

Lebanon Maine Board of Appeals
June 8, 2020 Reconsideration Public Hearing Minutes
Monday, July 20, 2020 @ 6:00 pm
Timothy Bragdon – 1384 Carl Broggi Highway – Map R3, Lot 6-1

DB
JTB
JTB
JTB

Members Present

D. Wilson - Chairman
L. Duell
R. Demers
D. Bruce

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
Ernest Lizotte – BOS
Corinna Cole – BOS
Charles Russell – BOS Chairman
Aaron Bragdon – son
Laura Bragg - resident

Public Hearing opened 6:00 pm.

Pledge of Allegiance

Chairman Wilson briefly outlined that this was a public hearing for the reconsideration of the June 8, 2020 decision. There was question in the legal findings and the fact that Chairman Russell was not in attendance at the June 8, 2020 hearing due to the death of his Father.

Chair Wilson stated that there have been many complaints that it was very difficult to hear the meetings due to people talking over one another and or out of turn. She stated that she would appreciate that everyone adhere to the agenda without interruptions as a common courtesy to those in attendance at the hearing but to those watching the hearing as well.

Selectman Philbrick made a statement prior to reading his letter of reconsideration into record. Selectman Philbrick wanted to note that at a previous meeting it was inferred that this was personal and that Mr. Bragdon was being targeted and wanted to assure that it was not. Selectman Philbrick has known Mr. Bragdon for a long time, however, the rules apply to everyone in the Town.

Attorney Fredette asked for a point of order. Chair Wilson stated that we are following the agenda and there will be no interruptions. Attorney Fredette wants the objection noted.

Chair Wilson stated that there have been many complaints that it was very difficult to hear the meetings due to people talking over one another and or out of turn. She stated that she would

appreciate that everyone adhere to the agenda without interruptions as a common courtesy to those in attendance at the hearing but to those watching the hearing as well.

Selectman Philbrick continued stating that he was not questioning the Board of Appeals choice. He felt that there was additional information that should be brought forth.

Selectman Philbrick started to read the reconsideration letter into record and noted that the minutes from Selectboard meetings in regard to this matter were included in the packets this evening. He then asked Selectboard Chairman Russell if he had anything to add.

Chair Wilson asked Chairman Russell to state his name for the record.

Chairman Russell stated that during a Selectboard meeting, he had made the motion to relocate, however the other members were not in agreement and as the Chairman he needs to ensure that the other Board members opinions are represented as well.

The Board did agree to issue a Certificate of Occupancy for a Medical Marijuana Caregiver Facility, which was noted in the letter entered into evidence as item one and proceeded to read the letter from Michael Beaulieu.

Chairman Russell asked Mr. Beaulieu if he had written this letter or if it has been written by legal counsel and you were asked to sign it. Mr. Beaulieu asked if he could read the letter and stated that he did write the letter. Chairman Russell went on to add that the Board had offered to provide Certificate of Occupancy for what the letter had requested. The permit that was issued was not what the letter had requested. In order to change the "use" of the building, Mr. Bragdon would need to see the Planning Board if the use were to be changed from what was written in the letter.

Chairman Wilson asked Selectman Philbrick if he had anything to add. He did not. Chairman Russell added that after it was realized the Certificate of Occupancy permit was written incorrectly, he had spoken with Mr. Beaulieu for there must have been a misunderstanding. He had spoken with Legal Counsel.

Attorney Dion started to say something to which Chair Wilson told him not to interrupt.

Chairman Russell had made the call to legal, and placed the call on speaker. Jenn Griffin who was Deputy Code Officer at the time was present. Legal had drafted a letter for Mr. Beaulieu to sign stating that the Certificate of Occupancy was written in error. Chairman Russell was instructed to bring Mr. Beaulieu to a private area to discuss the letter. The office was very busy and the Code Enforcement Office was being used at the moment so Chairman Russell and Mr. Beaulieu went into the "Vault" to discuss the letter and to request that Mr. Beaulieu sign the letter. Mr. Beaulieu read the letter then agreed to sign. It was said that if Mr. Beaulieu would not sign the letter, then the Deputy Code Officer would.

Chair Wilson asked Selectman Philbrick to stop reading his letter and noted that this was a major part of the discussion at the June 8, 2020 Public Hearing. Chair Wilson asked Attorney Fredette if he any questions.

