

Service Committee Minutes

Honorable Council
City of Newark, Ohio
August 28, 2013

There was a meeting of the Service Committee in Council Chambers following the Finance Committee, on Monday, August 26, 2013. These members were present:

Jeff Rath, Chair	Ed Houdeshell
Shirley Stare	Ryan Bubb

We wish to report:

1. **Resolution No. 13-78** objecting to the transfer of Ohio Department of Liquor Control permit number 63675700005 from Newark Downtown Center, Inc. to John E Guy and directing the Director of Law to take all necessary actions to prohibit the requested transfer and declaring an emergency was discussed.

John E Guy, "Eddie"- 3661 Dragoo Rd, I really didn't find out about this until Friday, he kind of let me know what was going on (he indicated a member of the audience who was a media personnel). I honestly didn't know so I started asking around. I spoke to Mr. Tom Cotton and he took me down and showed me the fire sprinkler system because I guess this is what this is all about. They are up they are running, they are all under pressure. My system is all working, 90% of the Arcade is working, and a lot of his stuff is working. I don't really understand why we are here other than the Fire Department hasn't been back to inspect. That is a simple deal they can come back at any time he will give them access to it at any given time. Like I said I took a tour today, it is all under pressure, it is all working. I followed the lines and my system is up and I am assuming that is what it is about. I don't understand if it was such an emergency why the Arcade has been running this long. Since we put in for a transfer now it is all a big deal, well I got a lot of money at stake here, this is all the money I got and we can do good here. We already have, we raised \$2,000.00 Saturday for some people and it can only get better. I don't understand the deal. The man has got it all under pressure, it is ready to work. Let's get the Fire Department down here to prove it, that's all we got to do. He has all his documentation right here from Gutridge Plumbing and Mid-Ohio Fire. All of our system is up; I don't think that this is necessary at all. I think what is necessary is to get the Fire Department over there and let's look at it.

Tom Cotton- I am the President of the Newark Downtown Center, I owe the Arcade and I used to owe the liquor license but it is in the process of transferring to Ed. The objection that I read in the Resolution stated that the building was not safe and the fire suppression system is non-compliant. I am here to tell you that that is false. Anybody who said that is either misinformed or is disingenuous with Council. Melissa keeps all my documents and records; she has prepared copies for everybody here. Gutridge signed off several weeks ago, there was a problem with two of the monitoring switches, Mid-Ohio was in promptly, they took care of it the same day and I am fully compliant. There are no safety issues, there is no emergency, and there is nothing wrong. I do want to say about Ed, we signed the agreement, Ed committed to do several things and we went back and forth on the money, give and take.

Mr. Rath- clarified that when Mr. Cotton was stating Ed he was speaking of John Guy.

Mr. Cotton- yes. He has already done 3 of the 4 things, that he said he indicated he was going to do. He has spent a great deal of money, he paid me cash. He has put in new carpet, increased volume, and gotten the kitchen up very successfully. One of the big things that he is going to do and I think will help downtown more than anything is that he is going to fix the stucco. He is going to put in a canopy and a little garden outside. It will totally change the appearance of the Arcade and help downtown a lot. I will say that Ed has done a better job than I could; I have several other things that I do. I just could not spend the time necessary to make Pounder's happen correctly. Ed is making it happen correctly. The previous owners before me chose not to give the proper amount of effort to make it happen or simply wanted to milk it and get out. Ed is not taking that attitude, he wants to take care of it correctly and I believe he is an asset to downtown and the transfer should happen.

Melissa Hiddle- 4765 Sunnyside Rd Granville, I have documentation from Gutridge and Mid-Ohio stating that the system is up and running and everything is fine. I also have pictures that I took this afternoon of how they signed them off. I welcome anybody to come look at it themselves because it is up and running. I also have a letter here from Val Jackson and engineer who has been down and looked at it and says it is up and running and other documents. She then passed them to Committee members.

