

**TOWN OF OLD ORCHARD BEACH, MAINE  
ADMINISTRATIVE HEARING  
Tuesday, July 31, 2012  
4:45 p.m.**

An Administrative Hearing was called to order at 4:45 p.m. on Tuesday, July 31, 2012 to consider administrative review.

The following were in attendance:

**Town Manager Mark Pearson  
Assistant Town Manager, Louise Reid  
Code Enforcement – Jim Butler  
Planner – Jeffrey Hinderliter  
Marc Bourassa  
Tina Morrison  
Police Chief Dana Kelley  
Lt. Timothy DeLuca  
Fire Chief John Glass  
Thomas Lacasse – Manager – Oceanside Grille at the Brunswick  
Guy Loranger – Attorney for Oceanside Grille at the Brunswick  
Marcia and Peter Kelley – President of the Association**

Also in attendance in the audience were other residents of the Brunswick as well as citizens representing the Brunswick itself and those indicating an interest in the issues being presented. The following noted their presence and also many spoke on various issues relative to the areas being discussed. Gina St. Jean, Fran Calaguilo, Kris and Chuck Lukas, Chris Aceto, Patrick and Frances Murphy, Dan Hogan, Danielle Campbell, Jim Stack, Scott Ring, Katherine LaCasse, Danielle Campbell, Jim Stalk, Debbie and Bill Long, Karen and Peter Redman, Arthur Denorey, Bud Harmon, Pat Brown, and some who did not sign the attendance request form.

**ADMINISTRATIVE HEARING #1: 4:45 p.m.**

The Town Manager presented the duties of the Administrative Review Board as follows:

**ADMINISTRATIVE REVIEW BOARD (A.R.B.) – OUTLINE OF DUTIES**

**Authority of the A.R.B.**

Authorized by Code of Ordinances: Businesses Section 18-38 and Section 18-39

**Purpose of the A.R.B.**

- 1. FACT FINDING**
- 2. PRIME GOAL = RESOLVE ISSUES**

## Process

- **A.R.B. meeting is triggered by either:**
  1. **one written complaint to License Administrator**
    - **pertaining to Business License / Code / Ordinance violation**
  2. **three or more disturbances verified by Police Chief**
- **This does not imply that businesses appearing before A.R.B. are less than stellar**
- **Complaint goes to License Administrator, to Town Manager, to A.R.B. (to discuss complaint/disturbance with business)**
- **If unresolved: to Town Council**

## Tools

- A. Resolve Complaint or Issue through Common Sense and Mutual Cooperation**
- B. Propose Consent Agreement with Applicant**
- C. (if not resolved) Recommendation to Town Council of License Revocation/Denial**

**The Town Manager reviewed the material which has been presented to the Administrative Board prior to the convening of this meeting which included the original complaint from Sanford Roberts, Esquire of the Firm of Sanford Roberts, 117 Bow Street, Post Office Box 4608, Portsmouth, New Hampshire 03802-4608. Attorney Roberts first indicated in his letter of July 2, 2012 that he represented 26 residential owners at the Brunswick but then in a fax, dated July 12, 2012, Attorney Roberts corrected his misstatement by indicating “while my letter to the Council was written on behalf of the Brunswick Condominium Owner’s Association as authorized by its Board, I have been advised that several of the residential owners do not support the request I have made.”**

**Presented in the letter from Attorney Roberts was a listing of 19 incidents at the Grille involving Grille patrols creating disturbances between October 2010 meeting at which the Council approved the 2011 Special Amusement Permit and the October 2011 meeting at which the Council approved the Special Amusement Permit for the 2012 season. On both the 2011 and 2012 permit applications the Police Department block is initialed but there are no indications in the Town file that the Police Department notified the Council of the numerous police calls to the Grille premises that occurred during the prior year. He reported there were 13 incidents between October 2009 and October 2010 when the Council granted the Special Use Permit for the 2011 season. There are police incident reports in the file for the 2004 application but not thereafter. Section 28-A- M.R.S.A Section 653 permits a municipality to deny a liquor license to an applicant for “repeated incidents of breaches of the peace, disorderly conduct, vandalism or other violations of law on or in the vicinity of the licenses premises and caused by persons patronizing or employed by the licenses premises. Attorney Roberts indicates “The incidents that these police reports document are the kind that endanger the public health, safety and welfare which are one of the required statutory considerations for municipal approval of a liquor license. The public health, safety and welfare are also required**

to be considered by Section 18-35 of your ordinance before granting the Special Amusement Permit.”