Attorney Fredette would like to State for the record that at the beginning of the letter it mentions that there is new information. Chairman Wilson mentioned that the Appeals Board did not have the benefit of Chairman Russell's testimony and it was felt that both sides should be heard. Attorney Fredette went on to say in regard to new information, the information was available and that Selectman Philbrick did not interject or go home therefor any comments should have been made at the previous meeting therefore he felt this was beyond scope.

Chairman Wilson replied that if Selectman Philbrick offered insight, without an attorney, it would be considered hearsay. The Appeals board needed to hear Chairman Russell's testimony to clarify the discussion between himself and Mr. Beaulieu. Again reiterating that Chairman Russell was not present for the June 8, 2020 Hearing, nor was an attorney to speak on his behalf, so it would be considered hearsay. To hear his testimony now falls within the reconsideration due to the death of his father. Mr. Beaulieu's testimony swayed the Appeals board vote without Chairman Russell present to offer his testimony.

Chair Wilson asked Selectman Philbrick to continue reading his letter which he did.

Chair Wilson asked the Board members if they had any questions for Selectman Philbrick or Chairman Russell. Member Demers asked why another store on Route 202 has opened. How can they open and Tim can't? Tim is doing it the right way.

Chairman Russell explained that a letter to cease and desist was delivered to the business. He also wanted to note that Mr. Bragdon had not received a letter to cease and desist. Mr. Bragdon has been open since May 1, 2020 and has not received a letter. Chairman Russell also added that the Code Enforcement Officer cannot physically shut them down and take their flags.

Member Demers asked why one of the selectman gave the new business permission to open. Chairman Russell reiterated that a letter to cease and desist was delivered and that Code Enforcement cannot physically shut them down. Member Demers asked if they received a letter from the board of Selectmen saying that they could open. Chairman Russell replied they received a letter to close.

Chairman Wilson asked if the Board Members if they had any other questions. There were not.

Chairman Wilson opened questions to Mr. Bragdon, Attorney Fredette and Attorney Dion.

Attorney Fredette asked Selectman Philbrick if he was at the last meeting on June 8, 2020 and that he did not make any objections at that time to which Selectman Philbrick replied that he was present at the meeting and that he did not make any objections.

Chair Wilson stated to Attorney Fredette that Selectman Philbrick was not on trial and not here as a witness, but here representing the Board of Selectmen.

Selectman Philbrick replied to Attorney Fredette that there was nothing on the agenda for the board of Selectmen to participate. Chair Wilson added that at the last meeting, there were constant interruptions and the Board went into deliberations early.

Attorney Fredette asked Selectman Philbrick if he were present during the deliberation and heard what had been presented and that the Appeals Board moved forward and made their final decision which passed 5-0. Selectman Philbrick replied that the Appeals Board had made two motions. Selectman Philbrick continued that there were two motions made and one motion did pass, however the final motion was stated incorrectly. Attorney Fredette stated that the testimony presented was based on a Medical Facility. Selectman Philbrick stated that up until the motions yes it was. Attorney Fredette suggested to Chair Wilson everyone was clear as to what the intent was. Chair Wilson replied that it was not Selectman Philbrick job to interpret intent.

Chair Wilson asked Attorney Dion if he had any questions for Selectman Philbrick, and he did not at this time. Attorney Dion asked Chair Wilson if he may ask Chairman Russell additional questions. It was allowed.

Attorney Dion asked Chairman Russell if he went into the vault, to which he replied yes. Attorney Dion asked Chairman Russell if he felt that there was any air of coercion, to which Chairman Russell replied no and that if Mr. Beaulieu would not sign the letter he would have Jenn sign it. Attorney Dion asked why Chairman Russell would think that Mr. Beaulieu might not want to sign the letter. Chairman Russell stated because Mr. Beaulieu and Mr. Bragdon are friends.

Attorney Dion asked Chairman Russell if he felt comfortable with Marijuana Laws. Chairman Russell stated somewhat. Attorney Dion went through the definition of a caregiver and that they started in homes. Those who were caregivers prior to the 12/13/2018 changes in law are grandfathered. Attorney Dion asked Chairman Russell if he believed in grandfathering. Chairman Russell asked if Attorney Dion was asking if he thought grandfathering was good or bad. Attorney Dion said no, and went through the scenario if there was a caregiver operating out of their home under the offices of authority of the State is this lawful to the Town. Chairman Russell stated that it was not if it were a retail store.

