



NOTICE OF REGULAR MEETING OF THE WEBER-MORGAN HEALTH DEPARTMENT

Notice is hereby given that the Weber-Morgan Board of Health will hold its regularly scheduled meeting at the Weber-Morgan Health Department **Annex Building**, 455 23rd St, 2nd Floor Auditorium, Ogden, Utah commencing at **4:00 p.m.** on **Monday, January 22, 2024.**

Agenda for the meeting will consist of the following:

Welcome	Ali Martinez
Action Items	
1) Approval of Novembers 2023 Meeting Minutes	Ali Martinez
2) November's Tobacco Appeal Discussion/ Final Action	Brian Cowan Brandan Quinney
3) Close Session for Quasi-Judicial Review	Brandan Quinney
4) Tobacco Appeal One Stop	Bryce Sherwood
5) Close Session for Quasi-Judicial Review	Brandan Quinney
Information Items	
6) Director's Report	Brian Cowan
7) Chair's Report	Ali Martinez
Other Business	
8) Executive Closed Session Health Officer Evaluation and Compensation	Ali Martinez
9) Reconvene Public Meeting	Ali Martinez
10) Health Officer Action	Ali Martinez
11) Adjourn Regular Meeting	

*In compliance with the Americans with Disabilities Act, individuals needing auxiliary
Communication aids or other services for this meeting should contact
Elvira Odeh at eodeh@webercountyutah.gov giving at least three days' notice.
Dated this 18th January 2024.*

**Weber-Morgan Board of Health
Minutes of Meeting
November 27, 2023**

The Weber-Morgan Board of Health held its regular meeting on November 27, 2023, in the Health Department Annex conference room at 455 23rd Street. The meeting was called to order at 4:00 pm. With Ali Martinez presiding.

BOARD MEMBERS PRESENT:

Ali Martinez	Sharon Bolos	Andy Jensen - Virtual
Jason Boren	Angela Choberka	Kevin Eastman - Virtual
Bonnie Wahlen	Dr. Frank Brown	Jared Anderson - Virtual
Leonard Call	Dr. Ken Johnson	
Cheryle Allen	Dr. Lee Schussman	

STAFF MEMBERS PRESENT:

Brian Cowan	Lori Buttars
Michela Harris	Summer Jacobson
Bryce Sherwood	Amanda Jones
Lekelsi Talbot	Sandi Rindlisbacher
Heidi Niedfeldt	

OTHERS PRESENT:

Brandan Quinney

Welcome and Introductions- Ali Martinez

Ali Martinez calls the meeting to order at 4:00 p.m. and welcomes those in attendance.

Introduction of New Employees and Promotions

Information Only

Brian Cowan introduces Sandi Rindlisbacher as a new employee to the Nursing division.

Approval of Board of Health Minutes of August 25, 2023

Motion Passes

A **MOTION** is made by **Dr. Lee Schussman** and **SECONDED** by **Jason Boren** to approve the minutes as written. Roll call is taken all vote aye. The **MOTION** passes unanimously.

Tobacco Appeal Midland Market

Motion Passes

Brian Cowan addresses the Board and informs them there are three appeals related to tobacco hearings that the Weber-Morgan Health Department has been holding over the last couple of months. Brian explains this is part of the department's adjudicative review process. The business owners will be able to present to the Board their concerns about the actions taken by the health department and hearing officer, the