It should be noted that the owner of the business is listed on the Business License as Oceanside Lounge Trust, 200 Wild Dunes Way, Old Orchard Beach, Maine 04064 (207-934-4513) with the exact Corporate name of HFY Enterprises who applies for the Liquor License. The Manager of the business is Tom Lacasse, 29 West Grand Avenue, Old Orchard Beach, Maine – (207-934-4873). They are licensed for Victualers with Preparation - \$150; with alcohol on premises - \$100; four coin operated amusement devices (\$15 each) - \$60 per year.

Approximately 16 residents of the Brunswick appeared at the hearing during which they were represented by the President of the Association, Marcia Kelley, whose husband, Peter Kelley, also spoke representing the Association. Mr. Kelley indicated:

“We want to thank you all for being here today – we very much appreciate this opportunity to be heard. We might have come before you sooner but, unfortunately, we’ve never been notified of any of your meetings. We wish that it were not necessary to be here now, but we have no choice. Over the past several years many of us, including our Associations presidents, have asked the Commercial lessee to please be a good neighbor. We have repeatedly asked that he put reasonable limits on the volume, duration and frequency of the bands playing on the patio directly beneath our windows, as well as the bands making our walls and floors vibrate whenever they play indoors. On some occasions, we have been subjected to both simultaneously. We have also asked them to please be more vigilant to possible over-serving within their bar and to take greater responsibility for the behavior of their patrons, in both our building and in the parking lot. Their customers have been responsible for many many thousands of dollars in property damage in both places and many of their own patrons have been injured or assaulted. If a covenant regarding the Commercial area within our building exists, we are unaware of it. Even if such a covenant does exist, surely this does not grant them the right to disregard all reasonable limits. We do respect their right to conduct business and yes, we all knew that there was a commercial entity on the first floor when we purchased our homes, but it was a very different commercial area from what it has become. In the hands of the current lessee, what was once a pleasant restaurant, a compact block of hotel rooms, and a small bar with occasional entertainment, has now expanded into vast bar areas, both indoors and out. There is now loud music coming from the bar nearly twelve hours per day at outrageous decibel levels nearly every day of the week. We cannot hear out TV’s, have normal conversations, or get any sleep, until the bar closes and its patrons finally go home, many of them after 1:00 a.m. The parking lot is far too frequently a battle zone where few of us feel safe passing through it at night in order to enter our own building. Many of us have children or grandchildren who can no longer visit us because of this and there are also owners who have serious health issues, among them is one who is trying to recover from a stroke and another who is currently having to undergo radiation treatments for cancer. We know the noise coming from our Commercial area is excessive because a friend, who lives in Ocean Park, one mile away, has told us that even she can hear the bands playing. More importantly, we also have statements from people who live blocks away that they are upset that the noise from our Commercial area is interrupting their sleep as well. None of us understands why this excess of sound seems necessary to their business when their patrons who choose to listen to this music are sitting right there, only a few feet away. We have done research regarding what various entities, including OSHA, consider acceptable duration and sound levels and we have consulted the mixed use ordinances of another comparable beach community in York County administrative board meeting - July 28 2012 - Oceanside Grille Page 3 of 9

for additional guidance. We can tell you that all our research has confirmed that we are not the ones being unreasonable here, far from it. On the evening of June 15<sup>th</sup> on the beach in

