

**Newburyport Board of Health Public Meeting
August 4, 2015**

Date of Approval: _____

Attendees:

Chairperson of the Board: Dr. Robin Blair

Board Member: Patricia Lawrence

Note Taker: Patti McAlarney

Call to Order: Dr. Blair called the meeting to order 7 pm

8 Strong Street – Dr. Blair announced that tonight the Board will be considering a request to demolish the residence located at 8 Strong Street. He stated that the Health Director was not able to attend tonight’s meeting due to personal reasons; however, Director Bracey has kept the Board up to date on this issue since the initial condemnation and has provided the Board with a document listing reasons he supports the demolition of the property.

Dr. Blair opened the floor for public comment regarding this issue:

Bernard Casey, resident of 6 Strong Street – Mr. Casey stated that this is a tough situation for everyone and feels that the house should come down. He has seen ‘critters’ come out of the upstairs and downstairs windows.

Tom Sexton, 600 Main Street, Rowley MA – Emergency Property Solutions – He did the clean out at 8 Strong St and removed all contents of the home including: clothes, toys, furniture, feces. The company also sterilized the property multiple times which was necessary because of the constant seepage of urine and feces into the flooring and studs. He recommends razing the house and noted that this would take care of all of the contaminated materials.

Patricia Lawrence asked if any other neighbors have given feedback. Mr. Casey said that ‘everyone in the neighborhood wants the house to come down.’ Mr. Sexton agreed. Mr. Haseltine noted that he has a vested interest in this decision since he is planning to purchase the house (it is currently under legal agreement.) He agrees that the house should be torn down and the condition of the house is the worst he has ever seen. His intention would be to replace the house with something within the character of the neighborhood.

Rob Germinara, 2 Ashland Street, Newburyport – Stated that he used to deliver oil to the property years ago and informed the Board that there is an underground oil tank in front yard. He supports tearing down the house.

Dr. Blair noted that the Director of Board of Health, Fire Department and Police Department all support razing the property. He also stated that there were three generations of family that lived at the property; the owner of the property currently resides in a nursing home.

Hugh Wear, family member representing 8 Strong Street, informed the Board that the sale of the home will help to pay for nursing home costs for the current owner of the property.

Motion by Patricia Lawrence– I motion to destroy 8 Strong Street, start fresh and have a new house built. Seconded by Chairman Blair. In favor: Patricia Lawrence and Dr. Blair. Opposed: none.

One Kent Street -

Dr. Blair explained that this property is under currently under ownership of People's Comprehensive Mortgage (People's) but the Board will not be discussing the legal ownership at this meeting. The issue to be discussed is whether the Board should issue a Tobacco Permit to People's Comprehensive Mortgage since the Board of Health put a stoppage on granting any further tobacco permits and that when a property transfers from one owner to another, the new owner must apply for a new permit within 30 days. It is the Board's understanding that the permit belongs to the physical property/location, not to the manager or owner of the business.

Lisa Mead, Blatman Bobrowski & Mead, introduced herself and her client, Charles Mabardy who is the potential buyer of Caldwell's Corner and explained the following: According to Ms. Mead, the only thing holding up the purchase is the non-issuance of the tobacco permit. In 2013 People's took ownership from Mr. Germinara in a deed in lieu of foreclosure. Prior to adoption of the new tobacco regulations, Mr. Nik Bakis of People's Comprehensive Mortgage Company filed with Mr. Bracey an application for a tobacco permit. Mr. Bracey denied it, saying that there were fees and taxes due to the City. However, Mr. Bracey failed to follow proper procedures pursuant to the Ordinance for failure to pay taxes. The ordinance requires that whoever is denying the permit must give notice, have a hearing and ensure that it is understood why the permit is being denied. (Ms. Mead explained that when she makes reference to "People's" it is synonymous with Nik Bakis.) Nonetheless, People's paid all fees by January 8, 2014. On January 8, 2014 he submitted another application for a tobacco permit. In March 2014, Mr. Bracey denied the application and said that the Board of Health had adopted new tobacco regulations that prohibited the issuance of new tobacco permits and that even if this were to be considered a renewal, it was too late because there was new ownership and more than 30 days had passed. Ms. Mead said that the issue with this is that the new tobacco regulations wouldn't be in effect until July 2014 and that although there was a provision in the regulation that took effect in April, it wouldn't have mattered, since the application was denied in March. Ms. Mead noted that she had provided to the Board a copy of the denial letter from Mr. Bracey.

