

**City of Ellsworth
Board of Appeals Minutes
February 7, 2019**

The special meeting of the Ellsworth Board of Appeals was attended by Members Jeffrey Toothaker, Steve Salsbury, Jeff Clark, Bruce Sawyer Jarad Wilbur and Steve Shea-Associate Member. Also in attendance were Code Enforcement Officer Dwight Tilton and City Attorney Roger Huber.

Call to Order
[6:35PM]

1. **ADOPTION OF MINUTES:** from the October 22, 2018 meeting. Mr. Toothaker motioned to adopt the minutes as written. Mr. Salsbury seconded the motion. The motion passed with five Members in favor and Mr. Shea was not a voting Member for this motion.

Adoption of Minutes

2. **OLD BUSINESS:** Continuance of the October 22, 2018, meeting that was remanded back to the Appeals Board by the City Council at their December 17, 2018, council meeting. *The September 12, 2018 request of Judith H. Blood who is appealing the September 10, 2018 issuance of a permit to Webber Oil/Webber Development Corporation to demolish the old Ticonic/Ellsworth Community Center building located at 10 Bangor Road, (Tax Map 143 lots 2 & 4) in the U (Urban) zone.*

Old Business

3. **PUBLIC HEARING AND CONSIDERATION:** December 7, 2018 appeal of Judith H. Blood appealing the September 10, 2018 issuance of a permit to Webber Oil/Webber Development Corporation to demolish the old Ticonic/Ellsworth Community Center building located at 10 Bangor Road, (Tax Map 143 Lots 2 & 4) in the U (Urban) zone.

Administrative appeal from Judith H. Blood regarding the demolition of the Ticonic / Ellsworth Community Building

BOTH AGENDA ITEMS 2 & 3 CONSIDERED BY THE BOARD CONCURRENTLY

Mr. Toothaker notified the appellant that previous testimony did not need to be repeated unless there was something additional for the Board to review.

APPELLANT PRESENTATION:

Judith Blood stated the Ticonic Firehouse is the only remaining original 19th century firehouse in Ellsworth and served as a firehouse from 1889 to 1942. The Ticonic Firehouse is one of the last wooded firehouses still standing in Maine. Ms. Blood confirmed with Mr. Toothaker that she could amend her petition and questioned if the agreement between Webber and the City Council was legal. The city turned down a \$20,000.00 offer years earlier from Webber and then sold it to them for \$5,000.00. At this point, she and the citizens of Ellsworth believed the firehouse would be cared for and maintained by Webber Oil. In her research about historical status, she spoke with the Historical Society who confirmed the follow through did not happen to elevate the historical standing of the firehouse.

Mr. Toothaker stopped Ms. Blood and stated the items she was bringing up were items the Board has previously considered. Mr. Toothaker introduced the new attorney, Roger Huber, who provided the Board with a memo stating the Board has jurisdiction to hear the appeal. Mr. Toothaker introduced Steve Shea as a new member of the Board and indicated that Mr. Shea was a voting member this evening.

Jeff Toothaker motioned the Board does have jurisdiction to hear the appeal. Steve Salsbury seconded the motion. The motion passed with all Members in favor.

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Mr. Toothaker stated the City Council has referred this back to the Board of Appeals. He said it was unfortunate the citizens assumed the building would be maintained after the sale price was lowerd, but no restrictions or requirements were passed along in the deed. The Board cannot fix the problem of deed restrictions or lack of requirements.

Ms. Blood listed items of concern on the demolition permit and in the ordinance violations: 1. Incorrect square footage, and 2. Does not reflect the story factor. She went on to say, this is a violation of Chapter 2 - 208.1. Both the City Council and the Historical Commission have referred to the buildings as having local historical significance. Along with the violations of Chapter 39 Articles 1 and Article 8.1.3, which require a Certificate of Appropriateness for demolition of a building deemed historic.

Mr. Tilton agreed there was an error made in the calculations and he has contacted Mr. Jim Sullivan at Webber Oil making them aware of addition fees due for the demolition permit.

Ms. Blood asked the Board to deny the permit to demolish the building. She was then asked to read from the ordinances she referred to in her appeal. Chapter 39 Article 8.1-Certificate of Appropriateness and 8.1.3-Demolition of a Historic Landmark. Mr. Toothaker confirmed with Mr. Huber that the buildings are not designated as historic. Mr. Huber said the provision that are being cited, are from the "definitions" (Section 2.3) specifically stating a building being "designated." She said she was appealing on the intent of the City Council.

Rebecca Maddocks-Wibur remembers the firehouse was spoken about in City Council meetings back in the early to mid-1980's. The owner (Webber Oil) was entrusted with following through on the official status of the building being historic. Since the agreement, with the city, the historical status did not follow through on the deed and it was not "technically" put on the historic register. She asked if this Board has authority in reforming the contract with Webber and Mr. Toothaker indicated that the Board did not. Mr. Huber confirmed the Board does not have the authority to reform the deed.

Mr. Gordon Workman asked what other rules (home rule) apply to help Ms. Blood and Mr. Toothaker said that the Board couldn't answer/speak for the Council.

Ms. Blood questioned the three options given to the Council, option three included initiation of a discussion with Webber Oil regarding the return or repurchasing of the property and she was wondering if this Board had the authority to send it back to the Council for that. Mr. Huber indicated this Board has no authority to send anything back to the Council.

Ms. Maddocks-Wilbur questioned the reference of the Ticonic Firehouse being Historic would be grounds to deny the permit. Mr. Huber stated that Mr. Tilton can only apply the ordinances as drafted and the ordinance requires that buildings "must" be designated as historic through a process. The building has not been designated and therefore the ordinance does not apply.

CITY'S RESPONSE: Mr. Shea indicated the Board is without authority under the attorney's advice and State Statues. Mr. Toothaker agreed and stated the action is between the citizens and the town to reform the deed. Ms. Blood said the last time they were in front of the city council they had no voice.

Mr. Sawyer reiterated when the Board denies the appeal, the appellant has another option with Superior Court.

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MOTIONS:

Chairman Toothaker motioned to deny the appeal and to lift the 6-month stay given on October 22, 2018. Mr. Salsbury seconded the motion. The motion passed with all Members in favor.

Chairman Toothaker motioned that Judith Blood has failed to carry the burden that the Code Enforcement Officer erred in the issuance of the building/alteration/demolition permit. Mr. Clark seconded the motion. The motion passed with all Members in favor.

Chairman Toothaker motioned to lift the 6-month stay on the demolition of the Ticonic Building. Mr. Salisbury seconded the motion. The motion passed with all Members in favor.

After the motion, Chairman Toothaker requested Mr. Huber to draft Findings and Decisions based on the outcome of the meeting. He also requested the document be presented to Ms. Blood and the Board for review. Mr. Toothaker suggested the Board reconvene within three weeks to one month to memorialize the adoption of the Findings of Fact. Mr. Toothaker asked the Deputy Code Enforcement Officer to arrange a date and time.

Appeal Denied

5. **NEW BUSINESS:** None

None

ADJOURNMENT: [at 7:27PM] Mr. Toothaker motioned to adjourn. Mr. Salsbury seconded the motion. The motion passed with all Members in favor.

Adjournment

Date _____
Steve Salsbury, Secretary
Ellsworth Board of Appeals

Board of Appeals Meeting (2-7-2019) streaming on
City of Ellsworth Website: <https://www.facebook.com/ellsworthme/videos/315786865713178>
Youtube: <https://www.youtube.com/watch?v=X7tLChMJITs>