



**MUNICIPAL OFFICES**  
23 SCHOOL STREET • P.O. BOX 875  
OGUNQUIT, MAINE 03907-0875  
(207) 646-5139      General Offices  
(207) 646-9326      Land Use  
(207) 646-9546      Town Clerk  
E-mail: townofogt@maine.rr.com

## **OGUNQUIT ZONING BOARD OF APPEALS MEETING MINUTES MAY 26, 2016**

### **CALL TO ORDER - 6:00 PM**

Members Present:    Jay Smith – Chairperson  
                              Glenn Deletetsky - Vice Chair  
                              Peter Griswold - Secretary  
                              Doug Mayer

Members Excused:    Jerry DeHart (1<sup>st</sup> Alternate)  
  
                                  Mike Horn (Recused)

Also Present:         Phil Pickering, Ogunquit Sewer District Supervisor  
                              Scott Heyland, Ogunquit Code Enforcement Officer  
                              Travis Prior, Wright Pierce Engineering

Mr. Smith noted that a quorum was present, and the Board would follow the agenda as posted.

### **ACCEPTANCE OF MINUTES – April 7, 2016**

**Mr. Deletetsky Moved to Approve the Minutes of the April 7, 2016 Meeting as Amended.  
DELETETSKY**

Mr. Smith noted that the motion did not require a 2<sup>nd</sup> and he called for a vote.

**APPROVED 4:0 UNANIMOUS**

### **UNFINISHED BUSINESS –**

**1. OGUNQUIT SEWER DISTRICT – 5 Marshview Lane – Map 10 Block 53 – Resource Protection District (RP). Variance Appeal Under Article 5.2.B.1.a – Request to increase lot coverage over the maximum of zero percent allowable in the Resource Protection District.**

Mr. Smith noted that this meeting is a continuation of a case heard on March 10, 2016, followed by a Site Visit on April 1, 2016, and a further meeting on April 7, 2016; at which time the application was tabled to allow Board members time for proper review of documentation which was submitted just prior to that April 7, 2016 meeting.

Mr. Smith made some opening comments for the record:

At the March 10, 2016 meeting the Board determined that it did have jurisdiction to hear this case.

The Zoning Board's role is to deal with a variance request and not a Design Review.

Mr. Smith stated that a review of the 1923 Deed shows that ownership of the property in question resides with the Town of Ogunquit, originally the Ogunquit Village Corporation.

Also at the March 10, 2016 meeting the Board voted to recuse Mr. Horn from hearing this case due to his wife's position as a Trustee of the Ogunquit Sewer District; and for Mr. Horn to hear this case would be a violation of the Board's By-Laws.

Mr. Smith noted that the Board had received input from the Appellant (Phil Pickering) and members of the public at both the March 10, 2016 and April 7, 2016 meetings.

Mr. Smith went on to review what this meeting would not accomplish and what it would not address:

1. Nothing that occurs at this meeting will result in the issuance of a building permit, or permission to build anything;
2. The Zoning Board of Appeals is not involved in Design Review which falls under the jurisdiction of the Planning Board's Design Review process;
3. The Zoning Board of Appeals is not concerned with the financial solvency of the Ogunquit Sewer District or its ability to get a bond floated, or its ability to borrow money, or the attractiveness of the current interest rates;
4. The Board is not interested in the Ogunquit Sewer District's long range plans to relocate the treatment facility to an alternative site. This Board assumes this will take place and that when it does it will be done in accordance with policies established within the Town's Comprehensive Plan where the relocation is specifically addressed.

Mr. Smith noted that such a move might be motivated by sea level rise projections and storm surge projections; and could be done consistent with the FEMA Flood Plain Management Guidelines, and DEP; all of which are tangential to the Zoning Ordinance criteria that must be met before the Sewer District may pursue a building permit.

Mr. Smith suggested that sea level rise and storm surge projections are not exact sciences; and even the scientific community has not come to a definitive consensus. Mr. Smith went on to say that failure to comply with Federal Government requirements can have negative consequences. For purposes of this hearing; and for this application the Board will presume that sea level rise is inevitable and the Board will not get bogged down with the severity thereof. Particularly since storm surge is a much more serious threat.

