

**Newburyport Board of Health Public Meeting
August 11, 2015**

Attendees:

Chairperson of the Board: Dr. Robin Blair

Board Member: Patricia Lawrence

Board Member: Dr. Darryl Colden

Health Director: Mr. Robert Bracey

Interim Health Director: Joseph Tabbi

Note Taker: Patti McAlarney

Call to Order: Dr. Blair called the meeting to order 7:04 pm

Interim Health Director – The contract naming Mr. Joseph Tabbi as Interim Health Director until such time as a permanent Health Director is hired was discussed by the Board. Patricia Lawrence asked that a line be added to the contract stating that it was the Mayor that set and approved the salary for the Interim Director, not the Board. Mr. Bracey agreed to make this change.

Motion to approve Joseph Tabbi as Interim Health Director was made by Dr. Darryl Colden; Seconded by Patricia Lawrence. The Board voted 3 approvals; 0 denials.

Executive Session – At 7:11 pm the Board went into Executive Session to discuss personnel matters.

Open Session Resumed – 7:27 pm

One Kent Street -

Mr. Germinara, 2 Ashland Street, Newburyport, announced that he would be audiotaping and videotaping the meeting.

Sarah Bolino, of Blatman, Bobrowski & Mead and Talliman, 30 Green Street, introduced herself and her client Charles Mobardy. Ms. Bolino explained that at the last Board Meeting a letter was reviewed that addressed issuance of a tobacco permit for One Kent Street, a property that her client is in the process of purchasing. Mr. Mobardy came to the realization that he was unable to obtain a tobacco permit and sought the counsel of Ms. Bolino's firm. Ms. Bolino presented to the Board a packet of information and a timeline of the series of events to demonstrate that when the current owner applied for the permit it should have been issued and was, in fact improperly denied by Director Bracey. In September 2011, Peoples Comprehensive Mortgage Company (PCM) acquired the property through a foreclosure deed and retained Mr. Germinara as manager of the gas station under the name of "Caldwell's Corner." The tobacco permit was duly issued in February 2012. Mr. Bracey sent out a notice that the application had to be renewed by date certain or it would expire. Mr. Bracey received no response and the permit did indeed expire in December of 2012. The relationship between PCM and Germinara soured and PCM decided to remove Germinara from the premises and take over

operations themselves. At that time PCM attempted to acquire their own tobacco permit but Mr. Bracey refused to accept the application because there was an issue with back taxes. PCM then paid all of the back taxes. At the same time (between November 2013 and January 2014 the Board began to have hearings about new tobacco regulations. Once all tax issues were remedied (in January 2014) PCM submitted another tobacco application. The application was denied in March 2014 by Mr. Bracey. Mr. Bracey indicated in his letter that the application was denied because the current tobacco regulations prohibited the issuance of a 'new' tobacco permit; and made reference to the date of when PCM took title of the company and reference to the expiration of the permit in 2012. Ms. Mead stated that none of these reasons were germane to the non-issuance of the permit.

Dr. Blair noted that anytime a permit is applied for, it is not automatically granted. Ms. Belino indicated that she understood this. She referred the Board to the packet of information she had provided to them as follows: From 2011 until July 2014 the regulations at Tab B from Ms. Belino's notes were in effect. The regulations at Tab B do not contain any provision for limiting the number of permits to be issued in the City, change of ownership or deadlines for new owners to apply. Dr. Blair stated that Board of Health had agreed to that stipulation.

Patricia Lawrence explained that a year lapsed from who is the owner. When applying for a tobacco permit, it would be a company in the business of selling tobacco. However, in this case, it was a Mortgage Company that owned a piece of property that applied for a permit under the name of Caldwell's Corner, LLC. Ms. Mead disagreed and stated that when Peoples' Mortgage applied for the permit it was under the dba of Caldwell's Corner. Ms. Mead directed the Board to Tab F – Peoples Comprehensive Mortgage Company's application dated 2014 which stated the name of business to be Caldwell's Corner but the property was owned by People's Comprehensive Mortgage Company. Patricia Lawrence noted that People's Comprehensive Mortgage Company will not be in the business of selling tobacco; to which Ms. Mead replied that People's Comprehensive Mortgage Company owned the property. Dr. Blair asked who owned the "name" Caldwell's Corner at that time and Ms. Mead replied that she did not know.

John McDonald introduced himself as the representative of Peoples Comprehensive Mortgage Company. Mr. McDonald stated that Mr. Germinara owned the property at One Kent Street but defaulted on loan payments and the property was foreclosed on. Mr. Germinara continued to work on the property as manager for the Property Management Company, Aries Oil. At a certain point, that relationship soured and the station continued to operate under Aries Oil for some time. Dr Blair and Patricia Lawrence asked for clarification as to what company held the tobacco permit at that time to which Mr. McDonald replied that he believed that it was still under the permit of Caldwell's Corner. In the 2014 timeframe, another business entity tried to purchase the property and attempted to obtain a permit but he does not believe that they ever held a tobacco permit but they were seeking one. Mr. McDonald stated that from 2011 through present there has been an attempt to keep the business in operation, but with difficulties. Dr. Blair inquired as to the length of the dormancy period during which there was no tobacco

permit. Mr. McDonald said that he would look into this. Director Bracey stated that the dormancy period was approximately one year. Patricia Lawrence noted that the dormancy period appears to have occurred in 2013. She also noted that the old regulations required that permits are renewed annually for each location and states that permits are non-transferrable.

Rob Germinara, 2 Ashland Street, introduced himself and stated that the business, Caldwell's Corner, closed on October 11, 2012 at which time he stopped selling candy, gas and tobacco. The taxes for the property were never brought current until April 27, 2015 after it was determined that the company's Flammables Permit would not be renewed until the property taxes (\$9,000) were brought current.

