

**Lebanon Maine Board of Appeals
Public Hearing Minutes
Monday, June 8, 2020 @ 6:00 pm
Timothy Bragdon – 1384 Carl Broggi Highway – Map R3, Lot 6-1**

DB DL
RTR
DW
JRS

Members Present

D. Wilson - Chairman
D. Leuchs
L. Duell
R. Demers
D. Bruce
K. Perry – Alternate

Others Present

Timothy Bragdon
Mark Dion Esq. - Bragdon Legal
Kenneth Fredette Esq. Bragdon Legal
Paul Philbrick - BOS
James DuPrie – Chair Cannabis Comm.
Mike Beaulieu – Former CEO
David Salvatore – Current CEO

Public Hearing opened 6:00 pm.

Pledge of Allegiance

Chairman Wilson stated that Alternate Member Perry may be asked to vote if Member Bruce is not comfortable to do so because she was not in attendance at the Site Visit.

Chairman Wilson introduced Attorney Dion and Attorney Fredette.

Attorney Fredette began to speak on behalf of his client, Mr. Bragdon. Attorney Fredette stated that Mr. Bragdon purchased the property in 2016. Mr. Bragdon has been a Medical Marijuana Caregiver since 2009. Hi sole purpose for purchasing the property was to move his Medical Marijuana Caregiver business from his home.

When Mr. Bragdon purchased the building, Mike Beaulieu was the Code Enforcement Officer at the time was who had issued the building permit.

Attorney Fredette asked Mr. Beaulieu if he issued the building permit and if he was aware that the building was going to be used as a Medical Marijuana Caregiver Facility.

Chair Wilson told Attorney Fredette prior to asking questions to others in attendance, to ask the Chair. (In regard to Mr. Fredette asking Mr. Beaulieu questions)

Mr. Beaulieu replied to Attorney Fredette's question. Mr. Beaulieu stated that he was a friend of Mr. Bragdon's. Mr. Beaulieu also stated that he was aware that Mr. Bragdon was going to move his current Medical Marijuana Caregiver business from 256 Lower Middle Road to the new building located at 1384 Carl Broggi Highway. At the time, 2016, there was no change of use ordinance in Lebanon. His job as the Code Enforcement Officer was to ensure that the building renovations were being performed to code.

Attorney Fredette asked Mr. Beaulieu if he has issued the Certificate of Occupancy to which Mr. Beaulieu replied yes, he did. Attorney Fredette asked Mr. Beaulieu if that was his signature on the Certificate of Occupancy to which Mr. Beaulieu replied that yes it was. Attorney Fredette asked Mr. Beaulieu if he chose the language on the Certificate of Occupancy which he did.

Attorney Fredette began asking questions of Mr. Bragdon. Attorney Fredette asked Mr. Bragdon what he did when he bought the building. Mr. Bragdon replied that when he purchased the building it was a shell with 16 foot ceilings. Mr. Bragdon stated that he finished the building including the second floor where the Doctor's office is located as well as the "retail" area. Mr. Bragdon offered that he has completed approximately \$500,000.00 into the building. Mr. Bragdon also stated that as a Caregiver since 2009, he has followed rules that were in place at that time. There was not an "Office of Marijuana Policy" at that time.

Attorney Fredette asked Mr. Bragdon if he had his State Marijuana licensing. Mr. Bragdon replied yes.

Attorney Fredette asked Mr. Bragdon about his first caregiver card. Mr. Bragdon replied that it was issued to his home address of 256 Lower Middle Road. Attorney Fredette asked Mr. Bragdon when he changed his address for his license. Mr. Bragdon replied that in June of 2018 it was changed to the 1384 Carl Broggi Highway location.

Attorney Fredette stated that this was prior to both the Town of Lebanon Site Review Plan Ordinance enacted November 6, 2018 as well as the State changes enacted December 13, 2018. Attorney Fredette asked the question if Mr. Bragdon was "grandfathered" because he was operating beforehand. Attorney Fredette asked Mr. Bragdon were there times that he sold product out of the 1384 Carl Broggi Highway location. Mr. Bragdon replied that yes, he sold marijuana product from the new location once a month for four hours to serve the patients from the addiction counseling center that is located in his rental unit at 1384 Carl Broggi Highway. He would transfer to the new building for the day and notified his existing patients of this as well.

Attorney Fredette mentioned the change of address paperwork which changed the address from 1390 Carl Broggi Highway to 1384 Carl Broggi Highway.

(The change of address was due to the land and building being split from lot R3/6-1 which required a new address.)