Board then will review those actions and determine if they were appropriate. Midland Market owner Sharanjit Multani approaches the podium and addresses the Board members stating he is the owner of Midland Market. He continues stating that they are under a two-year probation and his employee sold a cigarette to a minor a month or two before the probation period. He states employee was fully trained and his brother runs the store for him. He manages that location and is also fully trained. Sharanjit Multani continues to state that his employees made a mistake and asks why they are receiving a harsh punishment of a two-year ban. He asks if he can continue just with the normal tobacco license, not specialty products. Sharanjit states he cannot sustain his business and eventually will have to sell since they will not be able to sell tobacco. Heidi Niedfeldt introduces herself as the supervisor for the tobacco prevention and control program and explains she will give the information about the violations and how they occurred. The First violation at Midland Market occurred on October 13th, 2021 when a 17-year-old female underage buyer was able to purchase a puff bar from an employee of Midland Market which resulted in a 30-day suspension of their tobacco permit, and a 5,000 dollar penalty was issued. A hearing was held by hearing officer George Garwood, who upheld the first violation requirements. No formal online training had been completed, so they did not qualify for a fine reduction. A second violation occurred on July 31st, 2023. On this day, Roy City police department sent an underage buyer into Midland Market. The underage buyer was provided a non-functioning e-cigarette product to take with them into the store. An undercover police officer was also inside the. The underage buyer asked for a Miami mint electronic cigarette the employee Usman Maqbool provided two products one Miami mint and the other juke pineapple. The employee did not ask for a driver's license per Utah Code annotated 76-10-114. It is unlawful that an employee knowingly or intentionally sell or give tobacco products electronic cigarettes or nicotine products in the course of business to an individual who is under 21 years old. The store was issued a second violation and penalty as per Utah Code 26B-7-518, Midland Market requested a hearing. The hearing took place on October 3, 2023, and was run by a hearing officer George Garwood. George Garwood heard the discussion from both the health department and the owners of Midland Market and upheld the second violation and two-year revocation of their tobacco permit. The Penalty was \$10,000 but was reduced to \$7,000 dollars based on the store implementing a training program within 30 days. A motion to amend was submitted by the health department to further reduce the fine from \$7,000 to \$5,000 as allowed by Utah Code 26B-7-519 and hearing officer George Garwood approved the reduction. After the Hearing Midland Market submitted a request to appeal the revocation decision made by the hearing officer. Many of the Board members asked who has the ability to reduce the fine. Heidi responded it would be up to the discretion of the hearing officer. That was not the case he determined that Midland market did sell and the law states that the permit shall be revoked, upon the second penalty for two years. Brandan states this is in the notice of violation, it cites those statutes and the Board has the code sections in their packet. Sharanjit makes a comment stating he can take a month's suspension if that is possible, he states he no longer needs the specialty license he is requesting just the regular tobacco license. Ali Martinez clarifies that the action of the Board is to make a determination on the process itself and if the department acted consistent with state law. Dr. Ken Johnson asks Brandan Quinney if the Board can create some sort of penalty and do they have authority as

a Board to make some sort of change. Brandan Quinney responds that the Board members and the health department are subject to the state law. The Board is not authorized to create any regulations or make any exceptions to the law, at least in this area of law and when addressing tobacco regulation of retail, tobacco specialty businesses, or general tobacco businesses we have to follow what the legislature has passed. The Board is not authorized to do anything different from what the law has prescribed. Sharanjit makes a comment of what is the purpose of the hearing if the Board cannot make changes. Ali Martinez explains the point of the hearing is to make sure that there is another entity that looks to ensure that the process was followed fairly and consistent with the law. The Board looks for any deviances to make sure that there was a fair process and the health department has followed the guidelines set by the state. If there was any inconsistency then the Board would be able to say this was not followed according to the state law. The health department then would have to go back and redo their process. If the Board finds that, all of the regulations were followed appropriately, our action would be to uphold the standing of the health department. Ali Martinez states the Board values supporting small businesses and these processes are difficult, within the authority the Board is here to make sure there was a fair process and ensure that the statute was followed. A **MOTION** is made by **Dr. Lee Schussman** and **SECONDED** by **Sharon Bolos** to uphold the findings of the hearing officer. Roll call is taken all vote aye. The **MOTION** passes unanimously.