Attorney Dion asked Chairman Russell that if Mr. Bragdon followed he sold his home and notified the State that he would be shifting activity to include retail does that change? Chairman Russell stated that it does change because it was out of his home.

Attorney Dion asked Chairman Russell do you feel it is fair as an individual Selectman to debate having contested lawful caregiver activity protected by law in place in the beginning or as of 12/13/2018 giving the Town the authority to regulate. Chairman Russell replied no, but Mr. Bragdon moved to the 1384 Carl Broggi Highway location after 12/13/2018. Attorney Dion

stated but if he had transactions. Chairman Russell added that Mr. Bragdon was selling out of his car. Attorney Fredette added that Mr. Bragdon changed his address before that date. Everything was presented at the initial meeting is considered now as new.

Attorney Fredette asked Chair Wilson if they were expected to resubmit and review all the documentation this evening that was submitted and reviewed at the June 8, 2020 hearing. Chair Wilson replied that was correct. Chair Wilson asked Mr. Bragdon, Attorney Fredette and Attorney Dion if they would like to make a statement. Attorney Fredette wanted to clarify for the record that what was heard at first hearing is ok that they do not have to go through the entire thing again.

Chairman Wilson stated this is a new hearing, if you want something considered, submit it tonight.

Motion to admit documents from the June 8, 2020 hearing as evidence was made by Member Bruce. The motion was seconded by Member Demers. The vote was taken. The motion carried. Chair Wilson stated that the documents from the June 8, 2020 hearing are now admitted as evidence.

Attorney Fredette asked his client Mr. Bragdon questions, what is your name, where do you live, where do you conduct business etc. Mr. Bragdon stated that he did business out of his home located at 256 Lower Middle Road. That he had bought the property on Route 202, Carl Broggi Highway with the intentions of relocating. He wanted to move his business out of the residential area it was currently located in. Mr. Bragdon stated that he changed his address for his caregivers license from 256 Lower Middle Road to 1390 Carl Broggi Highway on June 26, 2018 and had been doing business at that address once a month for approximately 4-6 hours out of his car if there were patients in the building due to HIPA laws which was six months prior to the changes in marijuana law which were enacted 12/13/2018.

When Mr. Bragdon bought the building in 2016, it was just a shell, no insulation, sheetrock, electric, plumbing, a shell. In 2017 Mr. Bragdon had spoken with Mr. Beaulieu, who was the Code Enforcement Officer at the time about what it would take to finish the interior and the costs associated with it. Mr. Beaulieu had issued Mr. Bragdon the initial building permit in September/2017. Mr. Beaulieu resigned as the Code Enforcement Officer and Steve McDonough was hired. Mr. McDonough issued Mr. Bragdon a permit to finish the interior renovations in May/2019. When Mr. Bragdon was ready for an occupancy permit, Mr. McDonough had resigned and Mr. Beaulieu was acting as Interim Code Enforcement. Mr. Bragdon added that he had given Mr. McDonough all the paperwork, Mr. McDonough looked it over and told Mr. Bragdon that he was grandfathered. At no time was there a cease and desist order or additional permits denied for plumbing.

Mr. Bragdon added that Medical Marijuana was approved in 1999, Caregivers were approved in 2009 and there was only State control, not Town until 12/13/2018. Attorney Fredette asked Mr. Bragdon if he ever sought an Adult Retail license, which he replied that he did not he was only interested in medical marijuana. Attorney Fredette asked Mr. Bragdon if he was under the impression from the previous meeting that he was grandfathered Mr. Bragdon agreed to that

statement. Attorney Fredette asked Mr. Bragdon if he remembered Chair Wilson suggesting to pause the hearing and revisit in a couple of weeks. Mr. Bragdon stated that he did, but the Board Members declined and the meeting continued. Attorney Fredette asked Mr. Bragdon if he was under the assumption that the Board was deciding whether or not to revoke the revocation, to which Mr. Bragdon stated he thought that was the reason.

Chair Wilson asked Attorney Dion if he had any questions to which Attorney Dion declined.

Chair Wilson asked the Board Members if they had any questions for Mr. Bragdon.