Mr. Bragdon went through the documents showing dates, month and year when he was providing services at the 1384 Carl Broggi Location, some of which show the 1390 Carl Broggi address prior to the lot split and new address being assigned.

Mr. Bragdon stated that the former Code Enforcement Officer, Steven McDonough did some research and determined that Mr. Bragdon was grandfathered.

Attorney mentioned that Mr. Beaulieu performed the final inspections so Mr. Bragdon could apply for a Certificate of Occupancy. Mr. Bragdon relied upon the Town and the decisions that were made and continued to move forward with the renovations.

Copies were made of Office of Marijuana Policy Assessment Compliance forms that the Attorney brought for the Board Members.

Mr. Bragdon stated that things were great with the State with he and his wife, they have an open door.

Attorney Fredette asked Chair Wilson if he may address the previous Code Enforcement Officer.

Chair Wilson stated that he may. Attorney Fredette asked Mr. Beaulieu if there was anything in place at that time about medical marijuana facilities.

Mr. Beaulieu replied that yes there was. He had researched the information available. When Mr. Bragdon came back for a renewal of his permit, he was working as an interim Code Enforcement Officer. Mr. Bragdon was looking for a certificate of occupancy, there was a new Town of Lebanon ordinance in place for change of use if he applied for his permit now he would need to go through change of use.

Attorney Fredette asked Mr. Beaulieu if he was approached by a Selectman, to which Mr. Beaulieu asked if he could mention their name. Chair Wilson stated that there will be no mention of names.

Attorney Dion stated, noting for the record, that he disagreed and that the mention of names should be allowed. The name needs to be on video as a witness. Mr. Beaulieu asked if it was Maine State law that they need the name mentioned.

Attorney Dion stated that they need to provide testimony going on record.

Chair Wilson noted Attorney Dion's objection for the record, but stated that since the Board Members were not in the meeting in order to defend claims against them, stating names on a video recorded meeting that would suggest shady practice was not going to be allowed.

Attorney Fredette asked if Mr. Beaulieu was approached by one Selectman or the whole Board. Mr. Beaulieu replied that it was one Selectman who pulled him in to the Town Vault within the Lebanon Town Office and showed him the document. Attorney Fredette asked Mr. Beaulieu what was the conversation. Mr. Beaulieu stated that they went into the vault and he was asked to sign the document. The Selectman told Mr. Beaulieu that if he did not sign "then it's on you". Mr. Beaulieu stated that he was angry and did not want to have repercussions, he noted that he did not finish reading the document, but felt that he was being coerced, and therefore signed the revocation letter. Mr. Beaulieu noted for the record that the same Selectman that had approached him in the vault was also the same Selectman that had said originally that he could issue the Certificate of Occupancy at 1384 Carl Broggi Highway, Lebanon.

Attorney Dion asked Mr. Beaulieu if the process of issuing a Certificate of Occupancy includes the permission of the Selectmen to do so. Mr. Beaulieu stated that no it is not. When the permit was written there was not a change of use ordinance in place. When it came time to issue the Certificate of Occupancy there was no reason not to issue the Certificate of Occupancy. I did not sign the Certificate of Occupancy right away, when I wrote the Certificate of Occupancy I did do some research.

Attorney Dion asked Mr. Beaulieu what the discussion in the vault consisted of. Mr. Beaulieu replied that there wasn't much discussion at all. No change of use was discussed.

Attorney Dion asked how many Certificate of Occupancy have been revoked at other times. The reply there were none.

Attorney Fredette stated that Adult Recreational Marijuana is different than Medical Marijuana. The Town Ordinance has nothing to do with medical marijuana and the Town cannot prohibit Medical Marijuana Caregiver facilities in the Town.

Member Demers asked if he could ask questions. Chair Wilson told Mr. Demers there is a point on the agenda for the Appeals Board to ask questions and he may do so then.

Attorney Fredette mentioned that this is an estoppel. When Mr. Bragdon bought the building and the building permit was issued, the former Code Enforcement Officer knew what the building would be used for and no mention was made that it would not be approved in the future.

Mr. Beaulieu added that there has been two former Code Enforcement Officers that did not have an issue with the use.

In closing Attorney Fredette stated the following the date is 12/13/2018 allows this to be grandfathered. Mr. Bragdon is a lifelong resident and has sold at the location, this was okay through two past Code Enforcement Officers, and this should be grandfathered.

