

**TURN OFF ALL CELL PHONES
TOWN OF OLD ORCHARD BEACH
SPECIAL TOWN COUNCIL MEETING
FRIDAY, JUNE 29, 2007 – 2:00 P.M.
TOWN HALL CHAMBERS**

A Special Meeting of the Old Orchard Beach Town Council was held on Friday, June 29, 2007 at 2:00 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

CHAIRMAN KLINE: A request has been made to add an Emergency Item.

MOTION: Chairman Kline motioned and Councilor Frenette seconded to add an Emergency Item pursuant to the Town Charter, Section 1004, and add it under New Business Item Number 2071 – Discussion with Action: Approve the Special Event Permit Application from the Recreation Department to hold concerts in Memorial Park, July 13 through August 16, 2007; with a request to waive the fee.

VOTE: Unanimous.

CHAIRMAN KLINE: It should be noted that the Public Hearing Liquor License needs to follow the Business License. It should also be noted that the Special Amusement Permit must also follow the Public Hearing because neither can be approved without the approval of the Business License.

BUSINESS LICENSE: Oceanside Investment Group dba/Myst (306-1-2-I),
1 East Grand Avenue, Unit I, Victualers and one Vending Machine

CHAIRMAN KLINE: Is there any discussion required on this license or anyone wishing to make a comment? If not I will call for a motion.

COUNCILOR FRENETTE: This is not one of the kiosks; it is the Restaurant in the Grand Victorian, is it not?

TOWN MANAGER: That is correct.

MOTION: Councilor Frenette motioned and Councilor Long seconded to approve the Liquor License as read.

VOTE: Unanimous.

PUBLIC HEARING Oceanside Investment Group dba/Myst (306-1-2-I), 1 East
LIQUOR LICENSES: Grand Avenue, Unit I, s-m-v in a Restaurant/Lounge.

MOTION: Councilor Frenette motioned and Councilor Long seconded to approve the
Liquor License as read.

VOTE: Unanimous.

SPECIAL AMUSEMENT Oceanside Investment Group dba/Myst (306-1-2-I), 1 East
PERMIT: Grand Avenue, Unit I, Entertaining and Dancing.

MOTION: Councilor Frenette motioned and Councilor Long seconded to approve the
Special Amusement Permit as read.

VOTE: Unanimous.

CHAIRMAN KLINE: We had indicated that if there was a need for a Special Meeting
to approve business licenses, that we would meet as required. I would like to separate the
kiosks from the rest of the business licenses.

BUSINESS LICENSES: Kemal Akdogan dba/Illusions (307-2-1), 2 Old Orchard Street,
Rental Booth; Trish Yhnatko dba/Sunglasses & Temp. Tattoo (307-2-1-B), 2 Old Orchard
Street, Novelty Store, no knives or guns; Micheline Collin dba/Patrick Slattery Realty,
LLC (310-7-2), 64 West Grand Avenue, Unit 1 & 6, two seasonal rentals; Timothy &
Siobhan Quinlan (319-12-6), 20 Pavia Avenue, one seasonal rental; Timothy & Siobhan
Quinlan (318-8-2), 31 Reggio Avenue, one seasonal rental; Joseph L. Mannisto (313-2-10), 8
Pearl Street, four seasonal rentals; Heather Keegan (322-1-5), 20 Bridge Street, one
seasonal rental; Kathleen Mercier (205-12-15), 20 Carll Avenue, one year round rental;
Giuseppe Guerriero (320-5-7), 26 Free Street, one seasonal rental; Melissa Mans (202-2-3-
B6), 207 East Grand Avenue, Unit B6, one year round rental; John Latting & Caroline
Fohlin (321-6-2), 19 Winona Avenue, one seasonal rental; Georgia A. Springer (305-4-1-
504), 1 Cleaves Street, Unit 504, one year round rental; Robert Stuart (313-2-1-25), 1 Bay
Avenue, Unit 25, one year round rental; Sandra Florence dba/Pinehirst Grocery Store
(107-3-8), 7 Oregon Avenue, Victualers, Grocery Store; Sharon L. Bonville (205-7-5) 2
Hoffman Avenue, one seasonal rental; and Brad Barone (202-2-3-1E), 207 East Grand
Avenue, Unit 1E, one year round rental.

MOTION: Councilor Frenette motioned and Councilor O'Neill seconded to approve the
Business Licenses as read.

VOTE: Unanimous.

CHAIRMAN KLINE: We will now consider the following two kiosk business licenses.

BUSINESS LICENSES: Jesse Fowler dba/Fowler's Bayside Burgers (306-1-2-O), 1 East
Grand Avenue, Unit O, Victualers; and Steven Fowler dba/Unlucky Lobster (306-1-2-N), 1
East Grand Avenue, Unit N, Victualers;

COUNCILOR O'NEILL: I would very much like to have some clarification which I believe is needed on the definition of temporary structures. Several individuals have raised questions to me about what is a temporary structure?

TOWN MANAGER: These temporary structures are an issue that is being discussed with the Department of Environmental Protection. They are portable and they can be moved. Our legal counsel, Chris Vaniotis, and I toured the site and we were satisfied they are built on steel girders; how long they will be in service either three months or more is between the owners and the Department of Environment Protection. They were approved by the Planning Board when the Contract Zone was approved.

CHRISTOPHER VANIOTIS: I am here to see if there are any questions that the Council might ask. The DEP questions come into play here on whether these are temporary or permanent – whether this is a fixed location or attached to a structure. The DEP will make the final determination on this issue. The State issues the permit. The definitions do not go to the issue of temporary but rather the length of time it is there within the 6 months period. That is the DEP rules – our rules say we follow the State mandate.

COUNCILOR O'NEILL: What are the local requirements?