front of the bar, the level was measured at 104 decibels above the ambient sound. As we all know, mid-June is weeks before the high season begins, so I think that we can be fairly certain that the decibel level, with the addition of very large, very vocal crowds, far exceeds that earlier measurement. This is not only considered totally unacceptable by a standard but also in our research we have discovered that what we are subjected to both day and night is so far beyond acceptable that it far exceeds the level at which sustained exposure may result in hearing loss. OSHA say that discomfort level is above 80 decibels, the same as heavy traffic and the U. S. Department of Transportation requires noise abatement barriers at and above this level. Since our reading was at 104, over 20 decibels above that, the charts show that we are expected to tolerate nearly four times the sound level of heavy traffic. OSHA also tells us that the duration must be factored in. Their tables as well as several others indicate that no one should be subjected to a level of 104 for longer than approximately one hour. In excess of this is considered totally unacceptable. Yet, as I have said, we all have been subjected to this daily and nightly, early every day, within our homes. We have brought with us Police complaints from the past two plus years and we can give you a summary of these. We believe that these may be of some importance to you. We have also brought with us the results of some of our research as well as the maximum acceptable levels and hours of sound within the beach mixed use community to which I referred. We believe that these all should apply here and please feel free to look them over. Unfortunately, if you would like to look these over later, we must ask that you copy them and return them to us. Again, all our pleas for voluntary cooperation have been ignored so as citizens of Old Orchard Beach we are asking you to please help us now. We ask that our Town put reasonable limitations on the Brunswick Commercial area's Special Amusement Permit at the levels we have suggested above, so that we can again have the peaceful enjoyment of our homes that is a fundamental right to which we are all entitled. Thank you for listening. If you have further questions we would be happy to answer them now or you can contact the President of our Association, Marcia Kelley, directly, either by e-mail ([mmkelleyfl@yahoo.com](mailto:mmkelleyfl@yahoo.com)) or by phone – 207-229-4245. Further on in the meeting they also presented sound levels that were measured on June 15<sup>th</sup> at 8:30 p.m. - at the Waverly, 97 Db above the ambient noise level; in front of the Brunswick on the beach 104 Db above the ambient noise level. On June 16 – Beachwood Motel – did not object to the music at the Brunswick, thought it was good for the area, however, after hours. Particularly around 11:00 p.m. the music should go indoors as that is when the guests want to go to bed and sleep or watch TV without hearing the band playing. Oceanic – feels that there is absentee management and a nuisance at the Brunswick. There are also motorcycles that arrive there but he has more complaints with the live entertainment at the Sunset. #5 McNally Way – stated that there has been a problem for the last eight years and it gets worse after July 4<sup>th</sup>. . The individual does not have an air conditioner and has his window open and the music is so loud that he cannot sleep. July 7<sup>th</sup> – KEBEC3 – concerned about the noise level; 9:00 p.m. measured the decibel level at the beachfront directly in front of the Brunswick while the band was playing, the level was 97 Db above the ambient noise level and on the beach to the left of the Brunswick the noise level was 7 Db and to the right by the Waverly, the level was at 73 Db. July 11<sup>th</sup> – McNally Way – they were concerned with the noise level particularly at bedtime and were preparing a statement and suggested that a visit be made as there were other property owners who had complained. They also read a complaint that was received by the Association: “I am writing this statement in regards to the noise endured from the music of the Brunswick Hotel is subjected on us seven nights a week. As a resident of the neighboring administrative board meeting - July 28 2012 - Oceanside Grille Page 4 of 9

area we cannot get any sleep until after 1:00 a.m. It is very very upsetting. Also would like to mention have a very interested buyer in our property they checked out the noise level and decided to back out of the sale. I seriously would love to have some peace and quite in our neighborhood.”