Attorney Dion asked is it fair or reasonable for his client to put all the time into this but then he is unable to obtain a Certificate of Occupancy. Then new state rules mention "grandfathering" up to the date of 12/13/2018, after that date the State allows each Town/Municipality to have the authorization to make the decisions.

Questioning was open to the Board by Chair Wilson.

Member Demers asked if Mr. Bragdon did not move his Lower Middle Road location, would we be here now.

Attorney Dion stated that was a good question.

Member Demers stated Mr. Bragdon just wanted to expand, what is the difference between all the other establishments up and down Rt 202?

Mr. Bragdon stated that he went through the Town. And tried to do things that the town asked him to do.

Attorney Dion added that Mr. Bragdon went to Selectboard meetings and he was told no.

Member Demers asked Mr. Bragdon that you asked and got a permit. Did someone get mad at you? Why was this revoked?

Attorney Dion told Member Demers that Mr. Bragdon cannot answer that for it would be determining someone else's thoughts.

Member Leuchs asked if the print out which was given to each Board Member is what is enforced. Attorney Dion replied yes it was.

Mr. Beaulieu added that when this permit was first issued, the Code Enforcement Officer had nothing to do with determinations of marijuana facilities at all.

Attorney Dion added that he received calls all the time from other Code Enforcement Officers. The role at that time was for the Code Enforcement Officer to perform the regular building inspections to determine that the building is safe and in compliance. The State gave the Towns/Municipalities home rule authority as of 12/13/2018.

Attorney Fredette added as an example that a year ago if you were talking on a cell phone when driving in your car it was not an issue. Now there are new laws in place that you will be ticketed for the same action. Adding that legally you can not be ticketed now for talking on your cell phone before the law was enacted

Chair Wilson asked the Board if they had any other questions. Member Leuchs asked Mr. Bragdon when he changed his address from Lower Middle Road. Mr. Bragdon replied June of 2018.

Member Leuchs asked Mr. Bragdon could not fund this project through a bank because the Federal Government views marijuana as illegal, therefore he funded the project out of pocket.

Attorney Dion stated that was correct. Banks do not want to validate that he is a caregiver or not. However, there are some credit unions that may approve financing. This is a big cash flow business.

Attorney Fredette mentioned to Attorney Dion that Mr. Bragdon has been a medical marijuana Advocate since 1999. This bothers him that Mr. Bragdon made such an investment and the Town is not holding up their end. People need to know that when a project starts that it should be the same as the end.

Chair Wilson stated that the amount of money that Mr. Bragdon has invested or not invested does not apply to this case, the decision is for the Occupancy Permit only by the State or Code Enforcement Officer that the intended use is stated on the permit. There was no reason to go before the Planning Board at the time.

Chair Wilson asked Mr. Bragdon is he was looking for a business or occupancy permit?

Attorney Fredette stated that Mr. Bragdon wants to have occupancy.

Member Demers asked if they wanted to “un-revoked” the permit.

Chair Wilson introduced the current Code Enforcement Officer David Salvatore. Mr. Salvatore stated that the Town was not against a Medical Caregiver Facility, it is the change of determination from “medical marijuana caregiver facility” to “retail store” that is the issue at hand.

Attorney Dion asked several times if Mr. Salvatore was under oath. Chair Wilson stated that he was not and if Mr. Dion persisted with this then the meeting will be closed. Chair Wilson stated that she is trying to protect the Town’s interests. Mr. Dion asked if he could cross examine Mr. Salvatore. Chair Wilson stated that there is a time that he may ask questions, however if she deems the questions inappropriate, the meeting will end in the interest of asking the Town Attorney to be present.

Attorney Dion replied that he is trying to protect Mr. Bragdon’s interests.

Mr. Salvatore stated he is willing to issue an Occupancy Permit for a Medical Marijuana Caregiver Facility, but cannot issue a permit to include retail store.

Attorney Fredette asked Attorney Dion to rephrase. Mr. Bragdon would like to be “grandfathered” due to the changes enacted on 12/13/2018. That is the decision to be made.

Chair Wilson asked if the Appeals Board Members had any questions for Mr. Salvatore. Member Duell asked what the difference is between retail and a caregiver. Member Duell stated that asking for one thing, a caregiver, but there is another side which is retail.

Attorney Dion stated that he feels that Mr. Salvatore is correct moving forward with Medical Retail Store on Route 202, Carl Broggi Highway as an established business prior to 12/18/2018. The terminology “retail” created was only created by the State of Maine on that date..

Alternate Member Perry noted that the State application states that Mr. Bragdon can sell per license.

