded to Table until the June 7, 2011 Meeting the Approval of the Special Event Permit application from OOB365 to host the Spirit in America Hot Air Balloon Festival/Smokin' at the Ballpark State Championship BBQ Festival, on June 24th through June 26th, 2011 from 4:30 a.m. to 10 p.m. each day in the Square and Memorial Park, on the beach, and at the Ballpark. Request for a Beer Garden at the Ballpark. Caterer to provide liquor liability insurance listing the Town of Old Orchard Beach as additionally insured to the Town Clerk's Office at least one week prior to the event; a request for a banner in the Square; and a request to waive the fee in lieu of a donation to the Ballpark.

VOTE: Unanimous.

5413 Discussion with Action: Approve the Special Event Permit application from Thomas Falby and Alicia Amy to hold a beach bonfire and cook-out on the beach at the end of Oceana Avenue on Saturday, June 25th, 2011, from 6 p.m. to midnight.

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

VOTE: Unanimous.

5414 Discussion with Action: Approve the Special Event Permit application from OOB365 to host the Back to the Beach Corvette Weekend on Saturday, June 11th, from 10:30 a.m. to 5:00 p.m.; and permission to close Old Orchard Street from 10:30 a.m. to 3 p.m., with a parade at 4:30 p.m.

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

VOTE: Unanimous.

5415 Discussion with Action: Approve the Special Event Permit application from Surfrider Maine to host their annual Barefoot Wine Beach Rescue Project on the beach at the end of Walnut Street, on Saturday, July 30th, 2011 from 8:30 a.m. to 1:00 p.m.; and a request to waive the fee.

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

VOTE: Unanimous.

The motion for this item was made under EMERGENCY ITEM above in which the agenda item was added to the meeting as shown in the motion below.

5416 Discussion with Action: Approve the Special Event Permit application from the Towing & Recovery Association of Maine to host a Trade Show on First Street and Memorial Park on Friday, September 9th, from noon to 6 p.m., Saturday, September 10th, 8 a.m. to 5 p.m., and Sunday, September 11th, 2011 from 8 a.m. to 5 p.m. Parades on September 9th at 7:30 p.m. and September 11th at 10 a.m. Insurance listing the Town of Old Orchard Beach as additionally insured to be provided to the Town Clerk's Office at least one week prior to the event. A request from Public Works not to park on the grass at Memorial Park.

MOTION: Councilor Dayton motioned, with regret, and Councilor MacDonald seconded to Remove without Prejudice Agenda Item Number 5416.

VOTE: Unanimous.

5417 Discussion with Action: Poll the Town Council to determine their approval of efforts by Doug Ayotte of the Raging Tides to sell beer at the Ballpark for the 2011 season; working out the details and legal requirements, and provide them to the Town Council for approval at a later date.

The owner of the Raging Tides has an interest in the possible sale of beer at the Ballpark and in order to proceed with the numerous procedures and policies to be addressed, Mr. Ayotte is asking that he get a consensus from the Council as to their interest in approving such an effort.

Councilor Dayton discouraged the use of the term Polling the Town Council and the Assistant Town Manager/Secretary to the Council indicated that the verbiage was hers and that in the future, as per custom, she will designate – Discussion rather than Poll. Councilor Dayton expressed disappointment and concern that Mr. Ayotte was not in attendance to present his plan. She continued at length about the need to follow a process rather than presenting these issues as they come up with no information being provided to the Town Council. She questioned the recent charges for information from legal counsel on ballpark and the sale of liquor at the ballpark. Her concern is that this request should have gone through the Council so they knew of the questions that were being raised. Although the Ballpark is Town land, the proposed beer license would be sought out by Ayotte and the license would be a private license, not a municipal one. She suggested that this Agenda item be a Discussion only item.