Ms. Mead contends that the permit should have been issued in November 2013, or if it had been denied in November, it should have been issued in January 2014.

Ms. Mead stated that Mr. Germinara initially owned the property and People's held the deed in lieu of foreclosure. On September 7, 2011 People's took the deed from Mr. Germinara for failure to pay. Mr. Germinara continued to operate the business until approximately November 2013 when he was removed as manager.

Ms. Mead read to the Board the old tobacco regulations, which stated: "no person or entity shall sell tobacco products within the City without a tobacco sales permit from the Board of Health. A permit is required annually for each location and permits are non-transferrable. A tobacco sales permit shall be purchased annually by June 30. The fee shall be in accordance with the current Board of Health Fee Schedule." The regulations do not include any statements about change of ownership. The non-payment of taxes is a red herring because Mr. Bracey didn't follow proper protocol; however, they did apply again in January 2014. Ms. Mead referred to Mr. Bracey's letter to Mr. Bakis of People's. Ms. Mead noted that the letter cites regulations that were not in effect at the time of the January 2014 application.

Rob Germinara, 2 Ashland Street, Newburyport – Mr. Germinara explained the following to the Board: According to Mr. Germinara he was the person that started Caldwell's Corner and gave it the name. He contends that he is still the legal owner, not People's, and he has been disputing this for the past three years. He stated that he felt that this issue is so confusing that Mr. Bracey should be present for this discussion. Mr. Germinara respectfully requested that the Board extend this meeting to a time when Mr. Bracey can be present. He asked that the Board not take a vote on this matter until the next regularly scheduled Board meeting in September. He wanted to correct some discrepancies that he felt were expressed by Lisa Mead: He explained that he took possession of the property on August 31, 2010. Deeds in lieu of foreclosure were fraudulently filed in Salem, MA on September 7, 2011. This can be confirmed by checking the City website. Mr. Germinara stated that the last day that he was open on this property was October 11, 2012. Mr. Germinara noted that he felt that there were several people and businesses that were holding themselves out as "Caldwell Corner" specifically: People's Comprehensive Mortgage LLC, Peter Bakis, Nik Bakis, Newburyport One Stop, but the only person that is Caldwell's Corner is himself. On April 30, 2015, there was a question about a flammables permit being extended in City Council Chambers and the reason it was NOT extended was because there was \$9000 in back taxes due to City. The permit was due to expire on April 30, 2015. On April 27, 2015, he brought \$9000 to pay these taxes. Mr. Germinara noted that he had attended all of the tobacco regulation meetings and at the meetings he spoke in favor of Black Duck and Warren Street Deli. The Board made it very clear at the meetings that, going forward, they did not want to issue any new tobacco permits. Mr. Germinara reiterated that he felt that Mr. Bracey should be present for any discussion about the tobacco permit regulations.

Lisa Mead noted that she was not involved in drafting the agenda for tonight's meeting and has never held herself out as representing Caldwell's Corner as Mr. Germinara had stated. Ms. Mead stated that there was nothing in the old regulations that addresses lapse of ownership or thirty day deadline, etc. Mr. Bracey wrote in his letter of March 13, 2014 that the application was being denied using the new regulations. These regulations had had not taken affect at that time. Ms. Mead also noted that she has been trying to get a meeting with Board of Health since June 23, 2015.