Director Bracey offered some points of clarification as to why he denied the permit. He stated that the permit is for the location, not the individual and that this tobacco permit application was denied for the location, not for Mr. Bakis, not for Mr. Mobardy. The permit was renewed in February 2012. The Health Department sends permit renewal applications prior to December 31. A renewal application was not received. Mr. Bracey stated that in 2012 his decision was based on the old regulations which state that you have one year to renew the application. Ms. Mead stated that her interpretation of the regulation would be that if no renewal was received, a business could then reapply for a new application; they would not be foreclosed forever. Mr. Bracey said that the interpreted the regulations differently; that if you don't apply for the renewal then the permit is lost. Dr. Blair stated that in this case, a business could apply for a new permit. Mr. Bracey said that it will be for the Board to make the determination as to which interpretation is correct.

Mr. Bracey stated that when Mr. Bakis approached him in January he asked Mr. Bakis when he purchased the property. Mr. Bakis had indicated that he purchased the property in December of 2013 when in reality he had purchased the property in September 2011. Mr. Bracey stated that Mr. Bakis provided him with false and misleading information. Mr. Bracey stated that renewal application was sent out in 2012 to Mr. Germinara as a worker for Aries and as an agent for People's Comprehensive Mortgage Company.

Patricia Lawrence noted that the regulations indicate that it must be a retailer and questioned whether People's Comprehensive Mortgage Company is actually a 'retailer' that would qualify as a permit holder. Mr. McDonald stated that Aries, which is an agent for People's Comprehensive Mortgage Company, is a retailer.

Bob asked for clarification from the Board as to whether the intention of the Board was to reduce the number of permits by allowing permits that were not renewed would be lost to attrition. Dr. Blair clarified that the reduction by attrition would apply only under the new regulations.

Rob Germinara stated that in September 7, 2011 a fraudulent deed in lieu of foreclosure and estoppel affidavit was recorded. He did not even know about this until September of 2013. In November 2013 Mr. Germinara filed a lawsuit questioning the legal title of this

property against People's Comprehensive Mortgage Company, Peter Bakis, Nik Bakis and John Hanna. He stated that this issue should be settled before any tobacco permit is issued. Dr. Blair noted that this will be taken under advisement.

Charles Mobardy, 285 South Road, Kensington, introduced himself and stated that he is going to be the new owner and has all necessary permits except the tobacco permit. He stated that Mr. Bracey had just pointed out that the tobacco license goes with the property not with the individual. Patricia Lawrence noted that she interprets this differently.

Mr. McDonald asked that the record reflect that the court has ruled in previous motion that the property rests with People's Comprehensive Mortgage Company as the legal owner. Mr. Germinara pointed out that the lawsuit continues.

Mr. Germinara suggested that the Board delay any decision regarding issuance of a tobacco permit until after the Superior Court ruling on this issue. Dr. Blair stated if Mr. Germinara wins his court case, Mr. Germinara will be given the courtesy and consideration of allowing him to apply for a tobacco permit. Dr. Blair asked Mr. Bracey for his suggestions and Director Bracey stated that he would support whatever decision the Board makes. Patricia Lawrence stated that she supports having Mr. Mobardy apply for a new permit as a new company (retailer) under the new regulations, not just issuing a tobacco permit since she has seen no evidence of this company applying as a retailer other than under the name of Caldwell's Corner. The Board would then take the application under consideration and if necessary would consider issuing a variance, if it is appropriate.

John McDonald read the May 7, 2014 ruling from the court that found in favor of People's Comprehensive Mortgage Company that stated that 'there is no logic in allowing the real estate or personal property involved in this case to lay fallow and unproductive while the issue of damages are resolved.' Mr McDonald stated that the judge also said that the "ruling is now entered that the real and property rests in the defendant, Peoples' Comprehensive Mortgage Company." Patricia Lawrence noted that this would allow for the property to be rented out, which is what had occurred with Aries.

Mr. Germinara stated that if the Board issues the tobacco permit to Peoples Comprehensive there will be yet another fraudulent activity to occur. Dr. Blair stated that it is not the purpose of the Board to be involved in the decisions resting with the court.

Patricia Lawrence pointed out that the dates and the names of retailers on the applications previously submitted do not match.

Dr. Blair stated that we will allow Mr. Mobardy to apply for a permit under his name (not under Caldwell) so that the Board may consider a 'clean' application. In spite of the fact that the Board has assumed a zero growth initiative for tobacco permits they will allow this application to be submitted due to the past history of this case; and the application will be decided upon on its own merits and under the new tobacco regulations. Dr. Blair informed the audience that Mr. Bracey is leaving his position with the City and Mr. Tabbi

will assume the position of Interim Health Director. Dr. Blair also noted that Mr. Germinara will be afforded the same courtesy if he should win his case in court. Mr. Germinara stated that he feels that the Board is setting a dangerous precedent by making this variance. Mr. Germinara asked whether there will be another emergency board meeting or will this issue be voted upon at the next regularly scheduled board meeting. Dr. Blair stated that it will be voted upon at the next regularly scheduled meeting, which is typically set for the third Thursday of each month.

Ms. Belino noted that the old regulations specified retailer, as opposed to wholesaler or individual; she does not believe that it was any more specific than that.

Dr. Blair stated that this Board tries to be fair, they have made some popular and some unpopular decisions – overall, they just try to be fair. He further stated that, ideally, if the Board took into consideration the ‘health’ of the public they would not issue tobacco permits.

Meeting adjourned 8:01 pm