The Town Manager throughout the Review permitted individuals to speak and also acknowledged that Tom LaCasse, business owner, and his attorney, Guy Loranger, to speak after the President of the Association’s presentation. They presented some information throughout the meeting. They open up Memorial Day – May 25<sup>th</sup> to July 29<sup>th</sup> of 2012 – 65 days with 26,031 clients. July and August they average 20,000 clients per month. August perhaps 650 during the day. A typical Friday/Saturday/Sunday may turn as many as 1,500 each day and the average client spends \$178.39. The amount of average alcoholic drinks served during a visit is 1.85. Food sales were \$45,884 (38.61% of their income; and Liquor was \$50,955 (61.39% of their income - drinks/Beer/Wine/Alcohol. Off- season they reported that from September 6<sup>th</sup> to May 26<sup>th</sup> they have about 29,610 clients or 3,300 per month. Monday through Thursday they see 10% of their clients and on Friday through Sunday about 90%. They see between 200 to 400 on a Friday, Saturday and Sunday. Tom explained that he has been in business for the past ten years and never had an alcohol violation. They have constant walk-through by Liquor Enforcement Officer, Tony Germaine, with no violations ever cited. Their Bartenders serving experience includes ten individuals servicing with six to twenty years of experience; six have been with them from the first day in business; and two in training but have spent four years on the floor. During the summer they employ 65-70 employees and 25 employees off-season. Their retention rates are exceptional at 95%. Currently the Bartenders they have are attending law school, finishing Masters in Psychology, Dental Hygienist, Teacher, Culinary Grad Function Coordinator, Office Manager, College Freshman Business Career, Registered Nurse and one with a Bachelors of Science Degree. The age bracket at the restaurant for clients is 35 to 70 years of age. The music profile is mostly 70 and 80’s music. Monday through Wednesday they have Acoustical from 1 to 5 and Acoustical 6 to 10; Thursday Acoustical from 1 to 6 with a Band from 6 to 11 p.m. Friday and Saturday they have a band from 1 to 6 and a band from 8:30 to 12:30 a.m. and Sunday they have a band from 1 to 6 and a band from 6 to 10 or 11:00 for closing. They have the highest alcohol pricing on the beach \$7.50 brand name alcohol during and \$4.50 for Beer. They do not have any Happy Hours as compared throughout the town with \$2 drink specials at other bars. They have a zero Tolerance Policy which is posted and they recently spent \$35,000 for a security system with 16 cameras with remote access. Their Security Personnel increased this year by 50 percent with Monday through Thursday 2 on duty; Thursday night with 5 on duty; Friday Day, 2 – Friday night – 7; Saturday Day – 4 and Saturday night – 7; and Sunday Day – 4 and Sunday Night 3. Off season they have 5 to 6 on Friday and Saturday nights.

Several of the occupants of the Brunswick spoke and mostly reiterated the issue contained in the statements by the Kelley’s with the comment being made on several occasions that they did not want to close down the business but rather were concerned about their quality of life and some consideration being given to the noise level being reduced. Tom Lacasse indicated several times that he has lowered the decibel level and has tried to be a good business owner and cognizant of the residents living in the area above. One of the issues that was raised was the need for the balconies to be finished or restored and that would lower the level of the noise it was felt. Questions were raised about the ownership of the parking lot on which several complaints have been raised about the noise and the fights as well as the difficulty in finding parking spaces. A plan that was found in the Code Office which was revised in 1994 shows 26 parking spaces are deeded to residential units; 26 spaces owned by the Brunswick Hotel

Corporation; 3 spaces to be sold to Vachon; and 8 spaces to be deeded to Lindberg's Landing Trust. The plan was not marked "Approved". A plan dated 1993 which looks like a sketch plan but signed by the Site Review Committee shows 52 spaces owned by the Brunswick Condo Association; 11 spaces owned by the Brunswick Hotel Corporation; and 3 spaces for Vachon. The originally approved document of 1983 did not show parking at all. It was noted that the question of ownership is still up in the air.

There were several attendees who supported the business owner and indicated that limiting his ability to provide programming to those coming to the Oceanside Grille will greatly hinder his ability to make it profitable which is required to keep a business in operation. Restriction of hours or restriction of the types of music are considerations but must be tempered with the understanding of what it takes to run a profitable business and keep it in business.

One of the issues that was discussed was the covenant that was signed when the property was originally rented out. According to Section 9.3 of the document - "Each unit may be used subject to all restrictions contained in the unit deed, this Declaration, the Bylaws of the Association, and the Rules and Regulations of the Association, as amended from time to time. The Residential Units are restricted to residential and hotel use except that the Declarant may use any unsold units as models or as sales offices; other reasonable temporary non-residential uses may be permitted in the discretion of the Board of Directors of the Association. The Commercial Units may be used for any purpose, including but no limited to restaurant, lounge, entertainment, hotel/motel office, retail merchandising or any other use permitted by the zoning ordinance of the Town of Old Orchard Beach.

In reviewing several of the Police reports it was noted a few that appeared to be serious. Chief Dana Kelly explained to those in the audience that when a call is made about a disturbance or incident – the area of the complaint shows usually the business in the local. Therefore something may actually not happen at the business but on the street in front of the business or on the beach in the back of the business but the notation on the log still notes that it is the Brunswick, or the Pier, or whatever business is located that area. So that the many reports that were reviewed were not actually at the Brunswick but in the area of the Brunswick. Lieutenant Timothy DeLuca also reminded those in attendance that much of their complaints of issues they raised about inside the building are of civil matter not regulated by the Town. The Chief also said that many of the times they have discussed issues with the business owner of the Oceanside Grille, that he has been receptive and attempted to find a solution to the problem. He also noted that where there is drinking in any establishment there are always the issues that rise as result of the drinking.

