

HARPSWELL BOARD OF SELECTMEN  
SHELLFISH LICENSE HEARING  
NOVEMBER 5, 2015  
Approved December 3, 2015

Selectmen Present: Rick Daniel, Chair  
Elinor Multer  
Kevin Johnson

Guest: Amy Tchao, Esq., Drummond Woodsum  
Town of Harpswell Legal Counsel

The public hearing was held on November 5, 2015 at the Harpswell Town Office to hear an appeal of Shellfish Warden Kyle Neugebauer's determination to revoke the Commercial Shellfish License for Michael Bernier Jr. The chairman then explained the hearing procedure.

Public Hearing Opened at 10:00 AM

Mr. Bernier stated the Shellfish Wardens do not believe he has met the requirements set by the Town. He disputes this and feels the Wardens are relying on information provided by his family members who have been estranged from Mr. Bernier. He explained how he came to live with John DesJardins's father, a friend, who had a room to rent him and he says he has been at this residence for approximately three years. It worked the first year, even though it was scrutinized and the Wardens would stop by this house and ask if this is where Mr. Bernier lives. But this did not happen this year. No one has stopped by this year or asked John if he was there. He said "I do share a rental in Topsham". When he moved out of his father's house, he rented a place in Topsham for Amy and his children since it was hard to find a place in Harpswell. It was deemed acceptable by the Town for the last three years and nothing has changed in the last three years. He says he does spend time in Topsham, not to live there, but to visit his kids, to get them on or off the bus, play with them and that he may spend one night a week in Topsham. The majority of his time is spent at his rental in Harpswell. He said they don't have information to prove where he is but they are trying to prove where he's not. He feels this is a personal attack, because the only requirement they are focusing on is how often he sleeps in what bed and what time.

Mr. Bernier said he has contacts that can vouch for him. Amy (no last name) in Topsham with his kids; John DesJardins, Cundy's Harbor, Amy's mother and Dave Gilchrest, Harpswell Neck. He said he helps Mr. Gilchrest with yardwork while at Mr. Gilchrest's house and sometimes will sleep there. Mr. Bernier said he understands what the Wardens are concerned with, but how often he sleeps in Cundy's Harbor is hard to determine when they drive by the house and do not stop in to see if he is living there even if they do not see his truck in the yard.

Chairman Daniel asked Mr. Bernier to stay at the podium to answer questions from the Wardens and the Board. The Chairman asked Mr. Bernier if he has any rent receipts from Mr. DesJardins. Mr. Bernier said that he does pay rent but not a "regular sort of rent" on a regular basis, but that the receipts are in his file cabinet at his home. He pays cash and gets a receipt from him.

Selectman Johnson asked if Mr. Bernier was up-to-date on conservation time. Mr. Bernier said yes, he has never missed one in seventeen years. Selectman Johnson asked, "Have you been doing the meetings?" Mr. Bernier said yes, absolutely. He said he meets those requirements.

Selectman Multer asked, when the deputies drive by the house and don't see his truck, where is it? Mr. Bernier said that his truck is broken down most of the summer and his truck is in yard in Topsham because John DesJardins does not want it at his residence. He said he gets rides from Tammy from Harpswell Neck, when he can. He does not have a vehicle right now.

The Chairman asked the Wardens if they had any questions. Warden Neugebauer began by saying that it is not personal against Mr. Bernier, but this is their job to follow up. Warden Neugebauer said that information was received from others beginning last summer, July, about someone living in Topsham. At the beginning of this year when it was time to renew the licenses, the Wardens received information from Topsham that Mr. Bernier was involved in an incident on February 2<sup>nd</sup> where he stated that he lived in Topsham. He said that information corroborates the information he received in July. On February 17<sup>th</sup>, Mr. Bernier handed in his application for a commercial license. Deputy Bradbury & Warden Neugebauer then had enough information to verify and move forward. The information from July, from Topsham PD and Exhibit #2 (a report forwarded to the Town Administrator), and also an email from Bath Officer Cavanaugh, who had contact with Mr. Bernier in Bath, saying that Mr. Bernier told him he lived on the Cathance Road in Topsham. Warden Neugebauer forwarded this information to his Supervisor but was told to wait for this initial contact that Mr. Bernier had in Topsham in February to go thru its proper course in the courts and will pick it up after. On March 27<sup>th</sup> he wrote another letter to the Town Administrator that they were going to cease the investigation at this time until they receive more information. During the summer they receive more information and on August 1<sup>st</sup> he had contact with Echo Alexander, a friend of Mr. Bernier at Prince's Point Landing in Brunswick. While making small talk he asked where is "Mikey" living now, she said "Oh, he's still on Cathance Road." These are three incidents, and he feels he can move forward with this. Another incident happens in Topsham at the end of August, the Topsham PD is called where Mr. Bernier is the complainant. When asked where he lives, Mr. Bernier said "556 Cathance Road". Deputy Bradbury and Warden Neugebauer believe Mr. Bernier is not living in town.