Member Demers stated that the law was misunderstood and that the certificate of occupancy should be “unrevoked” for Mr. Bragdon was already a retail establishment at his home address of 256 Lower Middle Road, Lebanon, ME 04027. Member Demers also stated that he felt that as the Code Enforcement Officer, and knowing that he was coming to the Appeals Board Public Hearing that evening, that CEO Salvatore should have done his homework and had some kind of a presentation or answers ready for the Appeals Board.

Member Bruce agreed, stating that Mr. Bragdon was already permitted at the 256 Lower Middle Road address. Mr. Bragdon replied that it is considered a “drug store” code 053 with the State Revenue Service. Member Bruce mentioned that there was not a permit needed from the Town.

Chair Wilson asked CEO Salvatore when he had found out he was required to attend the Appeals Board meeting that evening, Salvatore answered, about 25 minutes beforehand. Wilson then asked if 25 minutes was enough time for Salvatore to create a presentation with regard to the Bragdon case, Salvatore stated that he felt it was not.

Chair Wilson informed Member Demers as well as all in attendance that she confirmed that Mr. Salvatore was unaware that he was to be in attendance this evening to offer a statement and to answer questions. Chair Wilson stated that she had only alerted CEO Salvatore 25 minutes prior to the meeting, that he was required by Lebanon Ordinance to attend the hearing. Therefore, Mr. Salvatore did not have the opportunity to prepare an adequate statement. Chair Wilson also stated that this was not the fault of the newly hired CEO Salvatore, but that he should have been alerted by the Selectmen that this was in his job description, or that he should have been alerted by the Land Use Clerk as part of the notification of the Appeals Board Public Hearing that he was to attend.

Attorney Dion added he agreed that it was unfair for Mr. Salvatore to here tonight to answer questions.

Member Leuchs asked how Mr. Bragdon is conducting business without an occupancy permit. Bragdon answered that he had opened on May 1, 2020.

Chair Wilson asked under who's authority did he open on May 1, 2020.

Chair Wilson asked if he opened his doors at 1384 Carl Broggi Highway with anyone's authority or permission.

Attorney Dion replied that State Law gave Mr. Bragdon that permission.

Attorney Fredette added that under the rules once you apply for the appeal – it is considered the matter in “limbo” so to speak and may be opened due to that.

Attorney Fredette stated that the question from Member Leuchs was not relevant that once the occupancy permit was issued. The question is whether Mr. Bragdon is grandfathered.

Chair Wilson asked Mr. Beaulieu if he wrote the letter on January 30, 2020, which revoked Mr. Bragdon's Occupancy Permit to which Beaulieu replied, “No”. Chair Wilson asked Mr. Beaulieu if he knew who wrote “revoked” on the occupancy permit to which Mr. Beaulieu replied, “No”. Chair Wilson asked Mr. Beaulieu if the words in the letter were his to which Mr. Beaulieu replied, “No”. Chair Wilson read the revocation letter into the recorded record of the proceedings.

Chair Wilson stated that Mr. Salvatore has offered on behalf of the Town of Lebanon to issue an occupancy permit for a Medical Marijuana Caregiver Facility.

Chair Wilson also stated that she felt that Mr. Beaulieu should not have been coerced in the vault, this was not brought before the Board in a meeting, and it was a secret decision in the vault.

Mr. Beaulieu stated that he wasn't sure that it was a secret.

Chair Wilson mentioned that the Appeals Board will be hearing and other appeal on Monday, June 29, 2020 and would like to revisit this at that time to have the opportunity to speak with our legal counsel.

Member Leuchs and Member Demers stated that isn't postponing the appeal in order to speak with our attorney not relevant due to the letter being forced?

Chair Wilson stated that she would like to find out what happened and if the occupancy permit should have been revoked or not.

Member Bruce added that this was a serious issue that someone made Mr. Beaulieu sign the document.

Chair Wilson replied that they were only to base the outcome in regard to the administrative decision only.

Member Duell asked why should we hold up Mr. Bragdon and have him pay \$250.00 per hour for attorney fees when it's our fault?

Attorney Fredette asked Mr. Beaulieu when he was presented the letter of revocation, was he asked to sign the letter or did he felt coerced. Mr. Beaulieu stated that he was coerced. Attorney Fredette asked Mr. Beaulieu if Mr. Beaulieu read the letter. Mr. Beaulieu replied that he did not.

Mr. Beaulieu stressed that Mr. Bragdon is a friend and he had been working with him for a long time in regard to this project. However, as the CEO he did not issue the occupancy permit until he heard from the Selectboard that he may do so.