Much of the discussions by those who spoke relates to "what is reasonable." The Town Manger who asked individuals to give suggestions for solving the issues that were raised indicated that it appeared from the Attorney's mind the issue was disturbances but most of the emphasis in the meeting today was on the issue of "noise." Discussion between the members of the Administrative Board brought suggestions that we find some way to resolve the issues that have been raised. It was indicated by Attorney Guy Loranger that he had already put forth the invitation for the members of the Association Board and the Business Manager to meet with him at a time convenient for them and to try to find some resolution to the issues. Some of the suggested resolution would be soundproofing considerations; agreement on the decimal level; breaks in the times the bands play; noise testing; agree to meet together for discussion; reconvene this meeting in another month once some agreement on means of resolution has been reached, have someone from the Police Department be part of the discussions . The two administrative board meeting - July 28 2012 - Oceanside Grille Page 6 of 9

**citizen voting members of the Committee, Mark Bourassa and Tina Morrison, indicated that they support having a meeting on September 10, 2012 at 4:00 p.m. in the Town Council Chamber to reconvene and receive an update on the result of the meeting between the Association and the Business owner. The Town Manager expressed appreciation to each of those attending for their contribution I the discussions and the atmosphere of cooperation that was shown. It was obvious throughout the discussions that both sides of the issue had a compelling interest in ensuring for the residents and the business and the environment to find a solution so that one's health and quality of life is not jeopardized. To protect, preserve and promote health, safety, welfare and business can be maintained through cooperative means.**

**The Administrative Board Secretary and Assistant Town Manager were approached by Pat Brown as the meeting was concluding. Ms. Brown had spoken earlier but indicated she failed to bring a written response that she would like included in the minutes and would provide that to the Assistant Town Manager.**

**“Via e-mail To:       Town Council  
                          Mark Pearson, Town Manager  
                          Louise Reid, Asst. Town Manager  
                          Chief Kelley, Old Orchard Beach Police Dept.  
                          Lt. DeLuca, Old Orchard Beach Police Dept.  
                          Chief Glass, Old Orchard Beach Fire Dept.  
                          Jeffrey Hinderliter, Town Planner  
                          James Butler, License Administrator  
                          Marc Bourassa, Business Member  
                          Tina Morrison, Citizen Member**

**Via Post/Hand cc:   Sanford Roberts, Esquire  
                          Marcia Kelley as President of the Condo Assoc.  
                          Guy Loranger, Esquire  
                          Thomas LaCasse, Oceanside Grill at the Brunswick**

**From:                   Patricia Brown, 1 Fourth Ave., Old Orchard Beach, ME**

**Date:                   July 31, 2012**

**Subject:               Administrative Review Board Meeting of July 31, 2012**

**Before leaving tonight's meeting, I requested the Administrative Review Board Secretary include this letter as part of minutes from tonight's meeting as it addresses two salient issues—the unfinished balconies at the Brunswick and the Town involvement in internal condominium decibel levels anywhere in Town. One of my primary concerns is the balconies at the Brunswick. I understand that there is some type of construction timetable in the works to have these balconies installed, but I want to be sure this construction timetable, complete with benchmarks and dates, is submitted in writing to our Town Officials by someone in authority affiliated with the Condo Association. I feel it's important to bring to your attention the complete cooperation the Condo Association received from everyone in the surrounding neighborhood during their initial construction project. The entire top of my street was cordoned off with a construction fence for much of the time, with construction noise constant every day, 7AM to 5PM, for many, many administrative board meeting - July 28 2012 - Oceanside Grille Page 7 of 9**