CHRISTOPHER VANIOTIS: Those requirements were set by the Planning Board and the Design Review Committee and actually by the Council under Contract Zoning.

COUNCILOR DAYTON: Regarding the six months, when does the clock start ticking?

CHRISTOPHER VANIOTIS: We don't even know if that is consecutive?

COUNCILOR DAYTON: I have been researching this issue for several months. I have been trying to understand what the structures looked like when they were supposedly approved by the Planning Board and the Design Review Committee, and in all the research that I have done it would appear to me that in the original plans that were approved in September or October of 2004 that this particular area of the contract zone site plan was nebulous. The kiosks were not described in detail. My conversation with people on the Planning Board and the Design Review Committee said that the detailed plans were not provided and would be provided after the real estate was substantially completed. Under this scenario isn't it misleading to say the Council approved the kiosks?

CHRISTOPHER VANIOTIS: The Council approved the kiosks could be built. There can be kiosks on that site according to the plans. I didn't mean to mislead you – but under zoning whether they are temporary or fixed the Council had the right to approve them.

COUNCILOR DAYTON: We authorized their existence not their locations. I would like to say the understanding when the plan was presented – many people had the concept of a real type of cart that you might see in the mall (seasonal) – temporary seasonal vendors - I think what was built is not what was intended or originally described.

COUNCILOR FRENETTE: The Town Council did not approve the plans – that is the responsibility of the Planning Board. We had no say in the building itself nor where it was located on the property. The owners of that property went through the Planning Board and at the April meeting of the DRC where the kiosks were approved or discussed; it looked like it was approved. I was surprised when they were approved because I always

believed that a kiosk was a cart but that is not what it was voted on. You obviously knew what you were voting on. There are no setbacks in that area so it belongs to those who own the kiosks. So I don't understand the problem. You cannot approve something and then say it is not what you thought. It does look taller and wider than what I thought. I have a memo from a member of the DRC. It is about a few little things that are in question and are beyond the purview of the DRC and the Council. I understand that the DRC has the right to approve – I was surprised when and what was approved – but this is not a Town Council decision – but rather that the staff has determined that the codes have been met. If the departments heads have signed off then that is the issue.

COUNCILOR DAYTON: I received a letter, dated June 29, 2007, from Mark D. Koenigs of 38 Fern Avenue, Old Orchard Beach and a member of the DRC and the Planning Board, having provided to all members of the Council, and would like to read it into the record:

“I’m writing you to express my concerns and objections to granting business licenses to the business applicants that wish to operate businesses in the new structures located near the pier and in the Grand Victorian’s new market plaza. These new structures have been called kiosks by those involved in their development, planning and design. These kiosks were presented by the developers to be temporary structures that could be moved if necessary. I’m concerned that the developers have not completed the construction of the kiosk in accordance with the Town of Old Orchard Beach’s Design Review Committee’s (DRC) design review certificate which was granted during a DRC special meeting held on April 23, 2007. I’ve attached the meeting minutes for your review to verify for yourself that the kiosks in their current state do not have the architectural features described in the meeting minutes. There should also be a design review certificate that was issued by the Town of Old Orchard Beach Planning Department, signed by the DRC members and approved by the Planning Board on May 10, 2007. The deficient items that I would like to point out are as follows:

- 1. There are no balustrades on the larger kiosks*
- 2. There are side service windows were the applicant (developer) agreed there would be none and there are other openings, windows and doors that were not shown on the applicant’s plan views.*
- 3. There are no eaves or brackets under the roofs.*
- 4. There are no awnings over the service windows.*
- 5. There are no round windows on the gable ends of the kiosks.*
- 6. There is no frieze board*

Some members of the DRC have pointed out these deficiencies to the Town Old Orchard Beach Planning Department and Code Enforcement. It should be within the code enforcement officer responsibility and authority to insure that the deficiencies be corrected prior to granting an occupancy permit or business license to utilize the new kiosks. If the code enforcement officer doesn’t have that authority or won’t use it, then it is up to the Town Council to enforce the Town’s ordinances and make the developer comply with his approved plan. If the Town Council grants the business licenses at this time, the developer will probably never make the corrective changes to the appearance of the kiosks. There are other issues

regarding the location of the kiosks within property lines setbacks and in the frontal dune area that have also been raised by various concerned parties. Since these kiosks are temporary seasonal structures, I would assume that the developer would have no problem correcting these deficiencies by relocating the kiosk as needed to be in compliance with boundary or permits requirements. I would urge you and the other Town Council members to carefully consider not granting business licenses to businesses planning to use the kiosks until all the architectural deficiencies of those kiosks have been corrected by the developer. I would further urge the Town Council to have the Town Manager address all outstanding property right issues, setback issues and DEP permit issues before granting the business license for the kiosks. Thank you sharing this letter to the Town Council for their consideration.

Sincerely, Mark D. Koenigs.” (Official letter is attached to Minutes.)

COUNCILOR DAYTON: In talking to some of the members who attended as to feelings during that meeting – and I hope to hear from some other members – I am concerned that given the importance of that DRC meeting – the DRC was not granted enough time required to make a decision on the spot – not allowed time to process the information – these are volunteers – and as it concerns the process – yes the developer followed the process but did we grant the members of the DRC the same courtesy to think about what they were approving? I don’t think so. The DRC was asked to run through this. There is a lot of conflict about this and that is noteworthy. I hope this entire council takes that into consideration. There have been many items noted that have not been completed and I would like to know how those are being handled. How is it that we could possibly approve the business license when issues are still outstanding and completion has not been met?