Tobacco Appeal Cloud Nine

Motion Passes

Brian Cowan introduces Sham S. Dhiman business owner of Cloud Nine who has requested an appeal to the Board. Sham Dhiman states they have accepted the violation they received and asked hearing officer George Garwood to give him the fine instead of the 30-day suspension. He states the 30-day suspension will be a hardship and states his employees are all fully trained and have everything they need to follow the proper process but the mistake was made. Sham Dihman is requesting a fine instead of the 30-day suspension; he states they had completed a 10-day closure due to a misunderstanding. Heidi Niedfeldt continues with the details of the sale. Heidi states On August 9, 2023 an 18-year-old female underage buyer went into Cloud 9. She asked to purchase a mango-flavored e-juice. The store cashier, Muhammad Iqbal, told her he had a mango strawberry vape and she told him that was just fine. The clerk rang up the item and she paid for it. He did not ask for her identification. As per Utah Code Annotated 76-10-114 it is unlawful for an employee to knowingly or intentionally sell or give a tobacco product, an electronic cigarette product, or a nicotine product in the course of business to an individual who is under 21 years old. The store was issued a first violation for selling to an underage buyer, given a 30-day suspension of their tobacco permit, and given a \$5,000 penalty as per Utah Code 26B-7-518. Cloud 9 requested a hearing. A hearing was held on October 3rd, 2023 and was run by hearing officer George Garwood. George Garwood heard discussion from both the health department and owners of Cloud 9 and upheld the first violation and 30-day suspension of their tobacco permit. He reduced the penalty from \$5,000 to \$2,500 based on the store having implemented a training program within 30 days of the employee, Muhammad Iqbal, having started as per Utah Code 26B-7-519. After the hearing, Cloud 9 submitted a request to appeal the decision of the hearing officer. **Angela Choberka** asks how the process will work since the business owner closed store for 10 days. Heidi explains there was a confusion about the process, if they appeal the decision, then they do not have to pay the fine or start any

revocations or suspensions until after the appeal process has finished. Normally when a tobacco permit is suspended or revoked, a weekly inspection is done to make sure the business is not selling or advertising and receipts can be requested. **Ali Martinez** makes a suggestion to make a recommendation to honor the 10 days the business had closed. **Brandan Quinney** states if the 10-day credit was given, they would be meeting the requirement of the statute and the court can decide as to whether that 10-day closure occurred. **Angela Choberka** asks if there is record of closure can, we ask them to honor the 10 days. Heidi clarifies that they do not require the closure of the store itself. The suspension is just for the tobacco permit. Heidi continues to explain there is no way to confirm that the tobacco advertising was covered up but could request the receipts that they were not selling tobacco. **Ali Martinez** asks the storeowner if they were to request the receipts could they provide them. Sham Dhiman states they do not have any receipts. **Brandan Quinney** states based on the statute and as far as the penalty requirements for the health department to impose there is no prerequisite to a factual finding that it was suspended for 10 days. It does not say that you have to make those findings on the record today. It simply says that we shall impose a 30-day suspension and a fine of \$2,500. Therefore, whether the 10 days has been satisfied it is a question of fact and you are allowed to determine whether the permit has been suspended in effect for 10 days and then you can do 20 more days after that. I do not see any anywhere in here that requires you to make that factual binding today with receipts. There is a requirement as Heidi mentioned that each tobacco retailer must keep a transaction log of each of the items they have sold. They have to be itemized and detailed. That is just something to note that it should be available if you request it. **Angela Choberka** asks Heidi if there is a documented date when the email was sent and can we figure it out through that source. Heidi states it could have been either an email or a phone call and they can go based on the visits the Health department had made to the store. **Leonard Call** makes **Motion** and states that as much as there was some confusion and the duty of the Board is to determine if the procedures were handled correctly and there was some confusion they can uphold the decision and give a credit for the 10 days. **Bonnie Wahlen** **SECONDED** the **Motion**. Roll call is taken all vote aye. **Sharon Bolos** makes a comment, while she agrees with the motion, as a Board member, she would feel comfortable with some kind of proof from the business to show that they did not sell. She continues and states it is the Board's responsibility to ensure that we are really giving credit for legitimate closure. **Ali Martinez** informs the Board of the motion and states a discussion to potentially amend the motion. **Angela Choberka** makes a comment on how do you prove that you did not sell or advertise if there is no record; it could have just not been kept. **Brian Cowan** states he cannot be part of this motion, but a suggestion on the practices of the health department is if we were to uphold that 30-day suspension, and could receive documentation that those 10 days occurred in a motion. If it gave us the ability to reduce that suspension time by the 10 days upon receipt of records, we could work that forward with that measure. **Ken Johnson** asks if Commissioner Sharon Bolos is requesting an amendment to the motion. **Sharon Bolos** states she is not asking for an amendment, but in order for her to support the motion she would like proof. She continues to state that the business by law is required to keep records and we should be able to see those records. If they do not exist then how can they give the 10-day credit? **Leonard Call** amends his motion to include the 10-day credit with documentation that owners were in fact closed and he requests a follow-up. **Brandan Quinney** provides some guidance on the motion to be remanded. The process is not making a final decision today. You are not affirming or reversing the decision. You are sending it back to them with further instructions and then they can come back with clarification and that is when you will