The Town Manager explained that it was in the plan to ask the Council for their opinion or consensus before making Mr. Ayotte go into a great deal of effort for permits, insurance and other requirements and that to avoid that pressure being placed on him and in working toward something developing for this season, he felt this was the appropriate way to address this. He indicated that there were discussions quite a while ago from Legal Counsel Vaniotis when the issue was brought up in the area of the question of OOB365 requesting this option. The Town Manager indicated that he was informed by legal counsel that there is a statute, (reproduced below), which makes drinking on public property a crime, but permits the owner of the public property—in this case, the Town—to give permission for drinking on public property. That is what the Town would be doing if it authorized a “beer tent” or similar arrangement at the Ballpark. The Town Manager acknowledged that in the past the legal counsel had been consulted. The Town would have to change the Town ordinance or issue a series of special event permits in order to allow the sale of alcohol at the ball games. The attorney felt using the special event permit process “season wide” was a misuse of the special event permitting process as special event permits are typically used for single events. Legal counsel felt that if the Council was going to allow the sale of beer at the Ballpark there would need to be an ordinance change and the Town is currently working on an ordinance change and should the Council decide to allow beer to be sold at the Ballpark, it could use the special permitting process until the change is made to allow the alcohol there. Councilor Dayton again said that a workshop should be held first and that she needed to hear from the public before she would make an opinion. She said that her opinion as a rule follows the public opinion and at this point she has not heard from the public. She again said she was opposed to the Council being polled and giving its input to someone before they pursued a business venture. She said it was not done for any other group and we were setting a precedent.

Councilor Sharri MacDonald strongly suggested this process was appropriate and that it would save the business from having to go before the Council and then getting shot down should the Council not approve of the proposal. She said she has not heard anyone from the business community say anything negative about selling beer at the Ballpark and believes that most of the business community is fine with the idea.

17 §2003-A. DEFINITIONS

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1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Authorized person" means a person having a relationship to the premises, which is unique and not shared by the general public. With respect to property owned by another, it includes a tenant, custodian or night watchman. With respect to publicly-owned property, it includes police officers and other public employees charged with the responsibility of maintaining or protecting public property. [1981, c. 418, §2 (NEW) .]

B. "Liquor" means and includes any alcoholic, spirituous vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquors, intended for human consumption, which contains more than 1/2 of 1% of alcohol by volume. [1981, c. 418, §2 (NEW) .]

C. "Open container" means not having a cap, stopper or other cover in place. [1981, c. 418, §2 (NEW) .]

D. "Public place" means:

(1) A place owned or operated by a governmental entity to which the public at large or a substantial group has access, including but not limited to:

- (a) Public ways as defined in Title 17-A, section 505;
- (b) Schools, government-owned custodial facilities;
- (c) The lobbies, hallways, lavatories, toilets and basement portions of apartment houses, hotels, public buildings and transportation terminals; and
- (d) Public beaches; and

(2) Private ways and parking areas, physically adjacent to public ways and designed primarily for vehicular traffic. [1987, c. 59, (AMD) .]

[1987, c. 59, (AMD) .]

2. Crime. A person is guilty of public drinking if the person drinks liquor in any public place within 200 feet of a notice posted conspicuously in the public place by the owner or authorized person that forbids drinking in the public place or after being forbidden to do so personally by a law enforcement officer, unless the person has been given permission to do so by the owner or authorized person.

[2001, c. 139, §1 (RPR) .]

3. Evidence. The possession of an open container of liquor in a public place is prima facie evidence of a violation of this section.

[1981, c. 418, §2 (NEW) .]

4. Violation. Violation of this section is a Class E crime.

[1985, c. 737, Pt. A, §39 (NEW) .]

Section 42-82 would apply to the Ballpark. See Section 2-404 of the Ballpark Commission Ordinance:

The Ballpark, as defined in this division, is intended to be operated as a sports/entertainment/events and recreation area and not as a public park subject to the care and superintendence of the conservation commission nor shall its operation be considered a recreation program subject to oversight by the recreation board.

(Emphasis added.) Since Section 42-82 refers specifically to “recreation property,” I would interpret Section 42-82 as applying to the Ballpark.

Section 42-82 is not a requirement of state law, and the Council could amend the ordinance to allow consumption of alcoholic beverages at the Ballpark under appropriate conditions (perhaps with a special events permit under Section 42-256). We would be glad to assist in drafting an amendment if the Council is interested in creating a different rule for the Ballpark.