Mr. Rath- asked the Law Director, if we transfer this liquor license or the State transfers this liquor license to Mr. Guy, is that liquor license only good at this address or can Mr. Guy take his liquor license and business and relocate to another location if he wishes as long as he meets Newark Code.

Law Director- it is only good at this location unless he requests a transfer of location, if you want to move it to a different location you have to get permission from the Department of Liquor Control to do that as well.

Mr. Rath- do you know how long the transfer to another location may take, days, months, weeks or years?

Law Director- weeks, on a transfer of location I believe notification has to go out within 15 days of the filing of the application, we have 30 days to reply, a hearing has to be scheduled within 15 days of our objection if we file an objection, so you would be looking at 6-8 weeks on a hearing of transfer of location.

Melissa Hiddle- I don't have extra copies of the pictures I took. I took the pictures today of the riser with the tag, they were tagged on July 20th.

Safety Director Spurgeon- while we respect the rights of business and certainly Ed Guy and Pounders Pub our good neighbors. The threat of fire in the community is a serious threat and the authority having jurisdiction is our Fire Chief. I would humbly suggest to this Committee that it is the Fire Chief that should have been notified if the system is in compliance. I have spoken to our Fire Chief and I have asked Jack to come down and I thank you for coming. There is an obligation to make the Fire Chief aware and we are simply unaware that this system is in compliance. I'm listening; this seems like a pretty simple deal we would be happy to re-inspect it. It is not what you or I think or what a vendor thinks, it has to be a certified service provider and it has to be signed off by our Fire Chief.

Mr. Rath- I would like the Fire Chief to come up and gives us your comments. I appreciate all the documentation that you have given us; that it is great and it does seem like progress has been made. But I would and I don't know about the rest of the Committee members, but I would tend to agree with the Safety Director. It doesn't really matter what Gutridge Plumbing or anybody else says or even you guys, not that I don't believe you until we get it certified by the Fire Department it is non-compliant.

Fire Chief- this has been an ongoing violation for several months it started around January of this year. Mr. Cotton was issued a notice of violation, later a notice of citation for violating the Ohio Fire Code.

Mr. Rath- asked the month of notice and whether the notice was written or oral.

Fire Chief- again it started in January and the notice was written. The last part of this step was the Ohio Board of Building Appeal which was Mr. Cotton's chance to present evidence to the Ohio Board of Building Appeals that the Fire Department had somehow made an error in this case and that his building was truly compliant. At that hearing the Ohio Board of Building Appeal confirmed our violations and notice of citation. Mr. Cotton was issued a fine and he was given 30 days to complete the necessary work.

Mr. Rath- do you know when that hearing was

Law Director- July 23rd

Fire Chief- I believe the deadline for completion was the 22nd of this month so we are over that deadline. We continue to have concerns with this building and I think the Director put it most concisely that this building was designed with a sprinkler system, it is an older building but that is the way the building was designed way back when and it should have a working fire system in it. I heard the term well it is 90% working, 90% doesn't cut it, it has to be 100% certified. We have not received any communications whether it be emails, phone calls or paperwork from any of the involved certified contractors, in this case Gutridge Plumbing or Mid-Ohio Fire verifying the key elements have been resolved. Once we do receive that whether it is from them or Mr. Cotton then we will go out and re-inspect the property for compliance. We have not been contacted yet that the problems have been resolved.

Mr. Rath- what is the normal procedure if a building is non-compliant repair work needs to be done. I assume that the owner, tenant or whoever responsible contacts a trained professional, that professional comes in and makes the repairs, what is the procedure at that point in time for a re-inspection from the Fire Department.