In response to a question from Patricia Lawrence regarding the date that the taxes were all paid, Ms. Mead explained that there had been a number of outstanding items that were due but it is her understanding that all taxes were paid by January 8, 2014. She has a letter from City Solicitor, Mark Rich, indicating that there were no outstanding financial commitments that should have held up the issuance of the tobacco permit.

All taxes owed to the City must be paid and up to date for issuance of any permit. Ms. Mead explained that her point is that there is a *process* (both statutory and required by City ordinance regarding unpaid taxes) that Mr. Bracey failed to follow. If a person is to be denied a permit due to non-payment of taxes they must be notified of the reason for the denial and be allowed a hearing; neither of which were done.

Mr. Germinara stated that he had paid for and acquired through public records request, the email exchange between City Solicitor, Attorney Wright and Mr. Bracey for the period from April 30, 2015 and May 4, 2015. At that time there was no reason for unpaid real estate taxes that would prevent a business license from being issued. As of today there are \$3000 underground storage fees owed, and \$4000 in Phase V Environmental Fees owed to the Commonwealth of Mass that are owed. Mr. Germinara stated that he is sure that Mr. Bracey will tell you that it is his duty to follow Mass General Law in regards to ensuring that all state and local taxes are paid before he could issue a permit to a property. In order for this to be vetted properly Mr. Bracey should be present for the discussion.

Ms. Mead read Section 9-5 of the Ordinance and noted that if Mr. Bracey had followed the procedure described therein, Mr. Bracey would have had the right to deny the permit. However, Mr. Bracey refused to even allow Mr. Bakis to submit an application. Then when the application was submitted in January 2014, the permit was denied using the reasoning that more than 30 days had passed since new ownership had taken place.

Mr. Germinara requested that no action be taken until the next scheduled meeting of the Board of Health. Dr. Blair and Patricia Lawrence noted that the Board has the right and ability to schedule a meeting earlier than the next regularly scheduled Board meeting, if it is necessary. However, Patricia Lawrence noted that due to the complexity of the situation she wants sufficient time to properly review and gain understanding of the timeline.

Ms. Mead reiterated that in November 2013, Nik Bakis tried to apply for permit. Mr. Bracey would not take the application because there was money owed to City. On January 8, 2014, Mr. Bakis applied again and nothing happened until March 13, 2014

when Bob sent a letter stating the reasons for denial. The reasons for denial stated in Mr. Bracey's letter had nothing to do with money owed; the letter stated the denial was due to the "current" City Health Department Tobacco rules and regulations and he cites to the rules and regulations which had not yet been adopted (The rules weren't adopted until April didn't go into effect until July.)

Dr. Blair asked Mr. Mobardy to clarify that it would not behoove him to go forward with the purchase of property unless he is sure that he would be approved for the Tobacco Permit. Mr. Mobardy stated that this is correct and that the bank actually requires that all of the permits for a convenience store be in place.

Ms. Mead stated that request they are making is that the Board find that the actions of Mr. Bracey were arbitrary and capricious and that Mr. Bakis should have been awarded that permit. And that if that permit had been awarded, then when Mr. Mobardy purchased it he would be coming in under the new regulations and would be able to apply for the permit.

Mr. Germinara stated that the only one that had a tobacco permit was Caldwell's Corner and it closed as of October 11, 2012. The whole question of the Superior Court Case revolves around whether the deeds in lieu of foreclosure was done fraudulently. Furthermore, Mr. Germinara asked, for the record, whether it is Mr. Peter Bakis or Mr. Nik Bakis who is selling the property to Mr. Charley Mobardy. Dr. Blair noted that on the Tobacco Permit Application it was Mr. Nik Bakis listed as the Manager. Mr. Germinara stated that Nik Bakis has never been the manager for Peoples Comprehensive; that according to the website of the Secretary of Commonwealth, the manager from 1996 to 2010 was Stanley Charmoy. From 2010 until they were dissolved by Secretary of Commonwealth on June 30, 2013 the manager was Victoria Hollian. And on June 30, 2014 John Hanna reactivated Peoples Comprehensive Mortgage.