KEN SHUPE: These are temporary structures without a full foundation. They are less than 300 square feet and can be moved on a trailer. They are a single self-supporting unit and are set on blocks without a permanent attachment and no foundation. You can buy these types of temporary structures at Home Depot and Lowes. They are temporary and can be moved or dismantled. The DEP states that is necessary for in the case of a storm, hurricane or natural disaster they could be removed prior to safety issues developing. So, as such, they meet all the criteria and meet all the requirements. We have addressed illegal issues. The original plan showed seven 10 by 20 foot structures as kiosks and was approved by the Planning Board. They were in a slightly different location but the Planning Board authorized the relocation.

COUNCILOR DAYTON: I wish to ask if you, Ken Shupe, Code Enforcement Officer, changed the plans as an administrative decision and not the Planning Department?

KEN SHUPE: Both Sandra Mowery and I were authorized to make administrative decisions for minor changes. We have done that in other instances such as Surfside, Cider Hill, as well as downtown commercial projects and I don’t know a banker or an investor will carry a project on forever. We make sure the access approach lanes are there for fire and emergency. We make sure fire alarm systems are workable in case of a fire. We are more interested in safety but we do receive direction from the Planning Board and DRC, and before any of these projects get their final approval, all of these things will be done. It is incidental items that are not completed. All the things are not in place but that is gingerbread – take for instance Mike Dickinson’s store – (shows artist’s rendition approved by the DRC and not yet totally completed but the store was given a business license.) There

are items that need to be dealt with. Final approval will be done before the project is completed and in some instances before occupancy is granted for them.

COUNCILOR DAYTON: I think it is necessary to understand this was an administrative decision – it was a major change moving the kiosk to the front of the restaurant. In layman’s terms the Planning Board did not have the opportunity to see or review that decision. I am waiting to receive the definition of minor change versus a major change. I think the decision to move the kiosks from the North side to the East side – is a real disservice to the public – the Planning Board should have been afforded that opportunity and they were robbed of that opportunity. It is obvious from what I have been told that members of the DRC in their minds thought it was a Planning Board approval and it is unfortunate they were misled. I believe the Administration has again overstepped its bounds and I am sorry that I didn’t know about the administrative decision sooner. Ken and I have talked several times about Class 5 structures. I need that explained again for the public to understand.

KEN SHUPE: Class 5 means a building constructed of any type of materials, flammable or non-flammable, whether they are protected (sprinklers) or non-protected (non-sprinklers).

COUNCILOR DAYTON: Are you telling me that a kiosk that produces high heat as Pier Fries and Burgers, steamed lobsters can be done safely in a Class 5 structure?

KEN SHUPE: Yes, Councilor Dayton, three-fourth of the buildings in Old Orchard are like that. Class 5 structures mean that any material can be used. There are different rules that apply for square footage. These are less than 3,000 feet and any fire code problems have been addressed. They have fire suppression systems – heat alarms – they will be monitored and in any case the fire department will be notified.

COUNCILOR DAYTON: Do they require sprinklers?

KEN SHUPE: No, they are under 3,000 feet and do not require sprinklers.

TOWN MANAGER: I would appreciate the record reflecting that Ms. Mowery and Mr. Shupe are authorized in making this type of administrative decision reducing size from 2,100 feet – it is now 1,350 feet. If you take out the two rest rooms – the square footage is cut in half from what was approved. We have used good wisdom in using the square footage. We are only talking about kiosks – N and O - both of them have been inspected and approved by the State Fire Marshall.

COUNCILOR FRENETTE: Beach Bagle has no sprinkler system, is that not correct?

KEN SHUPE: Yes, that is correct.

COUNCILOR DAYTON: I just want people to understand what has been done through this administrative decision.

KEN SHUPE: There is nothing in the International Building Code that requires these small temporary structures to be sprinkled.

COUNCILOR DAYTON: I thought we don’t have temporary structures in our ordinance?

KEN SHUPE: We don't but Old Orchard Beach has adopted the 2003 International Building Code and the 2003 International Residential Code which are the official codes adopted by the State of Maine and temporary structures are reference in those codes.

RICH REDMOND: I am a business owner from Old Orchard Beach and I followed the process of the building of the Grand Victorian as I have business interests in the downtown. At that time that discussions were had on a seasonal kiosk I didn't have a problem because I believed it was seasonal, something like a farmer's market and I thought that would be good for the downtown. I was in favor of the Grand Victorian originally. The last three weeks things have happened that I did not see in any discussions with the Planning Board or the DRC. There are smoke stacks which will affect my business. I didn't hear anything at the meetings about smoke stacks. They are at the level of my buildings window. How do you think that is going to affect me? I think a lot and not for the good. I didn't see that presented at any Planning Board or DRC. I didn't know what was going to be in these facilities. This is a major concern for me. I don't know if this was ever discussed. That is a major structural change. I don't know if the DRC or Planning Board knew anything about this. This is a major change. It could present major issues with me. Let's face it a temporary structure is not a two story level. I have been a big supporter of business down there. I have a couple of issues that are important and I am not here to point blame at anyone and I hope that you can correct these mistakes and point us in the right way.

