

**TOWN OF OLD ORCHARD BEACH, MAINE
ADMINISTRATIVE HEARING
Tuesday, September 18, 2012
4:00 p.m.**

An Administrative Hearing was called to order at 4:00 p.m. on Wednesday, September 5, 2012 in the Town Council Chamber to consider administrative review.

The following were in attendance:

**Town Manager Mark Pearson
Assistant Town Manager, Louise Reid
Code Enforcement – Jim Butler
Marc Bourassa
Tina Morrison
Police Chief Dana Kelley
Fire Chief John Glass**

Representing Kate's Butter was Attorney Timothy J. Bryant of Preti Flaherty Beleiveau & Pachios LLP, and Lucas Patry, son of the owner, Dan Patry. Residents in attendance included Astrid and Harry Bailey, Ed Dimond, Greg Kidd, William Guest, Kyle McCormick, Jamie Bentzen, J. Hall, Myron Hutchinson, and Mary Susan Jordan. Many of the above individuals spoke; some indicating that they appreciated what the Patry's have done with their business and the majority concerned over the noise, traffic and disruptions.

The Patry family has been making butter in a residential neighborhood off Saco Avenue in Old Orchard Beach for more than thirty years. The Administrative Review Board has the power to recommend to the Town Council that the business license for Kate's could be revoked if a satisfactory solution could not be found to the issues that were raised at the last meeting which included the use of different size of trucks such as a much smaller ones; less trips; and perhaps a redesigning of the hours of work. Noise, parking, the size of the trucks and the shut down of machines when they open up the garage doors were the main issues discussed by most who spoke. Again, several indicated they did not want to ruin the business for Kate's Butter; that they were pleased to see positive economic upturns for the company and wished them future success but a strong desire for them to move and in a short period of time.

The owners of Kate's Homemade Butter have 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 reached resulted from the formal complaint lodged with the Town earlier this summer by Harry Bailey who said he was tired of the disruptive noise and activity coming from the business at all times of the day and night. The goal of the agreement is to allow the neighbors to live with the business until it can most to its new location in Arundel.

The Town Manager who chairs the Administrative Review called upon the Kate's Butter attorney, Timothy J. Bryant, PretiFlaherty of Portland, Maine to present a proposed Consent Degree for discussions purposes only. He based his comments on the notes and the

Minutes of the former meeting as prepared by the Assistant Town Manager, V. Louise Reid. In a very detailed listing he addressed the issues of concern:

1. The size of the trucks being used in the neighborhood;
2. Noise associated with the trucks;
3. Scheduling of the trucks being operated;
4. Scheduling of outdoor work activities and the related noise of those activities.
5. Noise associated with the outdoor evaporator; and
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 and the suggestions included the use of small trucks; limiting outdoor work until 7:00 a.m.; 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. In the future (and it has already begun), the Operator will limit future product transfer to the use of box trucks equal to or less than 24 feet long. This will likely mean more trips during the day but with the small 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 (per a prior agreement with neighbor, Greg Kidd) arrives once per week (usually on Thursday evening) around 6:00 p.m. and leaves the property by 4:00 p.m. the next day.

2. The Operator will work with Mr. Kidd to address the noise associated with the operation of the outdoor evaporator. (Since the last meeting Lucas Patry and Mr. Kidd met with the Old Orchard Beach 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 (within 30 days of the date of this agreement, 7-10 feet tall, and 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.

It should be noted that during the meeting Mr. Kidd did not agree with some of the details presented regarding meetings or conversations with him.

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 make Lucas Patry available to the neighborhood to address any future concerns. Each of the neighbors will be asked to provide their telephone numbers and e-mail addresses. He will do the same. 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.

5. 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 the 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.

6. The Operator recognizes and understands this is only temporary solution to these issues. Obviously, the permanent solution is for the business to move to its new location in Arundel, Maine, once the building project is finished.

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.

It was also decided and agreed to by those in attendance that they will meet again with the Administrative Board on January 8, 2013 to hear updates and allow the neighbors to express any concerns they might still have. It should be noted that the Town Manager did raise the concern that no one is living in the house that holds the business. According to Part II – Code of Ordinances – Chapter 78 – Zoning, Article VII – Division 2 - Section 78-1267 – Home Occupations – it states that the purpose of the home occupation provision is to permit the conduct of only those businesses that are reasonably compatible with the residential districts in which they are located. Home occupations shall comply with the following conditions: (1) The occupation or profession shall be carried on wholly within the principal single-family detached dwelling unit or owner-occupied two-family dwelling or within a building or other structure accessory thereto; and (2) The occupation or profession shall be carried on by household members occupying the dwelling unit and one nonresident employee.

Police Chief Kelley and Fire Chief Glass indicated that they felt this was a beginning but that monitoring would continue for there have been promises in the past but this is a good start to working out a temporary solution until the Arundel building is in place. It was noted also that the Code Enforcement Officer toured the local business today and tomorrow will be touring the Arundel facility to be aware of the progress of that effort. Many of the residents in attendance did concur that there had been an effort on behalf of Kate's Butter to address the issues and were optimistic that that would continue. Several provided their e-mail addresses to the Code Enforcement Officer who will be the contact for giving regular updates to the residents about the progress of the facility and addressing any concerns that will be presented during the coming months.

Upon receipt of the draft minutes, Attorney Timothy J. Bryant of Preti Flaherty Beleiveau & Pachios LLP, provided the following Consent Agreement which will be presented to the Council at the October 16, 2012 meeting upon approval of the Minutes.

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.**

The Operator recognizes and understands this is only a temporary solution to these issues. Obviously, the permanent solution is for the business to move to its new location in Arundel, Maine once the construction project is finished.

The Administrative Board Meeting concluded at 5:22 p.m.

Respectfully Submitted,

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

I, V. Louise Reid, Secretary to the Administrative Board of Old Orchard Beach, Maine, do hereby certify that the foregoing document consisting of six (6) pages is a true copy of the original Minutes of the Administrative Hearings held on Tuesday, September 18, 2012.