Member Bruce did not, Member Demers did not, Member Duell asked Mr. Bragdon when Steve (Mr. McDonough) gave the permit what did it say it was for. Mr. Bragdon stated that it was for a medical caregiver facility. It was not for retail, Mr. McDonough was the first person that told him about being grandfathered, and Mr. Bragdon stated that he had no idea. Member Duell asked if when he went in for the permit if he showed his license. Mr. Bragdon offered that the option for retail did not show on the application or on the issued cards until after 12/13/2018. The Office of Marijuana shows 1390 Carl Broggi Highway and under that it shows 256 Lower Middle Road, which was cancelled 6/25/2018 when the new application was in effect.

Chair Wilson asked Attorney Fredette to read into record exhibit which reflects that a license was issued to the address of 1390 Carl Broggi Highway on 6/25/2018 prior, 256 Lower Middle Road was issued in 2012 and then 256 Lower Middle Road was cancelled on 6/25/2018.

Mr. Bragdon stated he would not have known of the 12/13/2018 date. Member Duell then asked Mr. Bragdon if Mr. McDonough had information from the State in regard to new laws to which Mr. Bragdon replied yes. Member Duell asked if he filled out the application the right way. Mr. Bragdon replied that he did and that Mr. McDonough added that the Town had the option to "opt in". Mr. McDonough told Mr. Bragdon that other people had also come in with questions, they went home brought their records and he said that they were also clearly grandfathered. I thought that I was doing everything the Town required.

Chair Wilson mentioned that there are so many officials involved, if people were in the doctor office then Mr. Bragdon could only conduct business from his car because of the products that he sold and HIPA laws. If no one was in the doctor office, then he could conduct business inside the building.

Mr. Bragdon stated that he would leave a note on the board at his 256 Lower Middle Road location letting customers know that he was at the 1384 Carl Broggi Highway location. Chair Wilson asked Mr. Bragdon if the 256 Lower Middle location had a retail office then under what authority did you have to be selling retail from your home.

Mr. Bragdon stated that the laws were different then and there was no need for appointments. He did not sell it to people off of the street, only to those with a card. Retail was for CBD oils.

Chair Wilson asked if in 2006 it was legal to sell retail CBD. Mr. Bragdon said no, in 2009 it was legal to sell CBD products under 3% THC level. Chair Wilson asked if it was legal in Lebanon at that time to which Mr. Bragdon replied that it was legal cross country.

Chair Wilson asked Mr. Bragdon, Attorney Fredette and Attorney Dion if they knew the date that you could legally sell CBD products to which they could or would not give an answer. Chair Wilson asked Mr. Bragdon how he came to be a retail store. There was no sign. Mr. Bragdon stated that every transaction is a retail transaction because you are taking a commodity for products, example given vape pens and other little products. Chair Wilson asked Mr. Bragdon if he was registered as a retail store to which he replied that he was registered as a drug store.

Chair Wilson asked if he had a retail store with a medical office and when you sold products you paid tax, Mr. Bragdon replied that he did. Chair Wilson asked Mr. Bragdon if the State knew he was selling retail at home and then decided to move your retail establishment to 1384 Carl Broggi Highway. Did the State know that the location was not ready nor did it have an occupancy permit? Mr. Bragdon stated that he bought the building to move his business. Chair Wilson stated that he had the building permit to finish the interior and additions. Mr. Bragdon stated that at the time there was not a method for a conditional use from the Town. The certificate of occupancy can only be issued as what is on the building permit. Chair Wilson, but you could not move in. Mr. Bragdon said Mr. McDonough approved the Doctors office to be occupied only.

Chair Wilson asked how you can occupy a building without a permit. Mr. Bragdon stated again, that Mr. McDonough gave him permission to utilize the building once a month for four hours. Chair Wilson asked Mr. Bragdon if he had anything that states this in writing, how was she to know. Mr. Bragdon said that she could ask Mr. McDonough. Chair Wilson replied that she could not for he was not on the list as a witness. Chair Wilson stated so, the building was occupied without an occupancy permit and no one came with a cease and desist order. Mr. Bragdon confirmed.

Chair Wilson asked Jenn if she knew of anytime that Mr. McDonough mentioned that he had been to 1384 Carl Broggi Highway or issued a cease and desist order. Jenn replied not that she was aware of. Mr. Bragdon and I had spoken about that and without something in writing, she could not accept that.