DAVID ORDWAY, ESQUIRE – As the Attorney representing the Grand Victorian I have been intimately involved in the building of the Grand Victorian before and since its inception. All the condo documents related to the Grand Victorian I have been responsible for developing and presenting. I say so that you know I have a little bit of history. I met on site with the Town Manager, the DEP representative, Tim Swenson, the Developer when the Grand Victoria was a vision – at its beginning. I just have a couple of comments because of things I have heard here today. Some clarification is needed. When it was approved – the approval of the kiosk locations was done also, not only in these locations (shows plans to the Council) but these are current locations – currently located. When the Planning Board approved and we came before you the kiosks included another area so the area of kiosks has been reduced. The Design Review Committee and the Planning Board looking at the Minutes of May 10, 2007 – formally approved this and it should be noted that they had three weeks in which to review these documents so they were not rushed, there was adequate time. I have been on this soap box before about issuance of licenses – I don't believe this is time to review history. There are lenders, property owners, investors who are affected here today that even months or years after a project has been approved and now it is up to re-review. Just to review briefly the criteria for the issuance or denial of a license – and this is important because those questioning need to understand that all these stipulations have been addressed and met. I reference again Section 18-35 – “Denial; imposition of conditions for issuance. The applicant does not have the legal right to occupy the premises for which the license is sought; Required State or local permits have not been obtained or applied for; The business or activity is not or the premises are not in compliance with other local ordinances; any public health, safety or welfare problems which occurred in the operation of the business or activity or a similar business or activity on the premises during the immediately preceding year were not satisfactorily resolve and are likely to recur; the applicant for the license has, during the immediate preceding year, committed or permitted, in the course of conducting a business or activity subject to this article, an act or omission which constitutes a violation of this article as defined in Section

18-28 or 18-39; the applicant is delinquent in paying any personal property tax assessed by the Town, unless there is pending at that time of application for the license a request for abatement of the tax or an appeal of the tax assessment. For purposes of this sub-section, the word “applicant” means all of the following persons: (i) the owner of any personal property used in the conduct of the business or activity for which the license is sought, (iii) the owner of the business or activity for which the license is sought, and (ii) the person who conducts or operates the business or activity for which the license is sought. As used in this subsection, the term “any personal property tax” shall include all personal property taxes assessed against any person within the definition of applicant, whether or not the property so taxed is used in the conduct or operation of the business or activity for which the license is sought. The licensed location has had three or more documented disturbances as verified by the police chief within the previous licensing period, which documentation shall be provided to the license administrator by the police department, or the applicant owes any fine, penalty or judgment of the Town as a result of any violation of this article and the fine, penalty or judgment, with any accrued interest, has not been paid in full. Notwithstanding anything to the contrary in 1 M.R.S.A., Section 18-3202, this subsection applies to actions and proceedings pending on the effective date of the Ordinance of April 15, 1997.” It is very disquieting to business owners and the citizens alike that if the people charged with enforcement are approving, that you then question their decision. I understand there are some hot button issues here but we would encourage you to rely upon the approvals of the Planning Board and the Design Review Committee.

COUNCILOR O’NEILL: We have spent over \$10,000 to defend tearing down a publicly owned building and have had to defend in court our reasoning for tearing it down so that we would have no structure in front of it. That is not fair to the taxpayers of this community. Plans change and every time it changes substantially it needs to go back to the Planning Board. We hear over and over about curb appeal and here we have a multi-million dollar building and then three kiosks, temporary structures that don’t look like temporary structures, in front of it. We make mistakes but we are also concerned about what is fair to everyone. Our staff makes mistakes. It is disheartening to me that we are going to debate, that we have to debate, the definition of a kiosk – and talking about a crane having to be used to move it. Perception is real – a 300 square foot building with a smoke stack coming out of it – define it like you will but this is not a time to visit this and it should not have gone this far in the first place – it should have come to the Council a long time ago. This is a bill of goods we have been sold in taking down the building on our private property so that nothing will appear in front of it and now we have kiosks.

DAVID ORDWAY, ESQUIRE: I take exception to your comments – I was in front of you – and the Planning Board – two years ago – and there was no expectation that there would be nothing there – you can see on this charge construction in several places. The design of those building was designed by the same architect as designed the Grand Victorian. The Design Review Committee had time to review them – as designed – as approved – no one said stop – we are concerned about curb appeal – now they are built and now we are hearing that we don’t like the design and it affects curb appeal – we don’t like them at all. Now is that fair?

COUNCILOR O’NEILL: Yes it is.

DAVID ORDWAY, ESQUIRE: Let all your Planning and Code Enforcement staff go because if every applicant has to start from page one then that is a dangerous road to travel.

COUNCILOR FRENETTE: I would like to say – how I came to Council five years ago. A neighbor wanted to tell me what to do with my property. The kiosks are not what I expected but it was approved. Shame on me for not questioning more. Yes it is the original plan. We have a Planning Board and a Design Review Committee and perhaps they are surprised. It is in the plans and there are no setbacks. If you want to tell me what to do with my property then buy my property. It is not up to the Council to decide what building can or cannot be built. I agree it is a little surprising – I had thought it would be little carts – but it is not what I expected – but I am not going to go against what has been approved. When you own property and you go through the process we need to stand by the process. I am going to support it.

COUNCILOR O'NEILL: The plans presented did not have smoke stacks, etc. So that is a change.

LEE KOENIGS: This was approved administratively; we would not have approved it – so we had nothing to do with it. This keeps coming back – they went through all the approvals – this is not what we approved – and it is not just gingerbread. No plans were ever given to us on the rest rooms. They were presented to us as a whole package – they all went together as a package. So it is very far from what we approved and it so far from something that we look at aesthetically pleasing. None of our calls were returned. That was a month ago. We had no recourse. Hit them in the profit line or things never change. God bless Robin and Shawn for having common sense. I have not talked to every DRC member but 90% would agree that we did not give our approval on what is shown today. We were rushed and we did have a special meeting. We were in shock – due to the plan change – if you have got more little buildings – they compacted in their space so they are bigger and we don't like that impact. That was done administratively – no Planning Board member knew about it. The square footage was under and they could approve. Maybe we need to look at this differently. It is very discouraging and disheartening. Window dressing makes a difference – we want to be the best that we can be – the beach is our gem – you have to care. We are very disappointed how this has been portrayed and what has occurred.

CHAIRMAN KLINE: Who follows up with your questions?