Fire Chief- all they have to do is contact us, the owner of the property or the contractor. Once we go out there we are going to want to see the paperwork so typically we meet with the contractor because they are the ones under Ohio Code that are certified to conduct that kind of work. Anyone who works on a Fire Alarm System has to have a certain level of competence. Typically our inspectors give them cell phone numbers and/or office numbers. In the correspondences we have had with Mr. Cotton he was advised to call me. We certainly want this building to stay viable and stay a part of Newark but we also want it to be a safe building and in compliance with the Fire Code. It isn't like we aren't there or hiding, we are there all we have to do is be notified. Once we are notified we will be out there as soon as our schedule permits probably the next day.

Mr. Rath- I find it interesting that he was cited and a hearing occurred and that the citing were confirmed and he says everything is fixed but the hearing to confirm the citing occurred three days after the paperwork I have here is dated. If the hearing was on the 23rd and this paperwork was dated the 20th I guess Mr. Cotton why haven't you called Chief Stickradt to have him come back out to re-inspect?

Mr. Cotton- there is some background and I would be happy to give you that background or I could just give you a point blank answer to your question. Which do you want?

Mr. Rath- a point blank answer. You have a building that is in violation, you have pending fines, you have a hearing and you are in non-compliance. I would imagine that you would want to get those fines resolved and come back into compliance not to mention all the lives that you are leaving in danger, I would imagine that you would want to have that resolved as soon as possible so why haven't you called the Chief to re-inspect?

Mr. Cotton- my lawyers were dealing with the Law Director, I was told by my lawyers that we requested inspector Coffman, I waited a whole afternoon he didn't show up. My lawyers tell me that they are continuing to try to get Mr. Coffman down here. Coffman still has not shown up at the Arcade. You are making it sound like there was something really going on bad and you don't know the whole story. May I please start in January where Chief Stickradt said the problem began? The risers in the Arcade also feed in to part of Church St, a great deal of Church St. Two of the land owners on Church St would be June Fivens

and Linda Smith. Their sprinklers were disabled before I bought the Arcade in 07. There is a plate that shuts them off. They came to me and said it is your sprinkler you have to fix it. So I went and sought legal counsel and they said once that property is conveyed to that owner it is totally their responsibility to maintain and to alter repairs on the other side of the wall, it is not your responsibility. My fire watch actually started because June and Linda was not compliant and they have been non-compliant for years and years. As time went on Bob Vela, that is the old Stewart Brothers building, he had his heat shut off over a year ago and during this period of time the wet system froze and broke, just water flooding everywhere. Now I will explain why I am cited. I get a call from the people closing the Center Pub saying that there is a flood coming down through the Arcade. I came down and there was a flood in the Arcade there was water like two inches thick coming down through the Arcade. Well they thought that it was Bob Vela's water cool air conditioner on the roof. We obtained access to go into Bob's building, we went in and I determined right away that it was the sprinkler line so I shut the sprinkler off that is what the violation is about; the period of time that the sprinklers were off to the time that they got back on. I didn't know I was supposed to do anything.

Mr. Rath- this flood is from a broken sprinkler head?

Mr. Cotton- no it was a 2 inch line broken on the 3rd floor.

Mr. Rath- of the sprinkler system, so it was a broken sprinkler system?

Mr. Cotton- yes sir, so I shut it off, I had to I didn't have another choice. In Bob Vela's building not my building. So this problem started in January and got much worse when Bob's stuff got froze and broke in February. Yes I know now that I should have called the Fire Department and let them know that the sprinklers were non operative but I didn't know that at the time. I called the owner and he assured me that he was going to get it taken care of and he did eventually get it taken care of but it took quite some time. Now the hearing, during that hearing we learned that the proper procedure is that when a shared system is non-compliant it is to be plated so that I can get my sprinklers back on or the person that has control of the risers can get their stuff back on. So all along I am fighting everybody else and I am maintaining that stuff has worked other than the few days that it was down while Bob was getting his stuff fixed. This all started with June and Linda there was a fire sometime last summer on the second floor. It is important for everybody to know that those buildings are only sprinkled on the first floor and the basement; the apartments upstairs have no fire suppression system at all in Linda and June's building, Bob Vela's building has sprinklers on all three floors. During the hearing in Columbus I believe the testimony of Inspector Coffman was that Bob Vela's building was compliant and I am here to tell you part of it is shut off and has been shut off, it has never been turned back on. I spoke with Gutridge Plumbing and they are preparing an estimate for June and Linda and they told me again that my stuff is compliant. So what happened at the hearing was that we showed up, Melissa and I, I was met by my lawyer and he said that we have an agreement because people know that you have had people in and it is all taken care of and you don't have to be at the hearing. You can go ahead and go. I told him that if he needed me to call and I would come back. Then I found out that I was held and fined and like the Chief said he wanted me to go ahead and do stuff but there is nothing to do. There hasn't been anything to do since we you have that paperwork. All that paperwork said was that there were two switches that didn't work for the monitoring, the suppression system was functional and it was fixed within two hours after we realized that. Questions?

