

LEBANON MAINE BOARD OF APPEALS

MEETING MINUTES

MONDAY, November 9th, 2020

DRW
12/17
Isyl

Members Present

Deborah Wilson – Chairman
Roland Demers
Lyle Duell
Kathleen Perry – Alternate

Others Present

Jenn Griffin
James DuPrie
Dave Salvatore, Code Enforcement Officer

Pledge of Allegiance

Board Chairman Wilson opened the meeting at 6:00 PM. There are three (3) members present which does constitute a quorum. The Alternate member was there to participate in discussion but has no voting rights in tonight's hearing.

This evening's meeting is hearing an administrative appeal from Tim Bragdon regarding his building at 1384 Carl Broggi Highway, Lebanon. Undue hardship rules are not used in an administrative appeal. It is listening to both sides and making a determination. He is asking for an extension of his building permit which expired in May of 2020. His reason for not finishing the construction was ongoing litigation with the town and Covid issues. He is also asking for a refund of \$2,515 for the new building permit he had to acquire to finish work on his building.

Mr. Bragdon stated his case. He went before the Selectmen a few weeks ago requesting extension for permit that expired in May 2020. Selectmen agreed to extend permit but one member thought because it was a town ordinance it should go through municipal appeal. He went to Code Enforcement Officer Salvatore to get new permit so he could continue work until appeal was heard. He was issued new permit he paid \$2,515 for. He wants six months extension of old permit and refund of \$2,515 for new permit.

Board Member Demers asked why the town couldn't just give him an extension. Board Chair Wilson said because it's a land use decision made by the Code Enforcement Officer and the Selectmen can't reverse that decision. Code Enforcement can't give the extension. He doesn't have the authority and has to say no according to law. Code Enforcement Officer did what he was allowed to do which was issue a new permit.

Alternate Member Perry asked about permits. He didn't pay correct amount for first permit. Wasn't charged correct amount. Second permit he was charged correct amount which

was a renewal by previous Code Enforcement Officer. Mr. Bragdon has spent about \$3,700 in building permits including \$2,515 refund he is asking for.

Board Chair Wilson asked you had a permit, finished project and got an occupancy permit. How is this an extension. Bragdon stated the previous Code Enforcement Officer gave him a partial occupancy permit to use certain areas of building.. Couldn't use any other part of building until permit extended and work done. Appeals Board gave him occupancy permit a few months ago after an appeal process. Mr. Bragdon saying it is a partial permit but Board didn't realize that when it was issued. Board Chair Wilson said Board didn't vote to give him partial occupancy permit. Board Chair Wilson asked Code Enforcement Officer Salvatore if it was partial occupancy permit. He stated he didn't see the permit Board issued. Jen found occupancy permit which is basically for front of store. Board Chair Wilson is concerned about adding other projects to initial building permit. Bragdon stated that the original permit from previous Code Enforcement Officer was for complete building. Renewal permit was for complete building. Previous Code Enforcement Officer gave extension and partial occupancy permit for front so Mr. Bragdon could continue finishing building. Previous Code Enforcement Officer said when work was done he could get occupancy permit for entire building. Previous permits do not specifically state what they were for and no drawings or plans were submitted with applications.

Code Enforcement Office Salvatore did give six month new permit. He was curious why Mr. Bragdon only wanted six month permit. It would have expired by now. In September of 2017 Mr. Bragdon was charged \$40 for original building permit. He should have been charged more. Permit costs would have included projected construction cost of \$350,000 and 5 thousand square feet.

Board Chair Wilson asked is this an extension or continuation of original project or a new project that has had additions and changes necessitating a new permit? She felt the Board previously giving Mr. Bragdon an occupancy permit meant closure of project of his previous building permits. Code Enforcement Officer Slavatore said he had nothing Bragdon to do on third permit. Application just said complete interior renovations. Again, Board Chair Wilson mentioned she felt giving him his occupancy permit meant the end of his existing permits. Mr. Bragdon said previous code enforcement officers knew what permits were for. Knew what he was doing. He was complying with state laws. He and they felt everything didn't need to be spelled out on permits. Mr. Bragdon feels Board Chair Wilson is having hard time differentiating between medical and recreational pot. Mr. Bragdon feels mistakes were made and he is being punished because of these previous mistakes. Board Chair Wilson said every time he comes before board it's about mistakes by pervious Code Enforcement Officers told him but nothing specific is ever in writing on issued permits. Board Chair Wilson said if she requested permit it would spell out exactly what she was doing with it. Board member Demers asked why he got a new permit. Mr. Bragdon said he was told to get a new permit and wants a refund for it. Code Enforcement Officer Salvatore said permit expired in May 2020 and Mr. Bragdon was grossly undercharged for previous permits. Alternate Board Member Perry asked if it was two different issues. Can we vote on extension and issuing refund. Board Chair Wilson

