

**Newburyport Board of Health Public Meeting
September 17, 2015**

Attendees:

*Chairperson of the Board: Dr. Robin Blair
Board Members: Patricia Lawrence, Daryl Colden
Interim Health Director: Joseph Tabbi
Energy & Recycle Coordinator: Molly Ettenborough
Director of Human Resources: Tracy Maynard
Note Taker: Pat McAlarney*

Call to Order: Dr. Blair called the meeting to order at 7:07 pm

Public Comments:

Robert Germinara announced that he would be audio recording tonight's meeting.

Organics Recycling Pilot Program – Molly Ettenborough

Ms. Ettenborough announced that the Organics Recycling Pilot Program has begun and has been enthusiastically received. Four hundred residents will be involved in the two year pilot and a wait-list has been started since additional residents have expressed interest in participating. All possible media outlets were utilized to notify residents of the availability of the pilot program. Participants all received an organics receptacle that will be picked up curbside every Tuesday in the south end of the City. The receptacles lock to prevent animals or rodents from gaining entry. As part of the pilot, each receptacle is weighed on the truck to monitor tonnage.

Approval of the Meeting Minutes from the August

Motion to accept the Meeting Minutes was made by Daryl Colden; seconded by Patricia Lawrence. The Meeting Minutes were unanimously approved by the Board with the following correction: Proper spelling of Board Members name is *Daryl* Colden.

Tobacco Permit for One Kent Street

Dr. Blair announced that the Board would be considering an Application for the Sale of Tobacco Products that had been submitted by Mr. Mobardy, owner of Newburyport One Stop. Dr. Blair explained that if this application is approved it will be approved under the new Tobacco Regulations. Sarah Bolino of Blatman Bobrowski & Mead, introduced herself as the attorney representing Mr. Mobardy for the purpose of the application by Newburyport One Stop for a Tobacco Sales Permit. She reminded that at the last Board Meeting the Board had agreed to review a new application from Newburyport One Stop for the Tobacco Sales Permit. Mr. Mobardy announced that he currently has a purchase and sales agreement for this property and has obtained all sales permits (with the exception of the Tobacco Permit.) Patricia Lawrence stated that she would like to deny the permit until a year has passed during which time he could determine whether lack of tobacco sales created a hardship for his business. After this period Mr. Mobardy could re-apply for the permit and the Board would re-evaluate the application. Ms. Bolino noted that there are no provisions in the regulations that call for the Board to consider whether a hardship exists when considering an application. Dr. Blair stated that when multiple hearings were held by the Board of Health many establishments said that customers may come into the store to buy cigarettes but then also purchase other items; at Newburyport One Stop it seems that most customers would be at the establishment to purchase gasoline. Ms. Bolino restated that the regulations do not include such provisions and that, as discussed at the last Board Meeting, it was due to an error on the part of the Health Director that the permit was initially denied. Dr. Blair stated that more than 30 days had elapsed from the time the business closed and

the new owner applied. Ms. Bolino stated that the old regulations did not include any provision related to amount of time that had passed from the change of ownership to the time of application for the permit. Mr. Mobardy stated that Newburyport One Stop will be serving as a convenience store, not only a gas station. Patricia Lawrence stated that as the Board of Health they are attempting to limit the sale of tobacco in the City; especially since there is an overabundance of tobacco sales' establishments for a City of this size.

Daryl Colden stated that the Board's mission is to promote good health for the community and that granting tobacco licenses is at odds with that mission. However, it would be helpful to clarify some of the facts of the case such as dates of application, etc. Ms. Bolino stated that the application was made by the owner/retailer, "People's Mortgage" and it was to be managed by Aries Oil and that the DBA was "Caldwell's Corner."

The attorney representing People Comprehensive Mortgage (PCM) explained that there was a mortgage issued to Caldwell's Corner. Caldwell's Corner acquired a tobacco license. They then defaulted on their loan. Caldwell's Corner had a UCC filing (which is available upon request). PCM acquired Caldwell's Corner and any sort of agreements that Caldwell's Corner had, including the tobacco license (which was valid at that time in 2011.) Nik Bakis was hired by PCM to run the gas business. Mr. Bakis met with Mr. Bracey in late November 2013 and was given an application for a permit to run the convenience store and for the tobacco license. When he submitted the completed applications to Mr. Bracey, he was informed of the outstanding taxes due. Mr. Bakis stated that he told PCM about the real estate tax issue and they were paid on or about December 20, 2013. Ms. Bolino further explained that in January 2014 another application was submitted by PCM; at that time the old regulations were in effect and all taxes were paid and up to date. Mr. Bracey should have approved the permit at that time. However, Mr. Bracey's denial of the permit was denied based on the new regulations that did not go into effect until July 2014.