months. This work was done off season, from September to May, which is a time that we look forward to enjoying the peace of the beach. There was no peace that year at all with construction equipment constantly moving up and down the street, multiple lowbed deliveries of both large pieces of lumber used to brace and shore the building, and enormous beams installed as permanent support. In every way, my street and also Fernald Street on the other side of the Brunswick became very active construction sites. It may be worthwhile asking Tom to describe the difficulties he encountered attempting to run any semblance of a business during this time while contending with rain pouring through the ceiling from multiple leaks in the roof and visible shoring lumber throughout his establishment. I find it extremely interesting that before, during and after that project, not even ONCE did the Condo Association attempt to seek input from the surrounding neighborhood. Usually with projects of this magnitude, it's a reasonable expectation for there to have been at least some communication with the surrounding neighbors to find out if any of us were unhappy with the noise, disruption or congestion. Obviously, this project suited their needs, so to me, they didn't seem to be concerned with the effect on any of the neighbors who are year round residents. I believe there are more year round residents on my street, McNally Way and Carl Smith than reside in the entire 26 Brunswick condominium units. (I actually question how many people present this evening are even full time summer residents.) The lack of impact to 98% of the condo owners may explain, but not excuse, their lack of concern with the construction noise, disruption and congestion to our neighborhood. The project abruptly stopped, without the balconies being completed. It was "rumored" the project would begin again in the Fall and balconies would then be completed. At that point, the ugly railing monstrosities were attached to the building. My neighbors and I were willing to let things ride for a season, but now it's stretched into two, and thus, I don't put much stock into what the Condo Association states it will do and by when. That is why I ask this construction timetable be submitted in writing to our Town Officials with full details, including start and end dates as well as milestone dates assigned to the completion of specific tasks within the project timeframe. I am thoroughly embarrassed to own property next to that building. It's the tallest building in this section of our beach and is referred to by everyone, including tourists, as the "Brunswick Jail". My property value, and those of my neighbors, has been significantly reduced by the exterior physical condition of that building. Not only is the lack of these balconies an eyesore that equals blight conditions, but my experience in the construction industry and from serving five years on the Sound Committee, leads me to strongly believe the lack of those balconies increases the external sound being heard inside the condos from the Patio. Tom mentioned the possibility of sound deflection boards on the exterior of the building. Those balconies are an integral part of the sound deflection system. Thus, rebuilding of those balconies must be part of whatever solution proposed. Concerning the Sound Ordinance decibel levels, the Condo Association President blithely suggested adopting the decibels from York Beach's noise ordinance. The Town of Old Orchard Beach Sound Ordinance was adopted a very short time ago, after MANY years of committee meetings, and final review by the Ordinance Review Committee. I served on the Sound Committee from beginning to end, investing much time and energy. I can say with complete certainty that changing anything in that Ordinance is a major ordeal. Further, not one person from the Condo Association served any time on that committee at all. They may say "they didn't know". But over the multiple years of that committee's existence, there were



many newspaper articles, public announcements both on Channel 3 and in the local paper and public hearings. If they were at all interested in public service to the Town, they had plenty of opportunity to either serve on the committee themselves or, at the very least, provide input.

One final point I need to bring to your attention that was raised this evening, but somehow didn't seem to be sufficiently addressed. The Town Sound Ordinance does NOT apply to the internal space of the condos. As it is with the multitude of condominium buildings in Town, any problems with sound decibels internal to condominiums in buildings are a Civil Issue, NOT a Town issue. Several people from the Condo Association, including their president, stated they were not concerned with the parking lot at all, and their concerns were associated with sound decibel levels inside their condos. The Town Manager, in an attempt to move the discussion along, developed a flipchart that clearly illustrated this fact with every point but one, which was added as an afterthought, listed on the noise side of the chart. I believe the Condo Association knows this is not a situation that falls under Town ordinance and that's why they hired a private investigator in an attempt to find neighbors who had noise issues. In conclusion, I request the Town focus utilizing its resources to address issues within its jurisdiction—ensuring the safe and timely installation of the decks. Specifically, I ask a construction timetable be submitted in writing to our Town Officials with full details, including start and end dates as well as milestone dates assigned to the completion of specific tasks within the project timeframe. The Town should be careful not to become embroiled in condominium issues outside of its jurisdiction such as sound decibel levels internal to the building. Thank you for your consideration.  
Sincerely,  
Patricia Brown”

The Administrative Board Meeting concluded at 6:55 p.m.

Respectfully Submitted,

V. Louise Reid  
Secretary to the Administrative Board

I, V. Louise Reid, Secretary to the Administrative Board of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of nine (9) pages is a true copy of the original Minutes of the Administrative Hearings held on Thursday, June 21, 2007.