Chair Wilson asked Mr. Bragdon, so you were finally issued a certificate of occupancy on January 16, 2020, it was revoked on January 30, 2020. Yet you made the decision to open anyway on May 1, 2020 even though there was an appeal in process. Mr. Bragdon stated he would like to have his Legal Counsel answer. Attorney Fredette stated the issued occupancy permit that was revoked is in appeal which would stay the process.

Mr. Bragdon stated he had misunderstood and thought that with the appeal in process that he could open. He had employees. Chair Wilson replied but it was four months after the permit was revoked when you opened without authority.

Attorney Fredette stated that Mr. Bragdon is here as he is grandfathered, he relied upon this and followed through under the notion that he was grandfathered as medical retail.

Chair Wilson asked under what authority after the occupancy permit was revoked on 1/30/2020 Mr. Bragdon had to open four months later. Attorney Fredette stated that that was irrelevant. Member Bruce questioned using a car as an office. Mr. Bragdon stated that he would use the building if no patients were in there due to HIPA laws. Member Bruce asked if the doctor's office paid rent. Mr. Bragdon said he did not charge them rent, he let them use the building. Chair Wilson asked if the doctor office was for medical marijuana, if it was separate medical office nothing to do with sales. Mr. Bragdon stated that it was separate, they just used the space. That they did do medical marijuana cards. Mr. Bragdon would send people to the office so that they could obtain a medical marijuana card and then they would buy products from Mr. Bragdon. The doctor office was a mix of medical cards and treatments. Mr. Bragdon offered that Mr. McDonough told him not to do anything on the other side of the building until he had an occupancy permit for this area, however he could use the building once a month for four hours.

Member Duell asked Mr. Beaulieu if he had any interaction with Mr. McDonough in regard to this to which Mr. Beaulieu replied that he did not. Was there any interaction from the Selectboard anyone from the Town?

Chair Wilson stated that Mr. Beaulieu was on the agenda and up next for questions.

Attorney Fredette asked if Mr. Bragdon could be sworn in by Chair Wilson. Chair Wilson replied that she did not have the authority to do so.

Chair Wilson opened questions to the public.

Selectman Philbrick stated he was curious about an occupancy permit for the doctor's office and if it was another agreement with code enforcement. Mr. Bragdon stated that the deal with "Mr. McDonough was four – six hours once a month. He gave Mr. Bragdon the application for the occupancy permit at that time but told Mr. Bragdon not to do anything else until everything was finished. It would not need two occupancy permits.

Chairman Russell asked Chair Wilson if he could ask an attorney a question. It was granted. Chairman Russell asked Attorney Fredette why would he ask Mr. Bragdon if he had received a cease and desist order during construction while he was spending all of this money with a letter from Mr. Beaulieu, why would an order be expected if it was legal.

Attorney Fredette chose not to reply. Chairman Russell asked Attorney Dion when it came into effect that you can only have one retail establishment at a time. Attorney Dion declined to answer. Chair Wilson asked Mr. Bragdon if he knew. Mr. Bragdon stated that he never operated two retail establishments at the same time. Chair Wilson asked Mr. Bragdon if Mr. McDonough told him that he could remain selling product at the 256 Lower Middle Road location and at the 1384 Carl Broggi Highway location. Mr. Bragdon stated no. Selectman Lizotte asked Mr. Bragdon how the doctor's office could move in without an occupancy permit. Mr. Bragdon stated that Mr. McDonough said I could operate at the 1384 Carl Broggi Highway location once a month for four hours, but not in the other part.

Selectman Lizotte stated that was hearsay and did not ok the occupancy permit. Mr. Bragdon stated that he was following what the Town let him do.

Attorney Fredette asked Mr. Bragdon if he applied for his caregiver card in 2018 and then stated that the documentation submitted earlier does show the address change from 256 Lower Middle Road to 1384 Carl Broggi Highway. Mr. Bragdon's intentions were always to use that facility.

Chair Wilson wanted to go through a timeline with Mr. Bragdon:

- So you came into the CEO and said I have someone who wants to open a drug rehab clinic at 1384 Carl Broggi Highway and he said go ahead?

- * Mr. Bragdon – No

- He didn't inspect

- * Mr. Bragdon – he did inspections, the State did inspections on the wiring

- The State gave you a permit to change your location

- * Mr. Bragdon – Yes, there is also a signed letter from Mr. Bosse stating in compliance

Member Bruce asked Mr. Bragdon if it was the same letter that stated he was in full compliance as a Medical Retail Store as of 4/20/2020. Mr. Bragdon confirmed. Member Bruce asked about the Resale Certificate. Chair Wilson made note that it was dated ten days prior to his opening the 1384 Carl Broggi Highway location. The compliance letter states that the inspection was done remotely which is by telephone. Mr. Bragdon stated that the inspector was at his facility prior to the 4/20/2020 date that must have been the date that the report was written.