Chair Wilson asked Mr. Beaulieu if he felt that his job was threatened if he did not sign the revocation letter pertaining to the Occupancy Permit. Mr. Beaulieu stated that he was not in fear of his job, as he was retiring four days after the date he signed the letter.

Chair Wilson asked Mr. DuPrie, who had been asked to attend as the Chairman of the Lebanon Cannabis Committee, for his input. Mr. DuPrie stated that this case represents a critical issue, the grandfathering and the question of caregiver facility or a retail store.

DuPrie stated that his understanding is that retail is a stop and shop type establishment with regular hours and open for anyone to walk in. A caregiver establishment operated by appointment.

DuPrie questioned if anyone felt that it should be considered operating as a retail store since Bragdon's early sales at 1384 Carl Broggi Highway were stated to be selling product out of the trunk of a car in the parking lot.

Member Demers mentioned that the business is classified as a drug store on Bragdon's State License and added, "Isn't Walgreens a retail store?"

Member Bruce feels that this appeal should pass.

Member Leuchs stated that this is just splitting hairs. He has used the CBD oils on his wrists.

Attorney Dion asked if Mr. DuPrie was speaking on his own opinion.

Chair Wilson replied that Mr. DuPrie was speaking as the Chair of the Lebanon Cannabis Committee.

Mr. DuPrie added that he has been working for months on the Cannabis Committee doing research and that is what he has based his opinion on. Mr. DuPrie added that part of his research had included discussions with both Attorneys Fredette and Dion as well as many others in State Government and involved with marijuana issues.

Attorney Fredette asked Mr. DuPrie if he has worked on the Ordinances which were to be presented on the upcoming town referendum ballot, to which Mr. DuPrie replied "Yes". Fredette asked if there were there definitions within the ordinance? Mr. DuPrie replied "Yes".

Member Demers stated he felt the discussion was going astray.

Member Bruce stated that she would like to vote, followed by Leuchs, Duell and Demers.

Chair Wilson asked Mr. Bragdon or his legal counsel if they would agree to the member's request to circumvent the agenda and close without rebuttal in order for the Board to vote on the issue.

Attorney Dion stated that he will "stand down"

Attorney Fredette mentioned that the 2019/2020 new rules and laws that apply to Maine Marijuana last year was half the size that it is currently.

Chair Wilson asked Attorney Fredette if the appellant would like to bypass the rebuttal to which he replied "Yes".

Member Leuchs made the motion to close the Public Hearing at 7:35 pm. Member Bruce seconded the motion. The vote was taken. The motion passed. 5 in favor 0 against.

Member Leuchs made the motion to reverse revocation of Mr. Bragdon's Certificate of Occupancy. Member Bruce seconded the motion.

Chair Wilson asked if there was any further discussion.

Member Leuchs stated the Mr. Bragdon had proven that he had been grandfathered as a retail caregiver.

Chair Wilson stated that we are not talking about Mr. Bragdon's license, or grandfathering, just the occupancy permit.

Chair Wilson stated that the following motion was on the floor which has been seconded Reverse decision, whoever made the decision to revoke Mr. Bragdon's Occupancy permit and to ask the Code Enforcement Officer to issue his certificate of occupancy immediately for "Retail Marijuana Store".

The vote was taken. The motion passed 5 in favor 0 against.

Member Leuchs made the motion to adjourn the meeting at 7:40 pm. Member Duell seconded the motion. The vote was taken. The motion was passed. 5-0-0 in favor

DELIBERATION

FINAL DECISION: Approval Administrative Appeal. 5-0-0

CONDITIONS

The Code Enforcement Officer was ordered to issue a Certificate of Occupancy immediately to Mr. Bragdon.

If anyone who is present this evening would like a reconsideration of this decision, the request must be submitted in writing through the Lebanon Town Office, no later than 10 days from the date of decision. Chair Wilson included that although Selectman Philbrick had been seated just outside of the conference room, therefore not visible to the video, that he was present and had chosen to sit outside of the conference room due to social distancing and limiting the number of people inside the conference room.

Chairman Wilson informed the applicant within 7 days the Facts of Finding and Conclusion of Law will be complete. Once Completed, the Fact and Finding report would be mailed to the applicant and the applicant or his representative will need to bring the document to the York County Registry of Deeds in Alfred to have it recorded in accordance with the Lebanon Town Ordinance.

Member Leuchs made the motion to adjourn the meeting at 7:40 pm. Member Duell seconded the motion. The vote was taken. The motion was passed. 5-0-0 in favor