

PLEASE TURN OFF ALL CELL PHONES
TOWN OF OLD ORCHARD BEACH
SPECIAL TOWN COUNCIL MEETING
MONDAY, JULY 9, 2007 – 4:00 P.M.

TOWN HALL CHAMBERS
AGENDA

A Special Meeting of the Old Orchard Beach Town Council was held on Monday, July 9, 2007 at 4:00 p.m. in the Town Hall Council Chamber.

Present were:
Councilor Robin Dayton
Councilor Roxanne Frenette
Councilor Shawn O’Neill
Councilor James Long
Chairman Joseph Kline

ACCEPTANCE OF MINUTES: Town Council Minutes of June 19, 2007; and Special Town Council Meeting Minutes of June 29, 2007.

MOTION: Councilor Long motioned and Councilor Frenette seconded to approve the Town Council Minutes of June 19, 2007.

VOTE: Yea: Councilors Long, Dayton, Frenette & Chairman Kline
Abstain: Councilor O’Neill

CHAIRMAN KLINE: In discussion of our review of the Minutes of June 29, 2007, Councilor Dayton has requested changes be made to some portion of the Minutes.

COUNCILOR DAYTON: I have provided to the Secretary a listing of the items that I would like to have changed to reflect more adequately discussions held during the June 29, 2007 meeting.

Councilor Dayton then reviewed each of the seventeen pages of the draft Minutes noting the changes that she would like to have made for consideration by the Council.

COUNCILOR FRENETTE: I raise the issue of why Councilor Dayton is making changes to the verbiage of other individuals. We were asked to approve two licenses not to consider discussion on the kiosks. That could have been done at a later date. I agree with the Minutes as they have been written and believe they adequately expressed what had occurred. It is obvious that the draft Minutes had been shared with other individuals prior to the discussion with the Council and that should not have been done.

CHAIRMAN KLINE: Are there any other changes to be made to the Minutes of June 29, 2007?

COUNCILOR LONG: I would like to correct on page 14 in my statement that the reference is to “trial courts” not “trial course.” I would also add the statement “A reasonable person would not consider these buildings to be temporary.”

COUNCILOR DAYTON: I was told there was no definition in the International Building Code for temporary structure and that is incorrect. There is a definition.

CHAIRMAN KLINE: Is there a motion to amend the Minutes of June 29, 2007?

COUNCILOR O’NEILL: Would that strengthen the case?

CHAIRMAN KLINE: I don’t think so. Is there a motion to amend the Minutes?

MOTION: Councilor Long motioned and Councilor O’Neill seconded to amend the Minutes of the June 29, 2007 as discussed.

VOTE: Yea: Councilors Long, O’Neill, Dayton, and Chairman Kline
Nea: Councilor Frenette

CHAIRMAN KLINE: I will now call for a motion to Accept the Amended Minutes of the June 29, 2007 meeting.

MOTION: Councilor Long motioned and Councilor O’Neill seconded to Accept the Amended Minutes of the June 29, 2007 meeting.

VOTE: Yea: Councilors Long, O’Neill, Dayton, and Chairman Kline
Nea: Councilor Frenette

CHRISTOPHER VANIOTIS, ESQUIRE: The draft finding of facts that have been prepared from the draft Minutes of the meeting of June 29, 2007, paying attention to the comments made by the three Councilors who voted in the majority to deny the license applications. It is essential that those Councilors who voted to deny the applications are satisfied with the stated reasons for the decision. The Council should feel free to add to, delete from, and otherwise revise and edit these drafts. Once the Council has done so, then the Council should take a vote to approve the notices of decision. Below are the Findings of Fact for both license denials:

Discussion with Action: Prepare written notice of decision, business license application of Steven Fowler, d/b/a Unlucky Lobster, Map 306, Block 1, Lot 2, Unit N.

“On June 29, 2009, the Old Orchard Beach Town Council considered your application for a business license dated June 4, 2007. The premises for which you were seeking a license are identified on the Old Orchard Beach Assessor’s Records as Map 306, Block 1, Lot 2, Unit O. For the reasons set forth in the minutes of the Council hearing (copy enclosed) and further explained below, your license application is DENIED:

1. The premises on which the business would be conducted are a ±200 sq. ft. “kiosk” on the Grand Victorian Plaza, which is a component of the Grand Victorian Project. On

the license application, the owner of the property is listed as “Grand Victorian Assoc.” At the license hearing, the owner of the property was identified as “1 East Grand LLC.” The Grand Victorian Project was developed pursuant to a contract zoning agreement between the Town and Grand Victorian, LLC dated October 19, 2004.