Member Bruce asked Mr. Bragdon if he had the caregiver cards for the previous three years. Mr. Bragdon stated that he would have to go through his records at home.

Mr. Bragdon stated that Mr. Bosse has been to the location twice since opening. Chair Wilson asked if he was in compliance with appointments. Mr. Bragdon stated that he does not make appointments, there is no law mandating it.

Motion to take a break was made by Member Bruce at 7:50 pm. Member Lyle seconded the motion. The vote was taken. The motion carried.

Member Demers made the motion to re-open the meeting at 8:10 pm. Member Bruce seconded the motion. The vote was taken. The motion carried.

Mr. Beaulieu stated that he had already made his testimony at the first hearing and that his testimony has not changed. He was not going to allow questioning. My testimony is recorded in the minutes as well as on video. My rebuttal is that I did not read the letter at the last meeting and it was known what I wanted to write the permit out for. My Deputy and I would role play in the office with different cases with myself as the "applicant" and the deputy as the "Town". The Selectboard knew what I wanted to write the permit out for and in the lobby was told to go ahead. My statement has not changed.

Chair Wilson stated that according to the law, this is a de-novo hearing, this is a new proceeding. You can note that you have already made your statement at the previous meeting, but it will carry more weight. Mr. Beaulieu asked if it was the law that he had to do this all over again. Chair Wilson, replied yes and added that the Board did agree to allow previous testimony and

documents, but there is not a document of your testimony then asked if Mr. Beaulieu was refusing to make a statement.

This is a new decision, the admittance of the previous documents for this hearing was approved. Chair Wilson stated that it was Mr. Beaulieu choice to make a statement or not. Attorney Fredette asked if the video and minutes are also included in the approved documents for this hearing. Chair Wilson confirmed.

Mr. Duprie, chairman of the Cannabis Committee felt that this meeting was mute once procedures are in place for licensing. There are two points that the occupancy permit hinges on.

- * definition of a caregiver retail store

- * what grandfathering means

Mr. DuPrie read the definitions. In his opinion this situation is somewhat questionable. Mr. Bragdon stated that he was not selling marijuana products @ 256 Lower Middle Road, but he was selling CBD oils which makes him a retail store NOT a medical marijuana retail store. (Example given: Go to Dunkin Donuts ask for a marijuana retail license because they are already a retail establishment)

The 1384 Carl Broggi Highway did not meet the criteria as a retail operation. There was not a sign, not a fixed location, no regular business hours, four hours once a month does not constitute as regular hours. The State assumes that any business already has municipal approval – which is a reason to be grandfathered. Lebanon has never had the mechanism in place to allow municipal approval until July 14, 2020. The State specifically states that building permits and occupancy permits are not municipal approval. According to the documents that have been submitted, retail does not show until January 2020 which is well past the 2018 law changes and the 2019 definition of retail. Mr. DuPrie feels that Mr. Bragdon had been running a caregiver facility since day one at the 256 Lower Middle Road location. The question is if the new location at 1384 Carl Broggi Highway was up and running with Town approval prior to 12/13/2018.

Member Demers told Mr. DuPrie to explain the difference between grandfathering and medical caregiver. Member Demers stated that Mr. Bragdon sold product. Mr. DuPrie stated that Medical Caregivers also sell products. Mr. Demers asked if that was retail. Mr. DuPrie stated that retail is not selling marijuana it is selling CBD products.

Member Duell asked if Mr. DuPrie feel the system is convoluted to which he replied yes it is. Member Duell asked if it were fair to punish people who do not understand. Mr. DuPrie replied that punished is not the right word. Mr. Bragdon made a business decision.

Chair Wilson commented, Mr. Bragdon has been in business since 2009 at his home. You walk in the door and there is a retail area where caregivers sell things. What do they sell? CBD oils, pipes, etc. Where does the caregiver stop and retail begin?