Councilor Dayton continued by recommending that the Ballpark ordinance needs to be changed and requested that the Ballpark Commissioners approve this issue. The Town Manager indicated that the Ballpark Commission is in support of this and he does not apologize for bringing this option to the Council in this manner. Councilor MacDonald reminded the Council that BRASS itself has supported this project. Jerome Begert indicated that although he might not support beer at the Ballpark that he believed the arguing will only put more cost on the Town when the lawyer gets involved again and that moving forward with this tonight would expedite the process. The Chair agreed that this was complicating an issue which isn't complicated.

The Town Council Chair asked if there was consensus to support the Town Manager's request and it appeared that Councilor MacDonald and Chair Quinn agreed. Councilor Dayton did not appear to support the plan at this time without following the process, changing the Ballpark Commission ordinance, and following the process that is already part of Council requirements. She said she would agree to move it forward with the following issues to be addressed in consideration of this issue. Councilor Dayton agreed to consensus if the council receives the recommendation of the Ballpark Commission on this issue; reflects changes as necessary to the Ballpark Commission Ordinance; recommend Doug Ayotte of the Raging Tides to proceed with permits and requirements to arrange for the selling of beer at the Ballpark; work with the Code Enforcement Officer to assure that all legal requirements and ordinances are being met; and bring the item back to the Town Council for approval. There was consensus to move forward on this Discussion item.

VOTE: Unanimous Consensus.

5418 Discussion with Action: change the name of the business license, special amusement permit and liquor license from Oasis Bar & Grille Inc., to Ernesto's Dockside Restaurant & Lounge, (306-5-3), 8 East Grand Avenue, and all other information remaining the same.

TOWN COUNCIL CHAIR: A Business License for Christopher S. Small dba/Oasis Bar & Grill, Inc. (306-5-3), 8 East Grand Avenue, was issued on May 18, 2010. On May 11, 2011 under Public Hearing Special Amusement Permit and Approval, the Town Council approved the Special Amusement Permit for Christopher S. Small dba/Oasis Bar & Grille, Inc. (306-5-3), 8 East Grand Avenue, Acoustic Solo & Duo Entertainers, DJ – Inside and Outside, 9:00 a.m. to 1:00 a.m. On May 11, 2011, under Agenda Item 5396, the Town Council again approved the Liquor License Renewal, as Christopher B. Small dba/Oasis Bar & Grille Inc. (306-5-3), 8 East Grand Avenue, s-m-v in a Class A Lounge. A request was received from Chris Small on May 23, 2011 as the licensee and owner of the above establishment to change the name of the business on the business license, the amusement license and the liquor license to: The Business License would show Ernesto’s Dockside Restaurant and Lounge (306-5-3), 8 East Grand Avenue. The Special Amusement Permit would show the following name change: from Oasis Bar & Grill Inc., to Ernesto’s Dockside Restaurant and Lounge (306-5-3), 8 East Grand Avenue, acoustic Solo & Duo Entertainers, DJ-Inside and Outside, 9:00 a.m. to 1:00 a.m. The Liquor License Renewal will have the following name change from Oasis Bar & Grille Inc. to Ernesto’s Dockside Restaurant & Lounge (306-5-3), 8 East Grand Avenue, and changed from an s-m-v in a Class A Lounge to an s-m-v in a Restaurant & Lounge.

MOTION: Councilor MacDonald motioned and Councilor Dayton seconded to change the name of the business license, special amusement permit and liquor license from Oasis Bar & Grille Inc., to Ernesto’s Dockside Restaurant & Lounge, (306-5-3), 8 East Grand Avenue, and all other information remaining the same.

VOTE: Unanimous.

ADJOURNMENT

MOTION: Councilor Dayton motioned and Councilor MacDonald seconded to adjourn the Special Town Council Meeting at 7:45 p.m.

VOTE: Unanimous.

The meeting was closed at 7:45 p.m.

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 seven (7) pages is a true copy of the original Minutes of the Special Town Council Workshop of May 26, 2011.

Louise Reid