Lisa Mead stated that the key cornerstone issue at hand is the regulations that were in effect at the time the property was transferred and in effect at the time that application was made was the prior regulation. If a property was sold, there was no lapse of time requirement issue under old regulations.

Dr. Blair asked Ms. Mead if she agrees with Mr. Germinara that there is a dispute over who is the legal owner of the property. Lisa Mead stated she is not involved in that legal issue but that it is her understanding that the legal owner of record is Peoples Mortgage. Ms. Mead indicated that if the Board agrees to accept an application, it would be Peoples' Mortgage that would be the applicant.

Mr. Germinara maintained that he is the current owner of the property at One Kent Street and that the court will agree to this when the issue goes to trial in September. Mr. Germinara also states that he has copies of a business license where he filed his name as

Salisbury Mini-Mart d.b.a. Newburyport One Stop. Mr. Germinara questioned why there are so many names involved in 'who' is applying for this permit.

Charley Mobardy, Salisbury Mini-Mart dba NBPT One Stop (for this one particular location) introduced himself and stated that he has known Mr. Germinara for about 29 years. He has been in the gas station industry for 31 years in Salisbury, Amesbury and Newburyport. As soon as the location was put under agreement he went to see Mr. Bracey to be sure they were following all proper procedures. Saw Mr. Bracey in April 2015 and he wanted to be open by the end of April. Mr. Mobardy explained to the Board that in 2010 he was at the auction when Mr. Germinara bought the property. Mr. Germinara asked Mr. Mobardy 'may I buy property' and based on this request, Mr. Mobardy did not bid on the property. For reasons unknown to him, the property became available for sale in 2015 and Mr Mobardy decided to purchase it. He went to the Board of Health and Mr. Bracey said "you're not going to get a tobacco license." He applied for a food license. He tried to apply for the tobacco license and "every time he turned around there was another stipulation." Many of the expenses that Mr. Bracey said had to be paid were expenses incurred by Mr. Germinara including personal taxes. He said he didn't go to anyone other than Mr. Bracey and stopped by daily trying to get the business open. Mr. Mobardy said that he obtained the fire permit from Mr. Bradbury. But Mr. Bracey was not satisfied, and he "would not give us the time of day." On April 13, 2015 Mr. Mobardy said he finally got a sign off from him to open. It took four months to get the permit. Mr. Mobardy personally paid taxes for the property.

Mr. Germinara stated that the reason Mr. Mobardy didn't bid on the property in 2010 was because there was a \$30,000 environmental issue that Mr. Germinara took 'head on.' The crux of the lawsuit is that the title to the property is in question.

Ms. Mead restated that the only issue before the Board this evening is whether or not the decision to not issue the tobacco license in March 2014 was arbitrary and capricious.

Dr. Blair noted that the Board will take all of this information under advisement and will re-adjourn. Patricia Lawrence stated that there is a lot of information to be reviewed before making a decision.

Patricia Lawrence asked Mr. Mobardy whether he felt that having a tobacco permit would make or break the success of the store, to which Mr. Mobardy answered, 'yes.' She explained that Board of Health is trying to reduce tobacco permits and to uphold the health of the community.

Dr. Blair noted that even if the Board does meet sooner, rather than later and if the Board did approve the permit for Mr. Mobardy and then if Mr. Germinara were to win his case in court, he could apply for whatever the court approved. Mr. Germinara respectfully disagreed and questioned why the tobacco permit is so important to the property and restated his belief that the legal owner of the property is Robert Anthony Germinara.

Patricia McAlarney is to personally notify Lisa Mead and Mr. Mobardy and Mr. Germinara when the date and time of the Board meeting is determined.

Mr. Germinara will submit tomorrow a public records request to receive a copy of all documents related to this issue that were available at tonight's meeting.

Motion to adjourn by Dr. Blair.
Seconded by Patricia Lawrence.

Meeting adjourned 8:09 PM.