Phil Pickering addressed the Board. Mr. Pickering stated that the plans have changed slightly. The proposed building has been moved closer to the fence line, and they have removed some of the access ramps in order to condense the building's footprint. He has listened to the public's comments regarding the removal of trees and reducing the project's impact on the area.

Mr. Smith noted the Board's receipt of a letter from the Ogunquit Sewer District outlining changes to the original application. He pointed out that there are two variances which will be needed for this project to continue through the process of acquiring a building permit. He noted that ultimately the Board will need to address the four hardship questions as outlined in Article 5.2.B.1.a of the Ogunquit Zoning Ordinance.

Mr. Mayer asked about the dimensional requirements in Table 703.1 of the Ogunquit Zoning Ordinance.

Mr. Smith responded that this has already been somewhat addressed however that table does require a variance if the Applicant is going to have any lot coverage in the Resource Protection District (RPD). The current allowance for lot coverage in the RPD is zero percent (0%) and any infringement in the RPD would require the granting of a variance.

Table 703.1 also requires a setback of ten feet (10') in SGD1; and in order to accommodate this application the Board would have to grant a setback variance of ten feet (10'). Mr. Smith noted that Table 703.1 indicates N/A – not applicable, because no one ever anticipated construction of a building in the dunes.

Mr. Smith went on to summarize the requirements as outlined in Table 703.1: Frontage requirement is one hundred feet (100') which this Applicant can meet.

Setbacks are ten feet (10') which is currently alright in the Shoreland General Development 1 Zone (SG1) but not in the RP, which is why a variance is needed.

Coverage in SG21 is a maximum of twenty percent (20%) which will not be aggravated by this proposal.

Height cannot exceed two and one half (2 ½) stories which will not be an issue with this proposal.

Mr. Mayer responded that all these criteria are for the SG1, the RP, as noted in Table 703.1 are all N/A – Not applicable.

Mr. Heyland responded that the setback requirement reverts to the nearest zone; and on the opposite side of the Applicant's fence is the SG1 Zone which has a setback requirement of ten feet (10'). Hence the ten foot (10') setback variance request.

Mr. Mayer stated that normally when dealing with two zones the requirement would go with the more restrictive of the zones.

Mr. Heyland responded that yes, however in this case the ten foot (10') setback would be more restrictive. The N/A is unclear.

Mr. Mayer responded that he feels the N/A means Not Applicable and that this is more restrictive than ten feet (10').

Mr. Heyland agreed that this may be the case. However requiring a ten foot (10') setback is more restrictive than a zero foot (0') setback. The ten foot (10') setback is taken from the nearest adjacent zone which in this case is SG1.

Mr. Smith asked for confirmation that Mr. Heyland's interpretation of the N/A is that it would revert back to the nearest, or abutting, zone.

Mr. Heyland agreed.

Mr. Griswold asked about the one circular tank not being currently used. He asked if there is any plan to use that tank in the future.

Mr. Pickering responded that all the tanks are being used. There is one tank that was originally designed as a clarifier which has been converted into a stormwater tank. One hundred percent (100%) of any rainwater that comes off of the OSD's property ends up in that tank. This is the tank closest to the Beach.

Mr. Smith stated that the site visit was very helpful as is the recently submitted documentation.

Mr. Mayer asked where the SG1 District ends and the RP District begins. He noted that it has been assumed that it ends thirty feet (30') beyond the Sewer District's boundary.

Mr. Pickering responded that when the Zoning Map was being set, he requested this buffer around the facility for future expansion. He noted that in 1991, when they had their last major upgrade they moved the facility access road to accommodate the new clarifier. He asked for additional coverage around the facility in anticipation of future expansion needs. However he agreed that the determination of the location of the SG1 line falls under the jurisdiction of the Code Enforcement Officer who believes the line to be at the current fence line, and not thirty feet (30') beyond.

Mr. Smith asked Mr. Pickering if the large blue line on the site plan is this buffer line.

Mr. Mayer stated that the site plan was only an approximation and it was issued in 2014 by an agency which is no longer employed by the Town to give GIS information.