Mr. DuPrie stated that it is a retail store if it meets the definition and they have a license to sell marijuana as retail. Mr. DuPrie read the definition. If Mr. Bragdon is grandfathered, it would be at 256 Lower Middle Road. BUT the question is he grandfathered at the 1384 Carl Broggi Highway location.

Chair Wilson asked if the public had questions for Mr. DuPrie. Selectman Russell stated that at the Lower Middle Road location caregiver facility, there were signs and regular hours. Clearly operating as a retail store, why do you think he is not grandfathered? Mr. DuPrie stated that he assumed there was not a sign or set hours. As of 12/13/2018 what was he doing at the 1384 Carl Broggi Highway location? You cannot expand or change location based on grandfathering. Selectman Russell stated that Mr. Bragdon did have a sign and let people come when they wanted at the 256 Lower Middle Road location for several years. Mr. DuPrie replied, but did Mr. Bragdon have municipal approval? You cannot have municipal approval because no one stopped him. The State operated on the assumption of municipal approval and you need municipal approval to be grandfathered.

Chair Wilson asked if Mr. Bragdon or his attorneys had any questions for Mr. DuPrie.

Attorney Fredette and Mr. DuPrie discussed/reiterated that the rules are ever changing and that the State is trying to figure out the best way to handle things as well as the Towns. Dates of definitions and law changes.

Chair Wilson asked if Mr. Salvatore, the Code Enforcement Officer had anything to add to which he replied everything has already been said. Chair Wilson asked if the public had any questions for Mr. Salvatore. Chairman Russell asked if someone came in with a building permit for something then came in for an occupancy permit for something else, would they need to go to the Planning Board for change of use. Mr. Salvatore replied yes. Chair Wilson asked Mr. Salvatore when Mr. Bragdon applied for the occupancy permit in 2020 was that requirement in place to go to the Planning Board to finalize the certificate of occupancy with Site Plan Review, it was enacted Nov/2018, Mr. Salvatore agreed. Chair Wilson asked Jenn why Mr. Bragdon was not referred to the Planning Board for Site Plan Review and if there was a reason why he wasn't. Jenn stated that Mr. Bragdon started the occupancy permit process in November/2019. Chairman Russell offered that on September 19, 2018 a permit was issued for the construction of a medical marijuana facility, so there was no need to come before the Planning Board.

Attorney Dion stated that Mr. Bragdon is trying to continue lawful legal caregiver activity prior to the Town 7/14/2020 ordinance and prior to the 12/13/2018 date of State changes. Every transaction a caregiver makes is a retail transaction. They give a drug/medication and they receive cash and pay taxes. Some patients want tincture or oil or salve and CBD products. Mr. DuPrie added that a caregiver facility does not sell non-marijuana items.

Attorney Dion stated that was correct. You cannot sell t-shirts, nothing non-medical. Chair Wilson asked why does the permit need to be for a medical retail store or caregiver if only interested in medical based products. Attorney Dion explained that it goes back to the Code Enforcement Officer at the time. The Selectboard issued a medical caregiver facility. Mr. Bragdon rejected the offer for he did not have a definition of what that meant. If his client could continue to operate lawfully as he was prior to the 2018 date then we would accept that.

Chair Wilson commented that was an interesting statement it had been offered several times as a medical marijuana caregiver facility. Cannot understand why someone would say they only interested in medical and yet continue to ask for retail certification.

Attorney Dion stated that it is imperative moving forward that access to floor space is limited to patients period. There are non-medical items, nutrition bars and vitamins. Chair Wilson asked if one side will be retail and other medical marijuana or if two occupancy permit would be necessary. Where did the approval to increase the space to use the area where the clinic was occupying. At what point do we lose control as a Town. Medical – Medical Retail in the same facility.

Attorney Fredette stated that he sympathizes with the Town, the State referendum process is imperfect and does not mirror what is now in effect and is ever changing. Towns are trying to figure things out. Planning Board wrote original ordinances, but they do not include medical.

Chair Wilson asked if she could enter a medical retail store and make a purchase without a card. Attorney Fredette stated that in order to purchase marijuana at a medical retail store you need a card. Non-medical items you would not need a card to purchase. (Example given: prohibition could not sell alcohol alone during dinner BUT you could go to a separate “tasting area”)

Member Bruce asked if the Board were to give an occupancy permit and he is grandfathered, how does that apply to the new ordinances and fees? Attorney Fredette stated that he has not read the ordinances as of yet. Mr. DuPrie offered that there is a clause that in order to receive a local license you must meet the requirements of the ordinances.