Chief Stickrad- it would have been very interesting to hear some of this testimony at the Board of Building Appeals hearing Mr. Cotton chose not to speak at that.

Mr. Cotton- that is not true I was sent away

Mr. Rath- please let the Chief speak, please don't interrupt him. He listened patiently and quietly to you.

Chief Stickrad- as chief I don't micromanage the Inspection Bureau but we did have entry to the building, Mr. Vela did have a leak it was repaired but the contention the Arcade system, the fire alarm and fire

protection system, is compliant is not true. The fire alarm system by Code is required to operate in a redundant manner with two phone lines. The last verification that we got, paperwork and so forth, says it is all operating on one. The phone line is also being used for other uses which aren't in accordance with the Ohio Fire Code. The fire suppression system, the sprinkler is my understanding that they found a leak and it will require a new pump and a new seal on I believe the numadic side of the alarm system. Again this is what the contractor found during his inspection of the building. There are many issues related to other owner, we can make this as complicated as we want but what we have done is said this fire alarm, fire suppression system resides in the Arcade, none of these other buildings can be in compliance without the heart of the system working. That is why we have chosen that route. I wish some of this could have been worked out at the OBBA meeting but unfortunately only the attorney presented his case.

Law Director- the report that you received from Guttridge Plumbing dated July 20, 2013 was made available to the Board of Building Appeals, it was not, for reason which I can't explain, entered into evidence, but it was made available that day. I think that it is important that we look at that report. A) system control valves and all other valves in the appropriate open or closed position- answer no b) are all control valves in the open position locked, sealed or equipped with a tamper switch- answer no, turn to page 2 #10: far west wet system 2 four inch valves closed no protection. That was the re-inspection of July 20, 2013. You can hang a tag on a sprinkler system that doesn't make that sprinkler system certified as operable because while it is essentially illegible, those portions of the photograph of the tag that you can read when it asks if certain systems are flow indicators in functional condition the answer no, does it test satisfactory-no, no, no. So all of that was available for the Board of Building Appeals at the hearing on July 23rd which resulted in the decision imposing the \$12,000.00 fine upon Mr. Cotton by order dated July 26th. The system that we are talking about here services buildings owned by 4 different land owners. Which made it very simple for me to understand throughout this entire process which began in January of this year is to understand that three of those property owners are downstream of Mr. Cotton. So nothing that they can or should do with their system can be tested or fixed until the upstream part of this system is addressed and fixed. Between the issuance of the citation in this case which was February 11, 2013 and the hearing on July 23 there were two separate continuances of that hearing in order to allow this system to be fixed. The reality is no one worked on that system who is certified to work on that system worked between those days. On the date of that hearing and on today's date both the fire alarm and the fire suppression system and the record keeping system and the communication requirements between to the property owner and the Fire Department continue to be out of compliance with the Ohio Fire Code. Every one of the citations that were confirmed by the Board of Building Appeals remains in effect as of 8:30 this morning. Now thanks to the efforts of an adjoining land owner Guttridge Plumbing who is the only local certified fire suppression inspector has been in that building, they had an appointment on Saturday and they were back in the building today to address the situation. They were working on it today as late as 11:00 this morning when I saw them there. The simple fact of the matter is that if this system does come into compliance with the Ohio Fire Code the Chief is happy, I'm happy and I would tell Council that there would be no basis to the objection to the transfer of this license and if we find ourselves at a renewal point no basis to object to the renewal. However that system is not in compliance, it hasn't been in compliance for a long time and there has been little to no effort employed to make that system functional. Now couple of little defense of the Fire Department and Fire Inspector Greg Coffman, I had been in contact with Mr. Cotton's attorney on a fairly regular basis, as recent as Friday afternoon. Not once did that attorney ask me or did that attorney ask Greg Coffman to stop by the Arcade to inspect the system. So when Mr. Cotton says that Inspector Coffman has been contacted repeatedly to inspect the system that is simply mis- statement of fact. Because I guarantee you that if Inspector Coffman was contacted by myself, by the Chief, even by Mr. Cotton's attorney or by Guttridge Plumbing to inspect the system he would be there that day, I guarantee