Mr. Prior responded that everyone seems to agree that the location of the boundary line on the Town's Zoning Map is only an approximation; however the Ordinance states that ultimately the interpretation is up to the Code Enforcement Officer. When reviewing the documentation the Code Enforcement Officer determined that the developed area is the defining boundary and the District's property is fully developed, thus the SG1 boundary line is at the District's property line. He has adjusted the application to indicate that the originally asserted line which was thirty feet (30') beyond the District's property line has now been relocated back to the property fence line.

Mr. Mayer asked for confirmation that the final determination of the location of the SG1 boundary line is up to the Code Enforcement Officer, and Mr. Heyland has determined that that boundary line is at the Sewer District's property line; and not thirty feet (30') beyond.

Mr. Pickering responded that this is correct.

Mr. Mayer also asked for confirmation that the entire proposed project will be in the RPD and not in SG1.

Mr. Pickering responded that this also is correct.

Mr. Smith added that regardless of whether the line is one foot (1') or thirty feet (30') into the RP it does drive the four criteria of Article 5.2.B.1.a of the Ogunquit Zoning Ordinance.

Mr. Heyland stated that the newest plan indicates the limits of the fence line; and that fence line is the limit of the SG1. He feels it is very clear. This proposed development is completely in the RPD, and the SG1 boundary line is at the Sewer District's property / fence line.

Mr. Smith asked if there was anyone from the public who wished to be heard.

There was no one and the public portion of the hearing was closed at 6:25 p.m.

Mr. Smith mentioned that at the conclusion of the Board's discussion of the criteria of Article 5.2.B.1.a of the Ogunquit Zoning Ordinance, he would like the Board to discuss some possible deed issues, other agency issues, and Flood Plain Management Ordinance issues.

Mr. Smith stated that the Board would review each of the requirements of Article 5.2.B.1.a of the Ogunquit Zoning Ordinance to determine whether they have all been met, or not met, by the Applicant. He will call for a vote on each of the criteria, however he may reserve execution of that vote until after the Board has reviewed all four.

Mr. Smith noted that the Applicant must meet all four standards in order for the Board to grant a variance.

*i. The land in question cannot yield a reasonable return unless a variance is granted.*

Mr. Mayer stated that he believes this standard to have been met. He does not see that the need for additional administrative space can be satisfied unless the District has the space to do what they propose, which requires the variance.

Mr. Smith posed the question: can the land in question operate as a treatment facility if the Board denies the variance? And what is “reasonable return”?

Mr. Mayer asked if the question addressed the existing Sewer Treatment Facility land or the proposed project, which will not be on Ogunquit Sewer District land.

Mr. Griswold stated that the upgrades to critical equipment need to be done. He agreed that the Sewer District is being prudent in elevating that equipment. However, the issue of accommodating the staff is more questionable, and whether or not they can be accommodated off-site. He questioned whether having staff members at an off-site location would impinge on the operability of the Sewer District.

Mr. Deletetsky added that the Sewer District does not need the variance to do the equipment upgrades. He added that they already have a variance as long as they don’t cross over into another zone. He added the question: who is going to buy a sewer treatment plant?

Mr. Smith asked if the Applicant needs the variance to do the equipment upgrade. He noted that the issue isn’t about the necessity for the upgrade; the issue is whether the relocation of staff is limited to this one location or if there are options.

The Board agreed to come back to this question

*ii. The need for the variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.*

Mr. Mayer reminded everyone that they are considering a variance for the proposed property. He noted that the treatment facility could continue to operate with the equipment upgrade; however the equipment upgrade will displace staff which will need to be relocated. He reiterated that the need for the variance is not on the existing property but on the proposed building site. He suggested that the “general conditions of the neighborhood” involve the RPD not the SG1.

Mr. Smith agreed that the existing equipment needs to be relocated, and the unique circumstances are that the property is in the Flood Plain and a storm surge would be devastating. The Sewer Treatment Facility has no control over these circumstances. The unique circumstance of the property is that it is in the Flood Plain which drives two things: the relocation of equipment and the displacement of staff.