Member Bruce stated so that all of the shops on Route 202 will all have to comply with these ordinances and pay the fees or they will be shut down. Mr. DuPrie added that the ordinances allow up to a year to be in compliance. Attorney Fredette stated it would be his position that at the time Mr. Bragdon purchased the property, the ordinance was not in effect and therefore irrelevant.

Chair Wilson replied to Attorney Fredette by saying that the coming of these ordinances has been over a year, there was no question that something was going to be put into place eventually. It is not as if all of a sudden two weeks ago at voting they appeared out of nowhere. Chairman Russell made the statement that grandfathered or not, everyone is required to follow the ordinances and pay fees. Attorney Dion asked if this is in writing, to which it is not at this time.

Attorney Fredette addressed the Board – an occupancy permit was issued then revoked, a reconsideration was filed, from what he has seen and heard he does not see a reason to undo what has been done.

Member Duell made the motion to close the hearing at 9:15 pm. Member Demers seconded the motion. The vote was taken. The motion carried.

Member Bruce stated that she stands with the medical marijuana retail store. Rephrase the motion from 6/8/2020.

Retail marijuana store – incorrect change to ? - Registered Caregiver Retail Store

Attorney Fredette stated that it needs to be written as “Caregiver Retail Store”.

Chair Wilson mentioned that Mr. Bragdon is looking to be grandfathered. Chairman Russell stated that he was grandfathered at the 256 Lower Middle Road location permitting we was agreed upon. Member Bruce asked if Mr. Bragdon would be grandfathered at the 1384 Carl Broggi Highway location. Chair Wilson stated that you cannot have two locations. Member Duell mentioned issuing the occupancy permit without the grandfathering. Grandfathering would include setbacks, signs, etc.

Chair Wilson stated that there will be 2 motions to be made. The first will be whether or not to issue an occupancy permit for 1384 Carl Broggi Highway as a caregiver retail store.

Member Bruce – no additional information was learned

Member Demers nothing new or changed

Member Duell same as first hearing but no grandfathering

Second is Mr. Bragdon grandfathered?

Clearly in business at home

Business in car

Owned 1384 Carl Broggi Highway since 2017

BUT was he retail at 1384 Carl Broggi Highway prior to 12/13/2018

Member Demers - yes

Member Bruce – he was paying taxes – yes

Member Duell – if you put it in grandfathering it overrules any other ordinance s, giving occupancy is one thing, grandfathering is different

Chair Wilson, an occupancy permit is stating that the building is safe to operate a store

Member Demers made a motion to grant occupancy permit for caregiver retail store at 1384 Carl Broggi Highway. Member Bruce seconded the motion. The vote was taken. The motion carried.

4-4

Member Bruce made the motion to grandfather Nature’s Gift at 1384 Carl Broggi Highway. Member Demers seconded the motion. The Vote was taken. The vote was deadlocked.

Chair Wilson stated that they can leave the vote as is which is a negative or they can discuss this further and vote again.

Much discussion took place which reiterated previous discussions throughout the hearing. Member Demers made the motion to grandfather. Member Bruce seconded the motion. The vote was taken. The vote was deadlocked.

More discussion took place. Attorney Fredette made the suggestion to make the motion to grandfather as defined by State statute but not as it applies to the Town Ordinance. According to State Statute Mr. Bragdon was grandfathered but not by local authority.

Member Bruce made the motion to grandfather Nature's Gifts, I make the motion that June 25, 2018 to grandfather Mr. Bragdon at 1384 Carl Broggi Highway, Lebanon, Maine to be grandfathered back to June 25, 2018 in regard to the caregiver retail store. Member Demers seconded the motion. The vote was taken. The motion carried in favor. 3-1

Member Bruce made the motion to adjourn the meeting at 9:50 pm. Member Demers seconded the motion. The vote was taken. The motion was passed. 4-0 in favor

DELIBERATION

FINAL DECISION: Approval Reconsideration Appeal. 3-0-1

CONDITIONS

Once the Facts of Finding and Conclusion of Law is complete, the applicant or his representative shall bring the document to the York County Registry of Deeds in Alfred to have recorded in accordance with the Lebanon Town Ordinance. A recorded copy of the document must be returned to the Town Appeals Board within 90 days in order to receive the Certificate of Occupancy.