you. This case has been litigated repeatedly that system is not functional until Gutridge Plumbing certifies it as functional and the Newark Fire Department certifies it as functional and Mid-Ohio certifies that their alarm system works in conjunction with the suppression system because they both have to all work together.

Mr. Marmie- I would just like to ask this Committee to definitely pass this, send this forward. This is not something that we are denying a liquor license transfer, this is just giving our Law Director the authority to prepare to go to another hearing in order to try to say that if it is not in compliance, if at that time it comes into compliance like our Law Director indicated the whole case is a moot point and we will stop and back up. However we can't stop right now otherwise we won't have the opportunity, it will be too late. They will still have an opportunity to come into compliance before we vote on this next Monday; they will have further opportunity before the hearing with the Department of Liquor Control as far as whether they will even be able to transfer it. We don't have the authority to say yes or no, it will still be up to them. All we are saying is that we are allowing our Law Director to provide information that we wish for it not to happen. If they aren't in compliance then that is the information that he is going to supply, if they are in compliance then we are going to say they came into compliance we don't have an issue anymore. So I would urge you to go ahead and take action on this this evening so that it can move forward in the proper procedure and if it comes into compliance we will respectfully withdraw all the information.

Mr. Rath- is that accurate Mr. Law Director

Law Director- it is exactly accurate

Mr. Cotton- I will try to be brief, I apologize Mr. Sassen I thought that Mr. Sassen had spoken to Mr. Coffman

Mr. Rath- the way I see it you have known since January this building is out of compliance, not only have you put your building at risk, Mr. Cotton stated from the audience that it was not his building, not only have you put your building at risk but there are three other business owners, three other portions of that building that are at risk because you have not brought your building into compliance. You are also putting the lives of the patrons of all four of those businesses at risk and from what I hear from testimony of trained professionals that are responsible for knowing what needs to be done and what doesn't need done, you have done nothing. I'm appalled at your actions.

Mr. Cotton- what is non-compliant in my building. There is nothing non-compliant in my building.

Mr. Rath- we have gone through a list of things.

Mr. Cotton- the Law Director said there were two things turned off, those don't service my building.

Mr. Rath- chief would you mind having an inspector within the next 48 hours check his building for compliance?

Mr. Cotton- please let me finish sir it will just take a second

Fire Chief Stickradt- at the request of Council we would do that.

Mr. Rath- Thank you I appreciate that. Mr. Cotton nothing else needs to be said other than a report from the Fire Inspector. The Fire Inspector can get back to us and he can say he is in compliance or he can say he is not in compliance. What the Fire Inspector says is what I am most interested to hear. Actually what the Fire Inspector says is the only thing that I am interested in hearing.

Mr. Cotton- the Fire Inspector never said that the Arcade doesn't have sprinklers

Mr. Rath- we will find that out in 48 hours.