Mr. Mayer agreed that the upgrading of the equipment forces the relocation of the staff however he asked if it forced the staff into the dunes.

The Board agreed to come back to this question.

*iii. The granting of the variance will not alter the essential character of the locality.*

Mr. Smith asked “what is the locality”? the treatment facility or the pristine ecosystem that would have to be altered? He asked if “character of locality” is the ecosystem or the treatment facility.

Mr. Griswold stated that the Comprehensive Plan leans toward protection of precious resources. He stated that the District would have to destroy an area in the RP which has been identified as precious to the State of Maine. He suggested it would be hard to argue that the proposal would not have a negative impact on the essential character of the locality.

Mr. Mayer agreed the proposed project can’t help but alter the character of the locality in some way.

Mr. Deletetsky agreed that this is a unique system. He also agreed with the other Board members that the Sewer District does a wonderful job and has done everything they could to reduce the impact of this proposed project.

Mr. Smith agreed that this is an essential public utility and he asked if there was any way that the Board can make things happen which are for the good of the Town. However this application bumps against a number of other ordinances and state agencies, as well as the Town of Ogunquit Comprehensive Plan. He agreed with the other Board members that he can’t see any way the proposed plan will not cause some disturbances in the dune ecosystem.

Mr. Smith agreed that the Comprehensive Plan is not law, or an ordinance. However it is the Town’s overarching policy which is intended to drive the collective consciousness of the community and its leadership. He noted that the proposed project would violate at least six places in the Comprehensive Plan which prohibit further development in Flood Plain areas.

Mr. Smith also pointed out that Ogunquit’s Pitch Pine Tree area has been nominated to the Maine Critical Areas Program which was created by the State Legislature in 1974, and has now been renamed as the Maine Natural Areas Program. This Pitch Pine Tree grove has been identified as a significant ecosystem which needs to be protected.

Mr. Smith appreciated the Sewer District’s attempts to minimize the impact to the area however all of the ordinances prohibit further development in “critical areas”.

The Board agreed to come back to this question.

*iv. The hardship is not the result of action taken by the appellant or a prior owner.*

Mr. Smith suggested the “hardship” is the dislodging of Sewer District staff, and he asked if that will be the fault of the District or due to the issues of sea level rise and/or storm surge which are out of the District’s control.

Mr. Mayer suggested that if the Sewer Treatment facility is maxed out, that may be the fault of the Sewer District which maxed out its own facility.

Mr. Smith reminded the Board members that it is not their job to suggest alternative locations to the Sewer District. He also noted that the Board has the authority to approve, deny, or approve with conditions. He reiterated that the “hardship” is the dislodging of the Sewer District’s staff, and he asked if the proposed location is the only location.

Mr. Smith noted that the Applicant is seeking to build on land which is owned by the Town of Ogunquit. He asked how the Sewer District will get permission to build on land owned by the Town. Mr. Smith suggested that permission to build at the proposed location will require a vote of the town citizens at a Town Meeting. He noted that the 1990 and 1991 Easement Deeds were approved by the citizens at a special town meeting. He confirmed that whatever the Board does at this meeting will not give the Applicant the approval they need to get a building permit.

Mr. Mayer added that everything is conditional upon the Zoning Board granting the variance request. A denial will prevent the Applicant from pursuing the proposed project as it is currently planned.

Mr. Smith asked if the Town can vote to allow the Applicant to do something the Board denied. Can the Town overrule the Ordinances? It appears as if this is what happened in 1973. He suggested this is a legal issue which the Board does not need to consider unless it is used for an approval with conditions.

Mr. Smith referred to the Flood Plain Ordinance for the Town of Ogunquit which states that “human alteration of sand dunes is prohibited unless it can be demonstrated that such alteration will not increase potential flood damage”. Article 10 of the Flood Plain Ordinance states that “the Board of Appeals may grant a variance from the requirement of this Flood Plain Ordinance consistent with the State Law and the following criteria...” this includes things the Board has already discussed and things they have not discussed. However it also states that variances shall only be granted upon a showing of good and sufficient cause showing that the issuance of the variance shall not conflict with other State, Federal, or Local Laws or Ordinances. This is where the application bumps up against the Maine Natural Areas Program. The Flood Plain Ordinance also states that “failure to grant the variance will result in undue hardship” and it repeats the four criteria of Article 5.2.B.1.a of the Ogunquit Zoning Ordinance.