address whether you are going to affirm or deny the action. The Board can include in the motion today to remand the hearing officer's decisions with the instructions to go and gather or have the business owner provide documentation for closure and then report back with a follow-up in January. Ken Johnson asks if the business would remain closed or open until January. **Brandan Quinney** states as far as due process goes, the business should be able to remain open. There can be a motion and in some cases to close it, if there's been an imminent threat to public health, you might not find that here. The business can remain open until you have determined that there was a violation. That is why the appeals process usually puts revocations and penalties on pause until it is seen all the way through to the end. **Cheryl Allen** comments and asks for clarification that the business was closed for 13 days the business was not aware of the process and received a phone on October 16th explaining the process of the hearing. **Sharon Bolos** makes a comment stating that with the motion, the way that it is stated; those clarifications will come with all the details, the phone calls, emails, and everything that comes out of that hearing. **Brandan Quinney** states the remand can be to revisit this issue, bring some information back to the Board or can remand down to the hearing officer, or let the hearing officer take care of the issue and if the parties are still briefed by that, they could bring it back to the Board later. A **MOTION** is made by **Leonard Call** to remand to the hearing officer decision for information and clarification. and **SECONDED** by **Jason Boren**. Roll call is taken all vote aye. The **MOTION** passes unanimously.

Tobacco Appeal Vapor Vault

Motion Passes

Brian Cowan introduces Warren Braegger business owner of Vapor Vault. Warren Braegger states he is here requesting not to be shut down for 30 days. Warren states his business is all tobacco and it is going to shut down his store. Warren continues with his concern that all of the employees are going to be out of a job for a month and with Christmas coming up and the bills that come with that, he is requesting to postpone the closure until March. Summer Jacobson Introduces herself as a tobacco prevention and control educator. Summer explains on August 9, 2023, an 18-year-old female underage buyer went into Vapor Vault. She asked to purchase a strawberry-flavored e-juice. The store clerk, L Jacob Phillips, handed her a strawberry banana Juicy Bar and took her over to the other counter where another clerk rang up the item. L Jacob Phillips asked her if he could glance at her ID. He looked at it and told her she was good to go. She then paid for the product and left. As per Utah Code Annotated 76-10-114, it is unlawful for an employee to knowingly or intentionally sell or give a tobacco product, an electronic cigarette product, or a nicotine product in the course of business to an individual who is under 21 years old. The store was issued a first violation for selling to an underage buyer, given a 30-day suspension of their tobacco permit, and given a \$5,000 penalty as per Utah Code 26B-7-518. Vapor Vault requested a hearing. A hearing was held on October 3rd, 2023 and was run by hearing officer George Garwood. George Garwood heard discussion from both the health department and the owner of Vapor Vault and upheld the first violation and 30-day suspension of their tobacco permit. He reduced the penalty from \$5,000 to \$2,500 based on the store having implemented a training program within 30 days of the employee, L Jacob Phillips, having started as per Utah Code 26B-7-519. After the hearing, Vapor Vault submitted a request to appeal the decision of the hearing officer. **Bonnie Wahlen** asks as to why if this happened in August that it is just being imposed to shut it down now. Summer Jacobson explains the process as follows, a sale occurs, a notice of violation is sent out, the business has an opportunity to request a hearing, and hearings are every two months on the first Tuesday. The