- 2. The kiosk in question is one of three 200 sq. ft. units connected together in a way which has the appearance of a single building. However, the Town’s Code Enforcement Officer stated that each unit is considered a separate building under applicable building codes.**
- 3. As required by the Old Orchard Beach Zoning Ordinance, the kiosk in which the premises are located (along with several other kiosks on the Grand Victorian Plaza) were submitted for review by the Town’s Design Review Committee. On April 23, 2007, the Design Review Committee reviewed specific plans submitted by the owners of the premises and approved those plans with certain revisions, resulting in the issuance of a design review certificate approved by the Planning Board on May 10, 2007.**
- 4. At the hearing on the license application, the Council heard testimony from two members of the Design Review Board and reviewed a letter from a third member of that board, all to the effect that the kiosk as constructed does not comply with the design required by the design review certificate. See attached letter to Councilor Robin Dayton from Mark D. Koenigs, dated June 29, 2007.**
- 5. During the hearing the Council also reviewed architect’s renderings that were submitted to the Design Review Board and agrees that the kiosk as constructed does not comply with those renderings.**
- 6. The Code Enforcement Officer testified at the hearing that the kiosk does not currently include a number of the architectural details and features required by the design review certificate. The Code Enforcement Officer indicated that he “signed off” on the license application because he did not consider completion of all the architectural details essential prior to occupancy of the structure, apparently on the assumption that the work would be completed after occupancy. The Council, which is the licensing authority, disagrees with that practice. This is an application for a new license in a newly constructed building. It would undermine the integrity of the design review process and devalue the work of the Design Review Board to issue a license when the premises do not comply fully with the design approved by the Design Review Board. If that has occurred in the past, the Council considers it to have occurred in error and the Council declines to continue an erroneous practice.**
- 7. The Council therefore concludes that the premises are not in compliance with the requirements of the Old Orchard Beach Zoning Ordinance and therefore, under Section 18-35(b)(3) of the License Ordinance, the license application is denied.**
- 8. The Council also notes that it was the understanding of the Council when the Council approved the contract zoning agreement for the Grand Victorian that the “kiosks” in the plaza area would be utilized for seasonal vending areas and would be located within temporary, portable structures.**

9. In order to be exempt from the requirements of obtaining a permit under the Natural Resources Protection Act (“NRPA”) and under the Coastal Sand Dune Rules published by the Department of Environmental Protection, the structure must be a “temporary structure,” as defined in those rules.
10. The evidence presented to the Council as to how this building is constructed and what would be required to move the building lead the Council to question whether it is indeed a “temporary structure” or whether it is a “permanent structure” requiring a permit from the DEP.
11. The Council was presented with no written evidence that the DEP has issued any kind of formal determination that the building does not require an NRPA permit. Therefore, the Council finds that the applicant has not met the requirement under Section 18-35(b)(2) of the License Ordinance that all required state permits have been obtained or applied for.
12. For the foregoing reasons, the Council determined by a 3-2 vote on June 29, 2007 that your license application is denied.”

COUNCILOR DAYTON: In Item Number 3 it should be noted that the Certificate of Appropriateness was never signed and that the Planning Board did not have a signed copy of the Certificate. The changes were done administratively.

COUNCILOR LONG: I have concerns with item 1 and the use of the word “premises” and would prefer the term “structures.” I also believe that the 200 square feet should be noted as “600 square feet”. In item 2 I would delete the wording “in a way which has the appearance of a single building.” In item 8 I believe the word “understanding” is not correct; and in item number 10 the word “also” should be added prior to “requiring a permit from the DEP.”

CHRISTOPHER VANIOTIS, ESQUIRE: I used the term “premise” in that it is the term used in the Licensing Ordinance.

CHAIRMAN KLINE: I have a question. If the two Councilors that voted to give the license to the applicants vote to accept these findings of fact as denoted by our legal Counsel, does that change our original decision to approve the giving of the licenses?

CHRISTOPHER VANIOTIS, ESQUIRE: No, your vote stands as made in the June 29th Minutes. You are only agreeing that the Finding of Facts are correct.

COUNCILOR LONG: Despite the changes that I suggested, I am prepared to make a motion to approve the Findings of Fact as prepared by our Legal Counsel.

MOTION: Councilor Long motioned and Councilor O’Neill seconded to approve the Finding of Facts re: Steven Fowler, d/b/a Unlucky Lobster, Map 306, Block 1, Lot 2, Unit N., and authorize the Town Manager to sign.

VOTE: Yea: Councilors Long, O’Neill, Dayton and Chairman Kline
Nea: Councilor Frenette

CHAIRMAN KLINE: We excuse Councilor Robin Dayton for personal emergency requirements.

CHRISTOPHER VANIOTIS, ESQUIRE: Noting that the Findings of Fact for both licenses were the same, you now need to vote on the second license.

Discussion with Action: Prepare written notice of decision, business license application of Jesse Fowler, d/b/a Bayside Burgers, Map 306, Block 1, Lot 2, Unit O.

MOTION: Councilor Long motioned and Councilor O'Neill seconded to approve the Finding of Facts re: Jesse Fowler, d/b/a Bayside Burgers, Map 306, Block 1, Lot 2, Unit O., and authorize the Town Manager to sign.

VOTE: Yea: Councilor O'Neill, Long and Chairman Kline
Nea: Councilor Frenette

MOTION: Councilor Long motioned and Councilor Frenette seconded to adjourn the Special Town Council Meeting at 4:48 p.m.

VOTE: Unanimous.

Respectfully Submitted,

V. Louise Reid
Secretary to the Town Council

I, V. Louise Reid, Secretary to the Town Council of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of five (5) pages is a true copy of the original Minutes of the Special Town Council Meeting of July 9, 2007.

V. Louise Reid

ADJOURNMENT