The Flood Plain Ordinance goes on to say that “variances will only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard... and the Board of Appeals may impose such conditions as it deems necessary”. Mr. Smith noted that this all refers to a Flood Plain Ordinance Variance however he suggested it also applies to variances from the Zoning Ordinance. He used the language to suggest that there are other factors which come into play when discussing development in a Flood Plain Area. It is clear that the spirit and intent is to discourage development in a flood plain area unless it is a necessity.

Mr. Smith noted that there are five “critical areas” in Ogunquit which are registered with the State; and the Dunes and the Pitch Pine Tree Stand are two of them.

The Board agreed to come back to this question.

*i. The land in question cannot yield a reasonable return unless a variance is granted.*

Mr. Griswold Moved that this criteria has not been met.

GRISWOLD/DELETETSKY

Mr. Smith called for a discussion.

Mr. Griswold stated that requiring a new building for the staff does not meet the standard.

Mr. Mayer asked how “reasonable return” for a critical area can be determined.

Mr. Smith noted that the Sewer Treatment Facility can still operate as a sewer treatment facility without the variance being granted. They can still do all the required upgrades and operate as a sewer treatment facility without the variance being granted. They do not need a variance to do the upgrades however they do need the variance to relocate staff into the critical areas.

Mr. Sawyer, Chairman of the Board of Trustees for the Ogunquit Sewer District asked to be heard.

Mr. Smith reopened the public portion of the meeting.

Mr. Sawyer addressed the Board. He noted the Board’s discussion of “misplaced staff” and he asked them to consider the staff as “misplaced operators and maintainers of the facility’s equipment”. He noted that the relocation of these people, who operate and maintain the equipment, needs to be close to that equipment. He also suggested that the “essential quality of that locality” is the wastewater treatment facility not the dunes.

Mr. Sawyer suggested that there is a question as to whether or not the Applicant would have to go to the Town voters for approval. He noted the Board’s agreement that if a variance is granted the applicants would need voter approval. Mr. Sawyer stated that he (Mr. Sawyer) had been before the Select Board and was informed that they have the authority to grant the easement if the Zoning Board grants the variance.

Mr. Sawyer stated that if the Zoning Board granted a variance, the Applicant’s next step would be to go before the Planning Board, and then the Select Board, and not to the voters.

Ms. Smith agreed that when he referred to “staff” he included the facility equipment operators and maintenance people. He also questioned how, based on the deed and the ownership, the Select Board could speak on behalf of the Town voters. He agreed that maybe they can, however it would have to go to the Select Board in order for the question to be placed on the Town Warrant for a Town Meeting.

Mr. Smith closed the public portion of the meeting.

Mr. Mayer again asked “what is the reasonable return of a critical natural environment”? Can a price be put on it? He doubted it.

Mr. Smith noted that the criteria call for reasonable return not the maximum return.

Ms. Smith called for a vote on Mr. Griswold’s Motion:

*i. The land in question cannot yield a reasonable return unless a variance is granted.*

**Mr. Griswold Moved that this criteria has not been met.**

**GRISWOLD/DELETETSKY 3:1 (Mr. Smith Dissenting)**

Mr. Smith noted that this condition has been determined to have not been met.

*ii. The need for the variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.*

Mr. Mayer Moved that this criteria has been met, that it is due to the unique circumstances of the property.

**MAYER/DELETETSKY**

Mr. Smith called for Discussion.

Mr. Griswold stated that the land in question is in the RP.

Mr. Mayer suggested that both properties are unique.

Mr. Smith called for a vote on Mr. Mayer’s motion.

*ii. The need for the variance is due to the unique circumstances of the property and not to the general condition of the neighborhood.*

**Mr. Mayer Moved that this criteria has been met, that it is due to the unique circumstances of the property.**

**MAYER/DELETETSKY 4:0 UNANIMOUS**

Mr. Smith noted that this condition has been determined to have been met.