hearing was held in October and the appeal if requested. **Dr. Lee Schussman** asks if the request is simply to the date of the 30-day suspension and if the Board can make that determination. **Brandan Quinney** responds that per state code 26B-7-518, if the sale to an individual under 21 years old, is a first violation, the enforcing agency shall, impose a fine of \$5,000 and immediately suspend the permit for 30 consecutive days. I do not see it here, immediately as it is not a set number as far as days or time goes, but it can be interpreted that it will apply from this day to March as far as suspension goes. If there are any issues that the Board needs to reconsider, as far as any standing issues that need further research, or further action, that's the only basis that the Board would be able to find to be able to table this. The decision would have to fall in line with state code, which is to suspend immediately. Dr. Ken Johnson asks if the date of suspension was documented. Angela replies the date is on the document that was given to the Board and states August 28, 2023, is day one of the 30-day tobacco permit suspension of the Vapor Vault, and September 17, 2023, is the day the business can begin selling again. Vapor Vault then appealed the process. **Brandan Quinney** offers some clarification and states there are due process steps that would suspend that immediate requirement. As soon as the person being affected, the appellant, in this case, receives a violation and wants to invoke the appeals process the immediate part of the statute makes way for due process. That is when there are so many days to schedule a hearing, so many days to schedule the next Board meeting, and then so many days for the Board to issue a decision. These are steps that are part of due process that are completely outside of what this would require as far as the meeting goes. Dr. Lee Schussman asks if they can delay this motion until February. Brandan responds if that is the Board's decision to delay they will have to consider the practice across the entire Board and apply this to every retailer. If the practice of the Board is to table the decision just to delay the penalty. This will have to be considered for any retail tobacco retailer or general retailer that comes to the Board and asks if this can be delayed until 2025 or in two months instead. Brandan states as far as the hearing officer level goes; there are not a lot of rules in place, and an appeal to the Board that would be considered happening in the future. The hearing officer has 30 days to issue a decision after a hearing. With a lack of rules on the Board level, we could consider adoptees and what the hearing officer decides; take those 30 days to issue a written decision. That would be following procedures like those that we do at any other level. It is consistent but if the decision is to go beyond that or table just for the purpose of delaying, that would be a precedence issue. Store owner Warren makes a comment stating he is not disputing the violation or that it isn't fair. Warren is requesting a less harsh punishment for a first-time offense and wants the 30-day suspension to be delayed. Ali Martinez asks if would it be appropriate as a Board, to include in the motion that we would ask that the notice of that suspension be no earlier than 30 days and still be a consistent procedure. Ali continues and asks to try and find a leeway but also knows how serious this matter is and there are consequences. She comments that as a business owner, it is their responsibility to make sure that the law is followed and continues to ask if it is appropriate to cite the 30-day notice and provide some delay. Ali also asks if the Board makes a decision today and supports the findings of the health department how late is the notice given and when the suspension will begin. Brandan states if there is no decision the Board has 30 days to make a decision. This is based on the hearing officer's rules. If a decision is made today then the statute states the revocation must be immediate. Angela Choberka comments and states the business had these couple of months to figure out a plan and figure out how to take care of its employees for the 30-day suspension. She states this is not something she has to weigh as well, and it is clear that the owner admitted that it was at fault, and knew of the employees and that is a

