

**TOWN OF OLD ORCHARD BEACH, MAINE
ADMINISTRATIVE BOARD HEARING
Thursday, June 6, 2013
4:00 p.m.**

An Administrative Review Board Hearing was called to order at 4:02 p.m. on Thursday, June 6, 2013 in the Town Council Chamber to consider administrative review.

The following were in attendance:

**Marc Bourassa – serving as Chair
Assistant Town Manager, Louise Reid
Code Enforcement – Jim Butler
Planner – Jeffrey Hinderliter
Tina Morrison
Police Chief Dana Kelley
Kenneth Lafayette**

**Absent: Interim Town Manager Robert Peabody, Jr.
Fire Chief John Glass
Gary Curtis**

In the absence of the Interim Town Manager, Robert Peabody, Jr., Administrative Board Member, Marc Bourassa, served as Chair. He opened the meeting at 4:03 p.m.

Discussion began regarding Kate's Homemade Butter, Inc., 3 Arbutus Avenue (206-17-4). Attending the meeting were Attorney Timothy J. Bryant of Pret Flaherty, representing the owners of Kate's Butter; and Lucas Patry, representing the Owner. Neighbors in attendance included Mary Susan Jordan, Richard Stephen, Edward Dimond and Councilor Bob Quinn.

Kate's Homemade Butter which has operated at a home-based business in the Town of Old Orchard Beach since 1981 has had several Administrative Board meetings. The company has been building a 17,600-square-foot facility in Arundel, Maine but the relocation has been an ongoing challenge for both the business owner and the neighbors.

The Assistant Town Manager reported to the Board that on Tuesday evening, June 4, 2013, the Town Council approved an Order that Kate's Butter must inform the Town by August 30, 2013 whether it will be able to meet the September 30, 2013 deadline to move out of the Old Orchard Beach facility and into their Arundel facility. If they are unable to do this a hearing would be held by the Town Council to revoke the business license. The Attorney for the business indicated to the Council that the disagreed with the Order and added that Kate's could not control the pace of the construction of the new building. He indicated they would make the best efforts to meet the deadline. The Code Enforcement Officer reported that it appeared that construction has picked up according to Arundel's Code Enforcement Officer.

Revocation would involve the following:

Sec. 18-39. - Suspension or revocation.

(a) The town council, upon notice and after hearing, for cause, may suspend or revoke any license issued pursuant to this article. The term "cause" shall mean the violation of any license condition, any section of this article, any condition constituting a threat to the public health or safety, or the revocation or suspension of any state or local license that is a condition precedent to the issuance of a license pursuant to this article. The term "cause" shall also include any of the grounds for denying a license application under section 18-35. * Licenses may be temporarily suspended without prior notice and hearing if, in the judgment of the building inspector, the town manager or the town council, the continued operation of the licensed business or activity constitutes an immediate and substantial threat to the public health and safety, provided the licensee receives written notification of the suspension and the reasons therefor, prior to its taking effect, and a hearing is scheduled as soon as possible thereafter.

*Notwithstanding anything to the contrary in 1 M.R.S.A. § 302, this amendment shall apply to any actions or proceedings pending on the date of its enactment.

(b) Before the town council conducts a hearing on a suspension or revocation, the town manager will convene an administrative board consisting of the town manager; the police chief; the fire chief; the license administrator; a member of the town business community appointed by the town council; and a citizen of the town, not an employee of the town, appointed by the town council, to discuss with the licensee the situation giving rise to the possible suspension or revocation.

(c) The purpose of the administrative board will be fact finding with the goal of resolving the situation by proposing a consent agreement with the licensee. If the licensee fails to appear before the administrative board or fails to accept a consent agreement proposed by the administrative board, the license administrator shall recommend to the town council that the license be suspended or revoked, as appropriate.

(d) Action undertaken by the administrative board will be viewed as advisory to the town council. The town manager will place recommendations on the agenda for the next regular meeting of the town council. The town council will act upon such recommendations in the same manner as used for license hearings.

Below is the Order by the Town Council as presented to the Board and attendees:

VICE CHAIR BOLDUC MOTIONED AND COUNCILOR MAILHOT SECONDED TO:

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.

VOTE: UNANIMOUS.

In review of the suggested Consent Degree provided by Attorney Bryant and resulting from the draft Degree recommended by the neighbors in December of 2012 but deleting some of the recommendations that have already been put into effect, discussion continued on various parts of the provided Degree. Neighbors previously had completed about which trucks were delivering raw materials and taking away finished products and had raised concerns about early-morning noise of butter production, as well as the stacking of pallets in the driveway before the trucks arrived. Modification of the hours had been suggested to reduce the size of its delivery trucks and the planting of trees and installations of other barriers to reduce noise. Some of these had been done and were not present in the current suggested Degree.