Robert Germinara stated that this was not true; the real estate taxes were not paid until May 2014. Mr. Mobardy stated that he paid almost \$9000 in April 2014 which paid off all taxes that had accumulated from January 2014 until April 2014

Robert Germinara, 2 Ashland Street, stated that on September 7, 2011 a fraudulent Deed in Lieu of Foreclosure and Stoppal Certificate were recorded at the Registry of Deeds. Dr. Blair stated that this court case has no bearing on the decision as to whether there was an active tobacco license in place and to whether an error was made in denying that license. Mr. Germinara stated that on October 11, 2012 was the last day that he was open at that gas station. Furthermore, at the present time there continues to be \$8000 dollars owed for DEP Underground Storage fees for this establishment.

Patricia Lawrence clarified that the issue revolves around whether an error was made in denying the permit under the old regulations. She asked and received confirmation that PCM currently holds the title to the property at One Kent Street.

Ms. Bolina stated that Mr. Germinara signed a Deed in Lieu of Foreclosure to PCM because they had a mortgage on his property. The judge has ruled that PCM currently owns the property. The claims being made by Mr. Germinara are not relevant to the issuance of the tobacco permit.

Dr. Blair announced that the issue at hand is that a permit was applied for in January 2014. At that time it was denied by Director Bracey for the reason that "under the regulations, it had gone

by 30 days.’ However, at that time the new regulations were not in effect. Today the Board is considering this application because that error had been made.

Mr. Germinara stated that he felt that if the Board would like to continue promoting health in the community, they should not go back in time in this case to approve a tobacco permit; especially since this establishment will be selling so many other items that not selling tobacco should not have a negative effect on their business.

Dr. Blair asked if Mr. Tabbi had any comments. Mr. Tabbi indicated that he did not have comments since he had not been involved in this case.

Mike Lowry, Newburyport One Stop, reiterated that this is a very unique circumstance and that approving this tobacco permit does not set a precedent that would cause other establishments to feel they could apply for tobacco permits.

Nik Bakis informed the Board that he felt that Mr. Mobardy would not be spending the amount of time and money in pursuing this tobacco permit if it were not important to his business.

Patricia Lawrence stated that the Board will consider if there was an error in denying the permit in past however, it is still the right of the Board of Health to make a determination as to whether there are too many tobacco sales establishments in the City.

Sarah Bolino also noted that in addition to denying the permit on the basis of regulations that were not yet in effect, Mr. Bracey had also failed to follow the proper statutory procedures for not accepting the application that was submitted in November 2012. If an application is denied because of overdue taxes, the applicant must be given the opportunity for a hearing. This was not done.

Daryl Colden stated that the economics of whether the tobacco permit is important is immaterial at this point. He further stated that the Board’s purpose is to promote health and wellness.

Dr. Blair stated that he sees both sides of this issue. An error was committed and the fact is whether we should reverse this error or, as Daryl stated issuance of tobacco permits goes against our Mission Statement.

Charles Mobardy said that he appreciates the position of the Board and he understands. However, this is a business for him and this is an establishment that has been in existence for a long time. If tobacco is to be limited it should be limited to everybody by increasing the age to 21 for the purchase of cigarettes. He stated that he goes to classes and his employees are trained to do the best that they can in following the tobacco regulations.

Robert Germinara told two stories about his father and a good friend who both smoked at one time. He stated that the way to stop people from smoking is to eliminate access to cigarettes. He encourages the Board to take a step further and eliminate tobacco in public areas entirely and he will promote this if he is voted in as a City Councilor.