*iii. The granting of the variance will not alter the essential character of the locality.*

Mr. Griswold Moved that this criteria has not been met.

**GRISWOLD/MAYER**

Mr. Smith called for discussion and he noted that this issue deals with ecological conservation issues.

Mr. Smith stated that the applicant contends that there is a treatment facility there now and there will be a treatment facility there later. He also noted that the key word here is “altered”. Considering the locality, there will definitely be an alteration/disturbance of the dune ecosystem.

Mr. Mayer responded that perhaps in the future it will be decided that the Zoning Board does not have jurisdiction to hear this case.

Ms. Smith called for a vote on Mr. Griswold’s Motion:

*iii. The granting of the variance will not alter the essential character of the locality.*

**Mr. Griswold Moved that this criteria has not been met.**

**GRISWOLD/MAYER 4:0 UNANIMOUS**

Mr. Smith noted that this condition has been determined to have not been met.

*iv. The hardship is not the result of action taken by the appellant or a prior owner.*

Mr. Mayer Moved that this criteria has been met.

MAYER/SMITH

Mr. Smith called for discussion.

Mr. Smith stated that he is willing to let the sea level rise and surge mitigation issues be identified as not the fault of the Applicant or a prior owner. Hardship in this case is not the result of actions taken by the Sewer District.

Ms. Smith called for a vote on Mr. Mayer’s Motion:

*iv. The hardship is not the result of action taken by the appellant or a prior owner.*

**Mr. Mayer Moved that this criteria has been met.**

**MAYER/SMITH 3:1 (Mr. Griswold Dissenting)**

Mr. Smith noted that this condition has been determined to have been met.

**Mr. Griswold Moved to Deny the Variance Request due to Items i and iii having not been met as required in Article 5.2.B.1.a of the Ogunquit Zoning Ordinance.**

**GRISWOLD/DELETETSKY 4:0 UNANIMOUS**

Mr. Smith stated that the Variance Appeal has been DENIED.

Mr. Smith informed Mr. Pickering that he does have recourse and the Code Enforcement Officer can council him on that.

Mr. Smith closed discussion regarding this case. And Mr. Horn rejoined the Board.

**NEW BUSINESS – None**

**CODE ENFORCEMENT OFFICER BUSINESS –**

Mr. Heyland informed the Board that he had recently received a request from a local ice cream shop owner who wants to purchase a bicycle with a cooler device to deliver ice cream. He (Mr. Heyland) initially believed that this would violate the ordinance restriction disallowing outside sales and services.

Mr. Smith summarized that a local business owner wants to deliver ice cream.

Mr. Heyland agreed and added that they already have a business with a brick and mortar store front. They now want to expand that business to have deliveries, similar to a pizza delivery, on a scooter. Mr. Heyland stated that the ice cream shop owner has compared his request to that of the pizza delivery person. He was informed that deliveries will be per order.

Mr. Smith added that the delivery person would need to have money on him to collect payment and make change.

Mr. Mayer asked if pizza orders have been delivered to the beach.

Mr. Heyland responded that he has never seen it but he has been told that it happens. His fear is that this particular delivery type will morph into people buying additional ice cream from the bike or truck.

Mr. Horn stated that the base criterion has always been “where is the money exchanged?” If payment is given over the phone then it’s not an outside sale. If the delivery person collects payment outside of the business it is an outside sale.

Mr. Smith stated that if payment is not collected by the driver then it is allowable.

Mr. Mayer added that so many things are paid for by charge that cash is almost obsolete. He asked if the product may be delivered to the beach if it is paid for by charge over the phone when the customer places the order.

Mr. Horn responded that the delivery location is irrelevant; it’s the point of payment that sets the standard. If something is paid for by charge over the phone it can be delivered anywhere.

Mr. Heyland stated that enforcement of the “where was it paid for” criteria is impossible to enforce.

Mr. Smith asked if the Ordinance addresses Point of Sale.

Mr. Heyland responded that it does not.

Mr. Mayer asked if this is a Zoning Board issue.