Below is the suggested Degree presented to the neighbors at the Administrative Review Board Meeting:

Consent Agreement

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, Inc. (the "Operator") hereby agrees to the following:

1. The Operator agreed to 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. There are two exceptions to this rule. First, the delivery of cream from Oakhurst Dairy 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. Second, in the unlikely event that Operator has mechanical problems with its 24' long truck, it may use a larger trailer truck to transport its product while repairs are being made to the 24' long truck. In such instances Lucas Patry will send an email or leave a voicemail with the Code Enforcement Officer explaining the reason for the need to use a larger trailer truck.
2. The Operator will refrain from opening the outer door on the existing portable 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.
3. The Operator will make Lucas Patry (via the Code Enforcement Officer) 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.

The Parties agree and understand that nothing in this Consent Agreement is designed or intended to waive any legal or property rights that either party may have related to the Operator's business located on 3 Arbutus Avenue in Old Orchard Beach, Maine.

There was discussion of the proposed draft Consent Agreement along with suggested items that had been recommended by neighbor, Greg Kidd. The Board felt that the changes should not be part of the consideration since the original agreement signed in December of 2012 did not include those recommendations and that in fairness we should move forward with the suggested Consent Agreement along with any changes made by neighbors in attendance.

It was noted that the Owner needs to be aware of the truck issues. In addition discussion centered around the noise coming from the silo and that promise had been made to sound proof it. It was noted that readings of the noise had been taken and were within the sound basis of the Town's sound ordinance but the request was made for the Code Enforcement Officer and Police Department to be aware of the need for readings to be taken on a regular basis and discussion relevant to this between the neighbors and the Owner. The Police Chief stated that this is an important issue and that keeping that reading within the Code Ordinance is vital to the absence of complaints being made. Kate's Butter Owner will meet with Code Enforcement Officer by June 15, 2013 to do a sound reading, and if the sound/noise exceeds Town Ordinance, the issue will be corrected (more trees, more soundproofing) and in place by June 30, 2013. In the discussion of how communication issues were between the neighbors and the Town itself, it appeared there needed to be another individual involved so that if the Code Enforcement Officer was not available that the Assistant Town Manger was to be called on her cell and would address the issues. Her cell phone number was provided – 207-284-3652. The issue of trucks not fully stopping at stop signs was raised as an issue and the Owner was made aware that this would be monitored. The question was raised by the Assistant Town Manager if anyone was living in the house, which is one of the requirements of a home business. Although there appeared to be questions regarding the Owner's representative saying he lived there, it was noted again that this is a requirement for a home-business. There was discussion under number 2 of the proposed Consent Degree in which the Operator would refrain from opening the outer door on the existing portable garage door to move products out of the

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house into the driveway earlier than 7:00 a.m. each day. The neighbors present indicated that was not an issue.

In summarizing the changes to the proposed Consent Agreement, Administrative Board Member, Tina Morrison, related the following Motion:

Administrative Board Member Tina Morrison motioned and Administrative Board Member Marc Bourassa seconded to:

1. Continue review of the noise level of the silo and attention to sound proofing to avoid noise complaints; and Code Enforcement Officer and Police Department to do regular monitoring of noise levels related to Town Noise Ordinance. Again, the Owner of Kate's Butter will meet with the Code Enforcement Officer by June 15, 2013 to do a sound reading, and if the sound/noise exceeds Town Ordinance, the issue will be corrected (more trees, more soundproofing) and in place by June 30, 2013.
2. Add the Cell Phone number of the Assistant Town Manager for use by the Neighbors and Business Owner in the absence of the Code Enforcement Officer and include in the Consent Degree her contact number – 207-284-3652.
3. Home business owner to reside in the home-business.

VOTE: Unanimous.

The Chair thanked those in attendance and called for a Motion to adjourn at 4:30 p.m.

MOTION: Administrative Board Member Tina Morrison motioned and Police Chief Dana Kelley seconded to Adjourn the meeting at 4:30 p.m.

Vote: Unanimous.

Respectfully Submitted,

**V. Louise Reid
Secretary to the Administrative Board**

I, V. Louise Reid, Secretary to the Administrative Review Board 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 Administrative Hearings held on Thursday, June 6, 2013.