said no. If we give him extension he still has to pay for it. Application checklist says plans need to be attached to old application. Resident James Duprie talked about cost that it should have been for permits. Starting from scratch would have been 4-5 thousand dollars. Mr. Bragdon feels what he was charged in the past is irrelevant. He didn't apply for permit renewal in May 2020 because he couldn't get contractors due to Covid. That's why he waited until October 2020. He couldn't get supplies and contractors to finish work. Alternate Board Member Perry feels Mr. Bragdon shouldn't be punished for mistakes in past. Board Member Duell feels very convoluted. He feels should be forgiven. Board Chair Wilson said at some point we have to stop making excuses and forgiving undocumented code enforcement officer mistakes. New permit says approved retail area, shipping and receiving area, kitchen area. This is what he got the new permit for. Board Member Duell feels the whole process has been horrendous on Mr. Bragdon. Jenn Griffin talked about other people having paid for permit renewals during the pandemic. Board Chair said Selectmen and local officials can't alter or establish fees for building permits. Appeals board is only entity that has that power. Because of pandemic Appeals Board meetings were suspended until June 2020. Bragdon decided not to argue this any longer. He is withdrawing request. Thanked board and left meeting.

Code Enforcement Officer Salvatore left meeting.

Motion made to close public hearing by Alternate Board Member Perry and seconded by Board Member Demers. Board members voted and unanimously agreed to end public hearing section of meeting.

James Duprie and Board discussed marijuana ordinances were voted in at the last town election July 2020. Since then similar ordinances have been enacted and are in litigation in other towns. Clause in most marijuana ordinances in state have residence requirements for licensing. That gives certain preferential treatment to residents of that particular town. At state level Maine residency requirements for marijuana licensing. State sued for business discrimination. Rather than litigating State said unconstitutional. Backing off on state residence requirement. Kittery had litigation challenging local residency requirements that they lost in litigation. We will get sued and lose. Because it is an ordinance we can't change it. Selectmen and legal want to change ordinance and put out there for revote. One other issue in our ordinance is misunderstanding of how marijuana manufacturing works. Making it into oils, food, candy, etc. Model based on manufacturer would be stand alone entity. Small number of manufacturing licenses. If growers are going to do their own manufacturing we need more licenses for that. Only a few licenses for manufacturing. Selectmen planning on having special town meeting for that. We could be accepting applications in December or January. Lots of changes coming. We are probably going to hear many cases. Entities not licensed now will be applying for licenses which are limited. Lebanon has two medical and two adult use licenses, as well as two that can be shifted to either medical or adult use. Six licenses total. Businesses will go bankrupt if they can't get these licenses for sale and manufacturing. .03% or more THC considered a marijuana product. No revenue sharing from the State of Maine. No Lebanon marijuana businesses currently have town licenses.

They have state licenses. State issues both recreational and medical licenses. Once we start implementing our licensing process state won't issue any licenses until business has local license. If they have existing state licenses they are good for a year and businesses have that year to apply for town license. If licensed by state will not automatically be licensed by town. Goal for number of licenses was to make sure local businesses would be able to be licensed. Lots of folks looking to open up in Lebanon so licenses will be competitive. James DuPrie encouraged board members to go on line and review ordinances for licensing in Maine. Contact James Duprie with questions. Medical use and business ordinances the same.

Board by-laws Board of Appeals ordinance changes never got on summer ballot. Board gave Selectmen two items they want included in next year's election. First is ADA hearings at reduced fee or no charge for license. They do have to pay to have appeal published. Second election item is having a second alternate. Two Board members go away during winter months. Those two items will be on June 2021 Lebanon ballot.

Motion made by Board Member Duell and seconded by Board Member Demers. Board members voted and unanimously agreed to end meeting.