LEE KEONIG: The Code Enforcement Department. We were under the assumption that these were marketing wagon type things with wheels.

JAN FISK: I am the Town's Planning Coordinator. Yes, the DRC Committee should be commended. They receive the packets a week before the meeting to give them time to review the material. I personally polled the Committee to make sure they could be at the special meeting and they all said they could and they received their packets in time to review them. The bottom line is that it is legal to make these changes administratively. The Design Review Committee reviews, accepts or rejects the suggestions – they accepted it 4 to 1 with the one abstaining. I take the recommendation to the Planning Board and there the Letter of Appropriateness sitting there unsigned because I have not been able to get everyone together to sign them. I personally asked George Kerr to drop the height below the Pier. Whether you agree to what it looks like or not it went through the proper channels, the decision was made, approval given. It is true the staff can make mistakes. Reducing the size was not a mistake.

GEORGE KERR – If you will remember I was on the Council when we started the beautification committee – I was Chair of the council – Co-chair of the Beautification Committee. Old Orchard Beach means a great deal to my family. We choose to live here. We have donated a basketball court and made other large donations because we care about what happens in this community. Shawn O’Neill and his family have been friends of mine for years. Nothing was done under the cover of darkness. We bought the first floor and the kiosks. We bought it with the approved plans. I spent over 2 ½ hours with these people and I showed them that – not to exceed 20 feet – understanding and accepting the requirements with DEP – and we showed these pictures to the DRC. We discussed for over two hours what the look was going to be. So for anyone on these boards or committees to say they have not seen the pictures – I am presenting them again tonight to the Council. I don’t know what else to do. Here are completed pictures – I don’t know what else to do. Here is what they looked at elevation and they were on these plans. Heights were noted. Paul Golzbein was at that meeting when these were approved. To the Chair, I find it a little upsetting because some members of this Council got bad information. My reputation is at stake. These structures have the elevation and the heights. The next question – can something be done? I didn’t expect to be here to discuss the Myst. – it was granted a business license and I thank you for that. I didn’t expect to discuss structures that have already been approved. I took the time and the energy to use the same architect as the Grand Victorian – reducing the size was a good idea – thought that was a good thing – a food court attractively to all including the Pier because we are in this together. We started today at 3:30 a.m. to complete brick paving - working together – expecting that the Council understands that we went through the proper channels in every regard; got the property permits and we built the projects. It was suggested that bathrooms would be good for the public and I said I would foot the bill. It was not my idea but suggested that the citizens would appreciate it and be grateful for it and someone brings that up today. I would pay for them – on my property. I chose to do that. I just want this Council to ask if you were in my shoes, following the same process – went to the bank in good faith, what would you have done differently? I have never deceived anyone – no board members – we are citizens trying to do a good job in the community that we love. Investors to these projects are from Old Orchard Beach – not from far away. I am only asking you to treat us as you would any other business person. We have worked very hard to get where we are. Any other questions I would be happy to answer for you. I told the DRC they could pick the colors and followed what they suggested.

COUNCILOR DAYTON: When I first saw this plan – I was initially not concerned – look closely that you have set back – that you could walk right between the Pier and the ramp. That is not the case. When you came before the Council for the grant for the retractable awning one of my questions was how much distance between the Pier and that structure. I was concerned then and I am still concerned now. It seems to me as a layman it looks like there is enough space – that you could get around it.

COUNCILOR FRENETTE: I would remind Councilor Dayton and the Council that this is a license hearing for two places. Jesse Fowler dba/Fowler’s Bayside Burgers (306-1-2-O), 1East Grand Avenue, Unit O, Victualers; and Steven Fowler dba/Unlucky Lobster (306-1-2-N), 1 East Grand Avenue, Unit N, Victualers. This is the issue that we are dealing with; not the issues that you are bringing up.

COUNCILOR DAYTON: I have every right to discuss these pictures. I don’t care whether....

CHAIRMAN KLINE: I raise a point of order. You have been rude. It needs to stop. If it continues you can exit these doors any time. We have agreed to have the rules of order. I am asking a simple question. Is there an agreement there is a point of order. The point of order will stand and we will move to the two business licenses?

COUNCILOR DAYTON: On behalf of myself when you look at the pictures in my opinion they are misleading. What is being built and what we are shown here are two different things. The picture shows distance between the structure and the Pier – I look at the picture it is different than when I go down to the Pier and look at this. I spent a large considerable amount of time researching this. It is my understanding to answer Mr. Ordway, the DRC Committee and the Planning Board – both were specifically told they could not talk about this among themselves. I think it is important when you are presented pictures – there be a scale – there is no scale. There are differences – there is no scale. It should also be noted that the DRC and the Planning Board are volunteers; they are not experts in the field.

GEORGE KERR: Ms. Dayton: On the site plan – buildings are up against the Pier. Councilor Dayton – you and I have made dialogues that in the deed there is a 3 foot set back – you have been given bad information – I gave you a copy of the deed – all the property under that area is not owned by the Pier – the Pier has an easement – no jurisdiction – that building is in the deed.

COUNCILOR DAYTON: May I respond?

CHRISTOPHER VANIOTIS, ESQUIRE: Mr. Chairman.

COUNCILOR LONG: Mr. Chairman, a point of Order – Mr. Chairman – you have loads of lawsuits here. We need to make sure that we protect the citizen’s rights. I am interested in the Town protecting its own interest.

CHRISTOPHER VANIOTIS, ESQUIRE: I would just like the Council to remember that as your legal counsel, as an advisor to the Council, I am pleased to assist in any way with questions on ordinance issues.