Motion to Accept Tobacco Application: Daryl Colden made a motion to accept the application, keeping in mind that doing so is on the behalf of honoring an error that was made previously based on the old regulations and this is by no means going against the mission of the Board of Health. Patricia Lawrence seconded the motion and stated that she will agree provided that the Board commits to reevaluating the permit process and the tobacco regulations. Dr. Blair said that

he would vote in favor of the motion and make this a unanimous decision because of the error that was made.

Dr. Blair stated that the Motion was approved and the Tobacco Permit will be granted.

Open Meeting Law – Tracy Maynard, Director of Human Resources

Ms. Maynard provided clarification of the Open Meeting Laws that are covered under 32B Mass General Law. Dr. Blair stated that one concern is that applicants should not have to be concerned about having it known (perhaps by their employer) that they are applying. Ms. Maynard noted that since these applicants are applying for a public sector job, it is likely they are aware of the transparent nature of the process.

Application review meeting and interviews must be posted on the City Website and on the City bulletin board and will be open to the public. The names of candidates will not be included on the postings. Tracy Maynard and Heather Rowe will be involved in the interview process; however, the final vote for the candidate will be determined by the Board Members only. Patricia Lawrence stated that she was concerned that having too many people involved in the interview process it may be overwhelming to the applicants. She stated that it is reasonable to have Human Resources represented at the interviews and she also feels that Mr. Tabbi should be involved. Dr. Blair stated that at the present time four applicants have been selected for interviews. Ms. Maynard stated that there are two additional applicants and the deadline for applications is tomorrow.

The following schedule for applicant reviews and interviews was established:

- Tuesday, September 29 at 7:00 pm – The Board will meet and review any candidates' resumes that were not previously reviewed and make selection of final candidates. Immediately after, all individuals involved in the interview process will join the Board to strategize the interview process and select individuals that will be involved in the interview process will meet to questions to be asked.
- Tuesday, October 6 at 7 pm - Interviews
- Tuesday, October 13 at 7 pm – Interviews. Immediately following, the Interview Team will discuss the candidates and hopefully, the Board will then be able to vote for a final candidate or, perhaps, two final candidates. The final candidate(s) will be notified on Wednesday, October 14 and background checks will be done
- Anticipated start date of new Director, November 2.

Report from Interim Health Director – Joseph Tabbi

- Mr. Tabbi submitted a request from the school department for a waiver to the grease trap regulations that would reduce the frequency of required grease trap inspections/cleanings from monthly to bi-annually. Mr. Tabbi recommends the waiver be granted in view of the fact that the schools generate a small amount of grease and are closed during the summer months. The school has a 30 gallon grease trap which has historically been pumped every six months. There is no grilling or deep frying done. The Board requested that Mr. Tabbi consult with Jamie Tuccolo, Director of Sewer Department and ask that Mr. Tuccolo submit his recommendation as to whether a reduction in the frequency of grease cleanings for the schools is acceptable. The Board will reconsider the issue at the next meeting.
- Mr. Tabbi explained that he conducted a survey of all food establishments to identify which establishments have grease traps and which do not. Mr. Tabbi recommends that a further review of establishments be conducted to determine whether compliance with the grease trap regulations is being uniformly met.

- Mr. Tabbi informed the Board that he was recently notified by the Department of Labor that a contractor was using a power sander (without HEPA vac) to remove lead paint from a residence in Newburyport at 25 Madison Avenue. As a result, the Department of Labor will be issuing a fine of \$8000 to \$10,000. Mr. Tabbi suggests that if a similar situation occurs in the future, that the new Health Director refer the issue to the Department of Labor since they are able to levy fines significant enough to deter the contractor from repeating the behavior.
- Mr. Tabbi notified the Board that the bullnose area in downtown will be power washed in late October by the same contractor that cleaned the area last year.
- Mr. Tabbi provided to the Board a copy of the flyer announcing the upcoming Flu Clinics that will be distributed at the supermarkets. The flyer is also posted on the Health Department website and on cable news. An announcement of the clinics will also be run in the newspaper. A Flu Mist (only) Clinic will be run in conjunction with the Department of Youth Services' upcoming "Touch a Truck" Event.
- The Board approved Mr. Tabbi's fee for providing inspectional services at two recent temporary food events.
- Dr. Blair noted that unless a pressing issue arises the Board will not hold a regularly scheduled meeting until November since they will be meeting multiple times for the interview and applicant review process.

Meeting adjourned: 9:10 PM.