challenge. Warren states he was told at the hearing that the Board could waive the suspension. **Ken Johnson** states he would like to make a motion based on the fact that he can not find a date in the hearing officer's documentation, of when the suspension should begin. He requests to uphold the suspension and it to begin on February 1, 2024, for 30 days. **Sharon Bolos** asks if there is a way to go back into the health department records to find the date of closure. **Dr. Lee Schussman** states he would support that arbitrary date because there are so many other dates that have been arbitrary through this process from the time that the violation first occurred to the point that it got sorted out. Dr. Lee Schussman states there is one page that has a whole lot of different dates, which would give a little bit of latitude and he would second that motion. **Jared Andersen** states he agrees with the motion as far as suspending but it was also mentioned that the Board could waive the suspension. Jared Andersen continues with wanting to amend the motion, possibly having more discussion. He states he is concerned when it's one in 12 years, and there's no thought process of waiving at all. We expect perfection and that's just a thought and a comment on the solution. **Jason Boren** responds the Board does not have the authority to waive the suspension, which is the state statute. **Brandan Quinney** states this was a misstatement from the hearing officer. The penalty is prescribed by law. **Leonard Call** states this is concerning if it was indeed communicated by the staff of the hearing officer that the business owners can come here and seek that relief and put off the suspensions. Leonard continues that the Board's job here is not to necessarily waive things it is just to say that the process was performed correctly. If the hearing officer were stating misinformation then, no the process was not correct. I would offer a substitute motion that we remand this back to the hearing officer, to straighten this out. **Jason Boren** recommends that we follow that precedent that is established. Take 30 days to give a written notice to the business. Have a public meeting to ratify that. Which would be another week or so after that, 30 days. This would be following both department precedents and the Board can state there was a very distinct process that was followed if this comes around again. Then this would delay the penalty from starting a month and a half following predetermined established processes and would give a reprieve and us something that we are following. That is a concrete precedent already set, rather than putting an arbitrary date out. **Ali Martinez** states the Board has to stick to the facts of what procedure followed. In addition, to provide a better explanation of what the Board's action could be. The letter as it is written implies that we could do something about the order and that is not necessarily clear. Ali states what is concerning is that it has been a common theme with the three business owners that they all thought that they could appeal and the Board would be able to overturn because the Board felt like it, not because it was a matter of process. Ali states it worries her to think that they are not sharing or fully disclosing their rights about the process with the business owners. **Leonard Call** states he feels that if something was misstated by the hearing officer, then no, the process was not followed. The Board's job is to say, was it the process done correctly, and if not the motion is remanded back to the hearing officer. **Brian Cowan** states he appreciates this discussion, However, there are two sides to this argument, and from the health department's perspective information was provided in writing. The process has been documented, and our adjudicated proceedings are available to the parties that we agree when we take an action. Without a clear statement from the hearing officer in an order or a letter, and without that clear statement, our adjudicated procedures, and proceedings are in writing within the timeframes identified and it would be hard to react to that

claim without further documentation. Ali Martinez makes a comment she states it is valid but the language she is referring to is on the letter by Mr. Garwood that states the owners can seek an appeal of this order by submitting a written request to the director of the Weber-Morgan Health Department. That may lack substance to guide the business owner at that point on what the process may be. **Ken Johnson** states on the documentation that Summer reviewed the process to appeal the hearing officer's decision and is not sure what Summer told the business owner in her discussion. She could have suggested coming to the Board and they would help, and explain the opportunity to appeal, and that is not correct. Ken Johnson states staff needs to make sure everyone is trained to not offer that option. **Ken Johnson** withdraws his motion and says there is already an admission of there being a mistake made and the buyer bought the stuff, the ID was not checked well enough. It is just a matter of when the suspension starts. **Angela Choberka** states that she noticed the appeals before there was no legal representation. She believes that legal processes are very confusing and all business owners don't understand all of that. She continues to state that it is not our responsibility to provide legal representation, but that there might be a gap in the community around helping to support small businesses to understand legal processes a little bit more. She believes the business owners do not understand that we do not set these ordinances in place. She states there are certain elements that maybe the business owners do not completely understand. **Ali Martinez** states she would like to see if the business feels that this would not be a fair process, then the Board could take action to correct the case or not having a fair process or a process that is consistent with state law. **Leonard Call** asks if the hearings are recorded and if they are, could it be reviewed and say, yes, he told him that, or no, he did not tell him that. If that were the case then remanding it back to the hearing officer would not be the correct way. Maybe it would be better to remand it back to the staff to just research and say, did the hearing officer say that this Board could waive the 30-day suspension or not? He states it is not the Board's job to change or interpret the state's code but to verify the process was fair. **Leonard Call** withdraws his motion to remand it back to the hearing officer. Ken Johnson asks if an action has to be taken tonight. **Brandan Quinney** informs the Board no action has to be taken tonight. If there are issues that still need to be resolved and time is needed to consider the issues, the Board can table it for the next meeting. Brandan advises that if that is the motion there is a legitimate reason to table it. It is a legitimate legal argument that needs to be considered not to do it for the sake of delaying the suspension. This just means some matters still need to be resolved and need to be looked into further. **Ali Martinez** clarifies the matter is the communication between the hearing officer and the business owner on the role of the Board in the appeals process. That is a concern with all three business owners the messaging that was received around the role of the Board. **Dr. Lee Schussman** states he wants to be sure that we don't set a precedent that we are changing the penalty or that we are juggling things so that it doesn't occur at an inconvenient time for the business owner because we don't want that precedent. Dr. Lee Schussman would like to remand a decision back to our health department staff so that they examine what the hearing officer said and intended, and then come back to, the Board with their opinion and decision. This would be a legitimate role in checking the process. We not trying to tinker with the statement of the law or be unfair to other business owners, in deference to the person in question. Unless somebody raises their hand and says