PAUL GOLZBEIN: Everything is perception. The DRC asked me to change the color – I am color blind (laughter in the room) so I let them choose that. The questions on the easement will be addressed by my attorney. We are five days from the fourth of July. Folks, business is suffering. The Pier is blocked off. You talk about perception. Pictures tell a thousand stories. The pictures you are looking at have gaps – the main concern is with Mr. Swenson – the question of ample space to maintain the Pier ramp is an issue – there is no sprinkler system. Cigarette butts and papers fall into the cracks and it is a fire waiting to happen. The Council received my letter of June 17, 2007 in which I expressed serious concerns with the new two story buildings that were built abutting my Pier entrance. The first major concern is the close proximity to my wooden ramp, there was a two foot setback from the ramp that is stated in my deed and mentioned in reference to be able to make repairs to the ramp of the pier. My other concern is that the buildings are wooden structures and are sided with cedar shakes with no fire retardant material having been used in the construction. The building on the north side of the ramp is less than 4 feet from the ramp and paper cups, napkins, and plates are piling up in this space along with cigarette butts. A lit cigarette butt could cause a serious fire not to mention there is no sprinkler system in the buildings. There is a lot of deception here. You need to make the

right decision. You have the authority to do that and I am asking for you to do what is right.

BILL DANTON: There is a little bit of misconception here. One East Grand Avenue – right of way – Paul Golzbein doesn't own the property. Ms. Dayton refers to the section like it is two separate pieces of land. They have a non exclusive right of way granted by me. So I hope that eliminates the confusion. It is owned by One East Grant Avenue. (Deed is given to the Council). One of the things that my brother has said is that the DRC picked all the colors, given the scale model one week before the meeting, scale model means, Ms. Dayton, means all of the heights and all of the set backs – we had engineers, attorneys, so there would be no question. The original height was asked by Mr. Golzbein to reduce 5 feet and we did that. So if you look at the minutes of the DRC he approved the plan. It is in the Minutes. The point that you really have to understand is that the property is owned lock, stock and barrel by One East Grand Avenue.

RICH REDMOND: The problem I have with N and O – is that the scale given to Design Review Committee that no one has addressed the smoke stack in view of my building. No one has addressed it, described it, never seen it in a design – never seen it – it is the only plan that I have.

COUNCILOR DAYTON: N – this is the Unlucky Lobster – O is the Burger place – Mr. Redmond is correct – this was given to the DRC and there is no smoke stack shown to describe this or anything to say what it is used for – it certainly has an impact on what it looks like.

JIM ALBERT: I am a business person and involved with the Pier. I have over 20 leases in malls of kiosks. I set them up. They are no bigger than carts - 10 by 15 (150 square feet). I don't know how they can say these are kiosks? There is stringent criteria – 3 inches over I have to rip it down. I have a problem with the smoke stacks – national retailers coming in – burgers- lobsters- French fries – not sprinkler system and this is a major concern for me and the other business owners. George Kerr – height of building right side of ramp – 13 foot building by Tim – new building would be several feet lower – lower than 13 foot or I would have fought it at the DRC meeting. I also believe that when we wanted to do a project with bathrooms we were told there could not be a second level.

COUNCILOR FRENETTE: I agree with Councilor Long – this looks like multiple lawsuits – the items on the agenda were for two business licenses, nothing more. We are getting into discussions that do not belong on this agenda. These have been signed off by all departments – approve these licenses – and given this information – need to approve but I believe there are other issues and misunderstandings – those issues have to be addressed later. I say lets approve the business licenses for this summer only and address the other issues at another time.

MOTION: Councilor Frenette motioned to approve the business licenses for this summer and address the other issues later on. Chairman Kline seconded for discussion.

CHRISTOPHER VANIOTIS, ESQUIRE: I would address the point or order...

COUNCILOR LONG: Mr. Chairman, Mr. Chairman, a point of order stops all discussion. He should know this he wrote the Charter.

CHAIRMAN KLINE: We will continue discussion.

JESSIE FOWLER: I am 22 years old and I have invested a lot of money and planned to open this weekend if you do not give me a license I will be denied my livelihood. I made a commitment and did everything that was asked and I need to open for the fourth of July or I will not make my money back and will lose it. I ask the Council to understand where I am coming from.

COUNCILOR FRENETTE: Are you old enough? (Laughter in the room.).

KATIE PORTER: I also am concerned. I have lived here ten years. I would remind you of the fire in Rhode Island and I am concerned about the smoke stacks. These do not appear to be moveable foundations – I have fire concerns – how big that smoke stack going to be? There is a big misconception of what a kiosk is going to be. A mistake has been made and we need to correct it.

KEN SHUPE: What has been referred to as a smoke stack is a legal termination roof top cap from the fire suppression hood system over the cooking range. Whatever emanates from that stack, 4 or 5 feet above roof, is not grease or flammable material. We have many of them in current restaurants all over Town. The hood contains built-in grease filters and grease collection reservoirs which are removable for emptying and cleaning.

WARD MCGOVERN: I live at 10 Shorewood Drive. There is no sign on my street and I have been asking for over a year. I call the Public Works Department and they never call me back. I leave messages and they never return my calls.

CHAIRMAN KLINE: I don't think this is the issue that we are dealing with today.

WARD MCGOVERN: I will get to it. I want a sign on my street and how long does it take to get it? How long for someone to call me back? I live in Old Orchard Beach, go to the beach, walk on the Pier, the buildings – kiosks look atrocious – I have no affiliation with the pier – these are two story buildings. I am sick and tired of not getting a response to my street repairs and yet he (referring and pointing to the Town Manager) doesn't even live here. He doesn't pay taxes here and I do.