Mr. Smith responded that it could be. If Mr. Heyland makes a decision and the applicant appeals, it would come before this Board.

Mr. Heyland added that the person who made the inquiry has stated that it is his opinion that the original ordinance was to prevent peddlers.

Mr. Smith stated that the Ordinance does not address this question. He suggested Mr. Heyland might go back to the ice cream shop owner and inform him that the Board's opinion is that it was the intent of the "founding fathers" to prevent carts from running around delivering things. Mr. Smith admitted the Ordinance doesn't specifically state this.

Mr. Horn asked how the Jitney Taxi collects money.

Mr. Heyland responded that she probably collects from inside the vehicle, which may or may not circumvent the outside sales restriction, similar to the trolley.

Mr. Heyland suggested that the restriction may be more applicable to something like a tee shirt shop having racks of tee shirts outside.

Mr. Griswold stated that pizza delivery has been around forever.

Mr. Heyland suggested the next step is ice cream trucks at the beach, or hot dog vendors, or blow up balloon sales.

Mr. Smith stated that outdoor sales were narrowly defined as "goods for sale, on display outside a structure". He suggested that new zoning language might need to be written.

Mr. Deletetsky added that the danger comes from the ice cream delivery person carrying extra ice cream which he could sell from his vehicle. The pizza and lobster delivery isn't riding around with extra pizza or lobster.

Mr. Heyland informed the Board that lobstermen selling lobsters from the dock were specifically exempted by the voters.

Mr. Smith referred to the Ordinance which states that "specifically allowable outdoor sales may include the use of outdoor cafes or restaurant seating, or vending or buyer operated retail devices". None of this language prohibits pizza or lobster delivery.

Mr. Mayer suggested that the pizza delivery originates with a telephone order, and the delivery person is only delivering, not soliciting or conducting an outside sale. If ice cream sales were conducted the same way it would be the same thing. However if the ice cream vehicle were to carry a variety of products and sell them as he goes along, that would be a violation.

Mr. Mayer stated that, assuming current pizza delivery is legal, then ice cream or lobster handled the same way would also be legal. As long as they only deliver orders which were placed via phone.

Mr. Horn asked how Mr. Heyland is going to police these transactions.

Mr. Horn suggested that no one will order ice cream over the phone. He asked how Mr. Heyland would police the ice cream delivery person from carrying extra inventory which might be sold at the destination, particularly the beach.

Mr. Heyland responded that it would be very difficult to police.

Mr. Horn noted that Ogunquit hasn't seen any impact of fast food trucks.

The Board agreed that the criteria would be at the point of sale being a solid storefront. In addition, there would be no sales from the window of a truck, or off another type of vehicle.

Mr. Smith informed Mr. Heyland that he might respond to the ice cream shop owner by telling him that the Board is inclined to interpret vague ordinances in a strict way.

Mr. Heyland responded that this has been the historic position of the Town. He asked if the current language restricts this delivery activity. It sounds as if the ice cream truck can't be restricted, however that has never been challenged.

Mr. Heyland asked if an order, placed and paid for over the phone, and delivered to the Main Beach on a bicycle clearly marked as "ice cream delivery" would be a violation of the Ordinance.

The Board and Mr. Heyland suggested that deliveries, paid for at the point of origin, and delivered from a vehicle with signage clearly identify it as "delivery" would be allowable.

Mr. Griswold asked what the consequences would be for violators.

Mr. Heyland responded that the Courts can set a fine of up to \$2,500 per day.

Mr. Smith asked if a permit is required.

Mr. Heyland responded that it is not, as long as the business has a valid business registration from the Town.

Mr. Smith asked for confirmation that if the business was found to be in violation of the delivery restrictions the Town could pull the business registration.

Mr. Heyland agreed, and suggested that if the point of origin is a business located out of town it might get more complicated.

**OTHER BUSINESS** – None

**ADJOURNMENT -**

**Mr. Deletetsky Moved to Adjourn at 7:58 p.m.**

**DELETETSKY/SMITH 5:0 UNANIMOUS**

Respectfully Submitted

Maryann Stacy

Maryann Stacy

Recording Secretary

*Approved on February 15, 2017*