Chairman Daniel asked if the Wardens check the proper addresses of all clambers or just suspected ones. Warden Neugebauer said the Town Clerk gives them all the applicants and they split up the list and verify their addresses. He also added that Deputy Bradbury was the initial investigator for this residency check and he made contact with Mr. Bernier at 400 Cundy's Harbor Road and Mr. Bernier said that he lived on Cathance Road but also spend a couple nights here.

Mr. Bernier disputes he told Deputy Bradbury that he lives in Topsham. He said the Deputy stopped at 400 Cundy's Harbor Road and found him there. When the Deputy asked him "why do you have two residences?" Mr. Bernier said he explained that he needed to make these changes in order to keep his shellfish license. He said they are misconstruing the words that he says. When he changed his address to Cundy's Harbor Road, it was to keep his license. He said that is his residence. He said that address is on his driver's license.

Mr. Bernier says when he spoke to the Bath Officer, he said "Which address do you want? Because I hold two." When the Officer seemed to question this, Mr. Bernier asked the Officer "Well, which one do you want?" The Officer said the one you get your mail at. Mr. Bernier told him "400 Cundy's Harbor Road." He said he rents a place in Topsham for his kids and he rents a place in Harpswell to keep his clam license.

Mr. Bernier said the malicious part came from his father and Echo Alexander. When he mentioned the malicious behavior he was directly speaking about the Times Record article and he suspects his father sent that article. He asked Warden Neugebauer if he got the newspaper article from his father that started this investigation. Warden Neugebauer said he never received an article from Michael Bernier Sr. but was Mr. Bernier Sr., one of the people who they received information from, yes it was. Mr. Bernier said the incident with his father was over money and he feels it was negligent for the Warden to receive information from his father because his father wants to hurt him. He said his suspicions are correct and this came from just the person he thought. Not because he did not meet his requirements, but because his father has a personal vendetta on him. He said his father and Echo Alexander are both malicious. He feels the Wardens are taking information from people who are malicious and don't like him.

Mr. Bernier asked Warden Neugebauer "Is there any night that you can account for in this investigation that you do know where I slept?"

Chairman Daniel asked Mr. Bernier that "when speaking with Bath Officer Cavanaugh, why would you state you physically lived at 556 Cathance Road?" Mr. Bernier said he gave him two addresses, one where his children live and one for his clamming license, and that Officer Cavanaugh heard one thing and wrote another.

Chairman Daniel asked if there were other questions from the public or the other Deputies. Deputy George Bradbury stated that he started this investigation and went to the Cundy's Harbor address to verify if he lived there and Mr. Bernier was there. He said that Mr. Bernier is trying to maintain two residencies and they went forward to confirm this. He feels this is not fair to the other harvesters.

Closing Statements:

Warden Neugebauer asked the Board to look at Exhibit 2B where Mr. Bernier made a report on August 29<sup>th</sup> at 3:30AM to dispatch from Cathance Road. He said that the report from Officer Cavanaugh states that Mr. Bernier physically lives at 556 Cathance Road and receives mail at 400 Cundy's Harbor Road to keep clamming license. There is no evidence of rent receipts.

Mr. Bernier said that the incident in Topsham was a robbery at the place in Topsham. He is a medicinal caregiver in Topsham and the application for this shows his address as 400 Cundy's Harbor Road. He said he has several jobs that pay the bills. When he was there at 3:30 in the morning he was working and this is a place of business.

Warden Neugebauer rebutted this by stating the Topsham police report noted that Mr. Bernier said "He awoke to a noise in the backyard". Chairman Daniel asked for copies of this report.

Selectman Multer asked Mr. Bernier how he got to Topsham on that day. Mr. Bernier said he received a ride from Amy's mother, Tammy.

Chairman Daniel asked if Mr. Bernier feels he has presented his case fully. Mr. Bernier did have questions for Warden Neugebauer whether he has had contact with Mr. DesJardins, Amy and Echo. The Warden stated he has not spoken with the landlord or Amy but spoke with Echo.

Selectman Multer asked if Mr. Bernier could get something in writing from these people. Mr. Bernier said he would.

Deputy Sam Cafone, Marine Deputy said that the rent receipts would be important and feels Mr. Bernier cannot produce them.

Hearing Closed:

The Board deliberated on the findings. The Board will request rent receipts, affidavit from the landlord, and statement or testimony from John DesJardins, Tammy Gilcrest and Amy.

The hearing will be continued tentatively at 9:00 a.m. on November 19, 2015 to be confirmed at a later date with the notice to go out to the parties as to the final date, time and location.

The Board feels there is need of more clarification on the appellant's actual residence and has asked to hear testimony at this continued hearing. The Board is asking for testimony from three individuals as well as rent receipts.

The meeting is adjourned at 11:20 a.m.

Respectfully submitted:

Diane Plourde  
Recording Secretary