CYNTHIA NYE: I have been on the DRC for eight years. Our concerns are the vision of the downtown. We have been dedicated and committed to what we have been asked to do. We have been asked to address the vision of the town and do what will benefit the entire town. We are volunteers – we work with the employees – I do get the packet ahead but sometimes I don't do due diligence. I have kids and I work. We try to be friendly to those who are coming in front of the DRC – helping rather than being obstructive. I don't always know what they have gone through – I did get the packet early – but I thought the kiosks were temporary seasonal vendors who would be doing business out of there. I thought they were easily moveable. That is what was in my head. I expected an obvious professional design – architectural details – so the Certificate of Appropriateness is not the building that is out there – we come to these conclusions – and if they build what they want – what is our recourse? We made a mistake. We did not do all that we could or should have done. We approved as given to us by the Planning Board – seven of them – we were only looking at the details – we should have been looking at architectural details – so we did not – it was not a collaborative effort – feelings came through early. I wished I had voted against it – I

wish we had more time and we would grant or make second requests. Doing it all in one meeting was a mistake. I would ask that you consider withholding these business licenses – separate from the buildings – these buildings are not permanent structures and cannot be easily removed. Perhaps we can have them issued business licenses for this summer and then readdressing this. If these are temporary, let us think of doing something different next year.

COUNCILOR DAYTON: Jan Fisk provided me with a copy of a memo of June 2006 and which I would like to enter into the record.

(Copy of Grand Victorian Kiosks attached to Minutes.) “Section 2.3 – Open Air Plaza Unit 103 – (b) Subject to (i) the limitations set forth in the following paragraph (ii) all applicable zoning requirements, land use regulations, and the other provisions of this Declaration and (iii) the easement for access to the Pier referred to in Exhibit A and on the Plat, the owner of the Plaza Unit 103 may: (i) construct or cause to be constructed within the Unit temporary (“temporary” meaning improvements that are cable of being removed from such Unit without undue effort for at least one day in each calendar year, or such other meaning given to the term under applicable land use regulations of the Maine Department of Environmental Protection) structures, buildings and kiosks (all of which shall be personal property and shall not constitute part of the Unit) in the areas shown on the Plat, not to exceed a height of 27 feet above mean sea level as measured on the date hereof: Not only must this developer meet DEP requirements for any construction in the frontal dune and/or the velocity zone, they may be obligated to present plans to the Design Review Committee as they are in the DD-1 zone, even though these structures are “temporary.” It may be possible to review them administratively but must have something to look at.”

COUNCILOR DAYTON: Can someone please explain that to me? So I would like an explanation about the two units – how do we move them without effort?

GEORGE KERR: Proper terminology – capable of being used.

COUNCILOR FRENETTE: I believe that Ms. Nye has made a good suggestion. She said – recourse. I think that is the recourse we need to take. We are talking about two business licenses – the other issues are separate to what we have been asked to address here today. The issue on the agenda is the business license – the Council could address the other issues at another time.

COUNCILOR DAYTON: Jan Fisk provided me with a copy of a letter from Ken Shupe to George Kerr and Tim Swenson, dated June 1, 2007 to which I would like to refer.

“At a special meeting called (at your request) by the Old Orchard Beach Design Review Committee on Monday, April 23, 2007, Old Orchard Beach Associates, LLC presented plans for adding removable kiosks to the Grand Victorian. There was considerable Committee discussion with you, Bill Danton and Paul Golzbein regarding the height, placement, design, colors, and, most importantly, window openings. The application and designs presented by you and your architect, Ben Walter, clearly illustrated that there were no window openings to the beach. In fact, Ben Walter recommended that the addition of a frieze board to the back of the triple kiosks would provide relief from the flat face with no openings. This is what is reflected in the minutes of that meeting (enclosed) and what was subsequently accepted by the Planning Board when the project was granted a Design Review Certificate. Current pictures (5/29/07) show that there are service openings facing

the beach to the rear of the kiosks. Prior to receiving a certificate of occupancy, each building must be constructed to the approved design specifications, and *no licenses will be issued for any vendor wishing to conduct business in any kiosk until design is compliant with the approved specifications.*” Sincerely, Ken Shupe

COUNCILOR DAYTON: I have serious concerns and real reservations that there is any way that these kiosks can be removed easily. I don’t think it is possible to remove this without undue effort and would like an explanation how that could possible be done.

KEN SHUPE: These units are built on separate frames, with separate floors, walls and roofs. They are joined by only two vertical trim boards. They can easily be lifted by a forklift or dragged on skids onto a trailer for moving. I don’t see a problem in removing them. Utilities need to be disconnected. Perhaps it would take about an hour.

COUNCILOR FRENETTE: It will be the building owner that needs to remove them, not the Code Enforcement Officer, Ken Shupe.

PAUL GOLZBEIN: Joe – they aren’t portable – they can’t be moved – you need some protocol.

COUNCILOR LONG: This has been difficult and very contentious as I expected it to be. I do note that Attorney Ordway has presented his comments – and I respect his legal skills – I take exception, however there have been many discussions and it was my hope that these business owners could come together and have some agreement for the Town and themselves. It is a complicated property and the issue could not be resolved. There is definitely an adverse impact that these kiosks are having and need to be addressed. I certainly am disappointed that the final recourse may be in the trial courts. We should have had an executive session to address these issues. I do not support these licenses; the issues and the impact on the Town, the precedence being set – leave me in the position that these building have a negative impact on the beach and on the citizens. A reasonable person would not consider these buildings to be temporary. Thank you, Mr. Chairman.

CHAIRMAN VANIOTIS, ESQUIRE: If the Town Council feels an Executive Session is necessary we can have a motion to go into that executive session.

COUNCILOR LONG: We don’t all need training wheels.

CHAIRMAN KLINE: Some of us do. Personal versus official opinion. My professional opinion has been followed and we are in a public hearing – professional staff has acted in accordance with the rules of the Ordinances and the State law. We can limit these licenses to this year only because they are moveable structures. As a Councilor these get reviewed every year because they are a temporary structures. We do need some conditions on them. I will withdraw my second.

