

**TOWN OF OLD ORCHARD BEACH
TOWN COUNCIL WORKSHOP
Wednesday, August 21, 2013
TOWN HALL CHAMBERS
6:30 p.m.**

A Town Council Workshop of the Old Orchard Beach Town Council was held on Wednesday, August 21, 2013. Chair O'Neill opened the meeting at 6:35 p.m.

The following were in attendance:

**Chair Shawn O'Neill
Vice Chair Bob Quinn
Council Kenneth Blow
Councilor Jay Kelley
Councilor Malorie Pastor
Councilor Joseph Thornton
Councilor Roxanne Frenette
Interim Town Manager Robert Peabody, Jr.
Assistant Town Manager V. Louise Reid**

Representative of the Administrative Board were also in attendance including Marc Bourassa and Tina Morrison who have worked with department heads in several Administrative Board Review meetings. Also present were Police Chief, Dana Kelley, and Fire Chief, John Glass.

This Workshop was called at the request to the Chair by Dan and Lucas Patry, owners of Kate's Butter. Historically Kate's Homemade Butter has been produced in a house in Old Orchard Beach for more than thirty years. It produces more than one million pounds of butter a year as well as buttermilk. They had been planning to move this past fall to a 17,600-square-foot facility in Arundel but that relocation has been held up by construction problems with the roof and an alleged stop-work order. Dan Patry presented to the Council a copy of the legal suits that are ongoing and complicating the ability to move into the new facility. The purpose of the workshop was for Kate's Butter management to request an extension to the date that they had agreed to be out of the building which was September 30, 2013.

It was noted that there have over the years been multiple complaints about Kate's Butter which range from tractor-trailer trucks driving through a residential neighborhood and damaging roads, to noise in the middle of the night as the butter is produced and loaded on to pallets. At the same time the neighbors had always expressed that they had no desire to put them out of business. However, it was pointed out that Kate's has grown to the point that it needs two tankers of cream delivered per week and a 48-foot truck picks up finished butter and buttermilk every day between 8:00 a.m. and 4:00 p.m. It produces its current volume of dairy products in about 1,000 square feet of space.

There had been several Administrative Board Review meetings with the determination to resolve Complaints or Issues through Common Sense and Mutual Cooperation; Propose Consent Agreement with Applicant; and if not resolved recommendation to Town Council of License Revocation/Denial.

The owners of Kate's Homemade Butter agreed to implement a series of new procedures designed to limit the impact of the business on its neighbors while the company continues to build a new facility in Arundel. The consent decree was reached and signed and Luca Patry indicated that he believed they have done their best to meet the criteria and when there have been difficulties they informed the Code Officer who was not

present this evening but on vacation. The goal of the agreement was to allow the neighbors to live with the business until it can move to its new location in Arundel.

It was understood that under this proposed agreement, Kate's will reduce the size of its delivery trucks, limit the hours that work will be done outdoors, and plant trees and install other sound barriers to reduce the noise. The Company will provide the Town's Code Enforcement Officer with monthly progress reports and construction updates on its 17,600-square-foot facility in Arundel. For the most part these responsibilities have been met.

Below is the Consent Agreement:

Old Orchard Beach – Proposed Consent Decree – For Discussion Purposes Only
(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 relocate 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.

At a meeting of the Town Council on June 4, 2013, the following motion was made and passed unanimously: "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 Degree 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."

Again, it was pointed out during the meeting that it has been noted that the owners have implemented a series of procedures which have brought some resolution to the issues.

The Chair gave an opportunity for residents in the audience to speak relative to their opinion of the issue being discussed this evening. The following individuals presented their concerns including Mary Susan Jordan and Gregg Kidd who reiterated the disconnect they have felt with the noise and what in some instances they felt as harassment. Neighbor, Dee Cyr, on the other hand spoke about wanting to be a good neighbor and appreciating all the things that the Patry's have done and the pride that should be felt in the type of business they have built.

Council members were quite frank about the situation. It was the general feeling that the situation had gone on too long; but there were extenuating circumstances which could not be planned on and have caused the situation to develop to this point. They also pointed out, however, that they knew the situation and it was the Patry choice of dates they felt they could be out and on which the Consent Agreement was based which was September 30, 2013. Dan Patry indicated that he realized that they had not analyzed the situation adequately and that he had talked with his son, Chris, who manages the building project and at first suggested December 31, 2013. Councilor Pastor indicated that she was disappointed since this Workshop was requested by the Kate's Butter management that they had not come prepared with a date-certain for the move. At some point in the conversation each Councilor reiterated the same concern that a date-certain should have been on the minds of the Patry's when they asked for this workshop and they should have been prepared to present that to the Council.

It was the suggestion of the Council that within the next week a letter be sent to the Code Officer or the Assistant Town Manager detailing certain the date they expect to be in the Arundel facility and the Council expressed their intention that it should a reasonable date to give assurance to the neighbors that this situation will be resolved.

The Chair thanked those who took the time to participate in the discussion and although there are unresolved issues that need to be addressed in a timely manner, we are aware that the situation caused by the legal implications has made the move difficult. He also assured the neighbors that we would work to bring this situation to a conclusion. During the discussion it was suggested that once the letter is received from the Patry's that this should go back to the Administrative Board with a recommendation coming back to the Council of how the situation should be resolved and any consideration of fines that it may entail.

ADJOURNMENT:

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 four (4) pages is a copy of the original Minutes of the Town Council Workshop of August 21, 2013.

V. Louise Reid