Chief Stickradt- we will report back to you Mr. Rath

Mr. Bubb- Mr. Guy does this process make sense to you, do you have any questions

Mr. Guy- it makes no sense to me, I am learning the hard way that is all I have to say

Mr. Bubb- you understand what Mr. Marmie eluded to that if the correct actions take place you should be able to proceed with no problems. Does that make sense?

Mr. Guy- I hope. One thing that I would like to say is that he offered this guy, pointing at the Safety Director, and the Fire Chief to come down and look and that is what I would really like you guys to do before you guys make any decisions at all. This isn't his liquor license that you are dealing with; you are dealing with my money and my liquor license. Give me the chance; come down look at our place, if it doesn't pass we will go on to the next step but don't just shut me out. If you guys deny my license that is really going to make it tough, I have put all my money into this. I own a car lot, I'm successful, I pay my taxes, I do everything right. All I want is a chance to do this right.

Mr. Rath- you know from what I have heard and from what I understand it does sound like you are trying to do things right and I feel for you and I appreciate the efforts that you are putting forth in the investment that you are making and I certainly don't want to squelch any business in the town of Newark but in the same respect we have a very large building that is putting a lot of people at risk and that needs to be resolved. It's not like this came about yesterday or even last week. It needs to be resolved and it needs to be resolved now. Unfortunately you're the leverage that we have to get it resolved. You are caught in the middle and I apologize for that.

Mr. Guy- when I decided to do this I'm not dumb, I don't have a lot of money but I am not dumb, so I get on my computer and I try to learn everything I can learn about Pounders Pub. Until Mike Folker came up to me and said this is happening I had no clue. You guys don't send a letter a Pounder's Pub which you guys know my name, no letters come to me. When you get on the computer and you look up Tom Cotton's name there is no evidence of this stuff not working, it is not on the computer anywhere. It is not there for a person to find. I would like to know why it is not public information just like finding out his other problems that he has had.

Mr. Rath- it is public information, it is just a matter of knowing the right place to look for it and the right place to not. We aren't required by law to notify tenants, however your point is very well taken. Actually the Mayor had a conversation with me earlier today saying that is something we need to look into. We are not faced with this very often. This is an interaction between the City and the property owner not the tenant. You as the tenant are caught between a rock and a hard place. If you want to help apply pressure to get him to get into compliance to keep everybody in Newark safe, that is awesome.

Fire Chief- we were never asked to do an inspection. We want compliance with the Fire Code; we want a safe environment for his patrons. I send people into burning buildings every day and that is a risk reward business. This building has a system that will help us do our job and make things safe for those firefighters. Right now we are having a non-compliant system, we are not sure that the system is going to operate and therefore it puts those firefighters at greater risk. We are committed to help the business owner and the property owner become compliant. This started in January we are now in August, soon going to be September when is enough enough? We need to get compliance with the established codes. I'm sorry sir if you were ill informed or couldn't find this information. What I would encourage to anybody wanting to buy a business or move in to a building in Newark contact the Fire Department we will share that kind of information with potential businesses. We don't want to stifle a new business in the City of Newark we are more than willing to work with anybody.

Mr. Bubb- Mr. Guy I just following up on the previous conversation, I will be moving to object to this tonight, it's not a denial of it, if it gets in compliance I hope you have a good business with downtown I really do. That being said he motioned to pass this on to full Council.

Motion by Mr. Bubb to send Resolution No. 13-78 on to full Council, second by Mr. Houdeshell

Motion passed by a vote of 4-0.

Mr. Rath- Mr. Cotton I know that you had a \$12,000.00 fine levied against you, I know you had an opportunity to come into compliance by August 22nd to have that fine reduced in half at this point in time I would love to see that fine doubled every month from now until it comes into compliance if I had the power to do that I certainly would but I don't. Please get it together. Please give the Fire Chief and the Fire Inspection access to do the inspection in the next 48 hours and I hope that you bring it into compliance.

Jeff Rath, Chair