CHRISTOPHER VANIOTIS, ESQUIRE: Some words for counsel. This has been an emotional time and important business licenses are being discussed. The licenses are for one year. I would suggest that if the vote of the Council to give licenses, a statement needs to be added approving the two licenses but with stipulations on them. It needs not to be viewed as a permanent design of building or locations of the businesses. I also have heard some input from the citizens – Council has the ability to approve these licenses with condition of approval. Section 18-35 of the Code under Businesses – Denial; imposition of

conditions for issuance – “The Town Council shall consider information provided by the applicant or received from the building inspector, the electrical inspector, the Town Manager, the Police Chief, the Fire Chief or any other municipal employee or the general public in determining whether to issue, issue subject to conditions, or deny any license requested.” The Town Council may deny a license application and there is a listing in the Code of several of those areas of denial.

CHAIRMAN KLINE: I would withdraw my second and recommend that the DRC Committee needs to have issues followed up with then so they are satisfied with the outcome of these issues.

COUNCILOR FRENNETTE – I withdraw my motion as well.

CHAIRMAN KLINE: All motions have been withdrawn.

MOTION: Councilor Frenette moved and Chairman Kline seconded to approve a one year license for Jesse Fowler dba/Fowler’s Bayside Burgers (306-1-2-O), 1 East Grand Avenue, Unit O, Victualers; and Steven Fowler dba/Unlucky Lobster (306-1-2-N), 1 East Grand Avenue, Unit N, Victualers; with the stipulation that we make no commitment if the structures become and issue and as such the businesses will not be grandfathered.

COUNCILOR O’NEILL: We have no ordinance for a temporary structure? I would appreciate Ken Shupe helping me understand the definitions and the 300 square feet, and the joined structures.

KEN SHUPE: The buildings are each only 200 square feet and they are not secured to the ground. They can be moved separately when required.

COUNCILOR O’NEILL: Three together equals 600 square feet. That defies the International Code then? Is this correct? I live in a manufactured home and my foundation can be knocked out – is it a temporary structure? We don’t have a regulation on it. It is very difficult to make a decision that will affect next year. For that reason I do not support. It is difficult to make a point without getting into the emotional feelings of what has been discussed this evening.

KEN SHUPE: The DEP was satisfied that they were temporary structure and they could be separated – they are linked together for appearance – only two outside trim boards are holding them together.

CHAIRMAN KLINE: Louise, call for the vote.

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

CHAIRMAN KLINE: The business licenses for Jesse Fowler dba/Fowler’s Bayside Burgers (306-1-2-O), 1 East Grand Avenue, Unit O, Victualers; and Steven Fowler dba/Unlucky Lobster (306-1-2-N), 1 East Grand Avenue, Unit N, Victualers; are denied.

CHRISTOPHER VANIoTIS, ESQUIRE: I would recommend that you request Counsel to articulate for the findings of fact the reasons for the denial.

DAVID ORDWAY, ESQUIRE: Here is what Section 18:35 says – “When the Town Council denies a license, it shall provide written notice of the decision to the applicant within ten days thereof, which shall set forth the reasons for the denial. The licensee shall receive written notice in the same manner of any conditions imposed upon the licenses whenever conditions are imposed, and the license administrator shall not such conditions on the lice records maintained by the license administrator.” The Council owes us an explanation of whom and what you found credible and not credible.

COUNCILOR O’NEILL: I would enter into the record that the reasoning for denial can be acquired through the minutes of the meeting, taken by the Secretary.

MOTION: Councilor O’Neill motioned and Councilor Long seconded that the reasoning for denial can be acquired through the minutes of the meeting.

COUNCILOR DAYTON: Now will all pictures and other documents be in the record as well?

CHRISTOPHER VANIOTIS, ESQUIRE: I would again recommend that we prepare a draft of the findings of facts within ten days.

COUNCILOR LONG: It would be my hope that these issues could be resolved mutually through the businessmen.

LOUISE REID: As Secretary to the Council I would point out for the record that I am not a court stenographer.

NEW BUSINESS:

2071 Discussion with Action: Approve the Special Event Permit Application from the Recreation Department to hold concerts in Memorial Park, July 13 through August 16, 2007; with a request to waive the fee.

VOTE: Unanimous.

CHAIRMAN KLINE: As a rule we do not have Good and Welfare under a Special Town Council Meeting but I will permit you to speak.

BILL DANTON: I am the co-owner of the kiosks and the retail space at the Grand Victorian. I would let Councilors Long, Dayton and O’Neill know that they have compromised business owners in our town – compromised the tenants – and responsible for a substantial division in our Town. I am exasperated and I will not forget it.

COUNCILOR O’NEILL: Is that a threat?

BILL DANTON: No, Councilor O’Neill, it is a promise.

DAVID PERKINS: I own A-1 Towing; tow small cars and trucks and small sheds, 12 by 12. I do have the equipment to move those kiosks should that be necessary. I have the equipment to do it.

TOWN MANAGER: Chairman Kline, I would like to point out to you that the Assistant Town Manager was instructed by the Town Clerk to put the Liquor License and the Special Amusement Permit before the Business licenses even though the Assistant Town Manager disagreed. It seems to be a procedural issue that you might want to address.

CHAIRMAN KLINE: No need to make anything of it. No big issue. We corrected it.

MOTION: Councilor Long motioned and Councilor Frenette seconded to adjourn the Special Town Council Meeting at 5:15 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 eighteen (18) pages is a true copy of the original Minutes of the Special Town Council Meeting of June 29, 2007.

V. Louise Reid