otherwise, he suggests that the case be remanded back to the staff to clarify what was communicated to the business owner from the hearing officer to make sure that occurred properly. **Leonard Call** seconds the comment. **Leonard Call** agrees to the comment and would state that by remanding it back to the health officer and staff the process or the communication is very clear about what the appeals process is. What the Board's role is, is so that people coming here understand that the Board is not here to change what's being ordered by the hearing officer or what's ordered by the state law, but only to see that the procedures were followed. This will clarify the process. **Sharon Bolos** comments if the Board feels like the process was not followed or the messaging was not appropriate and, perhaps misleading, then the other two businesses would have the same issue. Sharon states the messaging on all the letters is the same. **Angela Choberka** suggests having some written form given to the business owners stating what the Board's role is. **Brandan Quinney** states there is a state code that establishes that the Board of Health is the appeals authority for a hearing officer's decision. State code does not provide any guidance as to what that means. It does not provide any guidance on what the standard of review would be, whether you are reviewing for the correctness of the application of statutes or whether you are reviewing it de novo which means you're taking the case brand new and the hearing officer never has had a hearing. This is administrative law and a rule has not been created for the health department either. Brian Cowan explains the department has written administrative procedures that are available and outlined in the process. These forms include the language out of our administrative procedures. If they go from a departmental conference to a hearing officer, it is a different form and appropriate language, and a different form for appeals with an appropriate language. There is written communication that takes the party through the process with our department. **Dr. Frank Brown** makes a comment stating the Board does not have discretion in this situation, unlike other programs in the health department. It is concerning that this was a recurring date from the three owners. As a Board, we can look at that and say, we have concerns about what is going on with the process. George has been a hearing officer for a long time and a Board member years ago. He does an excellent job in that position but it is concerning. Brandan states he would be remiss if I did not highlight, Dr. Johnson's comment that you have to consider whether this even changes your result. If we do remand, if the Board chooses to remand, no matter what the decision is, does that change how you would issue this penalty today knowing that a violation occurred? If it does, that cuts against the legitimacy of remanding. **Brandan Quinney** asks the Board to consider as they vote on the motion and states he is not saying it is not an illegitimate motion; it is just something that should be discussed. **Dr. Lee Schussman** comments that he sees now that the messaging is on all of the documentation for the three businesses and may have to withdraw my motion in any case. Dr. Schussman said that he thought that there was a problem in the process right there in that our business owner is saying they received some information and now he is worried that the same information was given to everyone and it wouldn't be fair to the people that the process was upheld. He states he did not realize it was the same sentence. Dr. Schussman states he would like to continue this discussion, and requests to withdraw his motion. **Ali Martinez** comments, that Dr. Johnson asked what would be different in the process. She believes by allowing the business owner to decide and fully understand what the role of the Board is, that is what would be different. Then the

property owner would be able to say, well, if they can only rule on if the process was completed fairly, then they could request to take the 30 days now be done. Versus no, I am still going to request an appeal because the process is not fair, and that would be different, the property owner then can make the best decision for their business. **Ken Johnson** makes a comment stating that the first two cases had a start date and this last case did not and based on that he suggested an arbitrary date. He states this can then be sent back for further review and in the meantime, it does not need to be a motion, but it needs to be clarified in the procedure that this statement of appeal be cleaned up. **Leonard Call** makes a statement that nothing necessarily is going to change other than it is cleaned up and goes back to choice, it was not clear. It affected their right to make an informed decision as to whether they appeal or should they not appeal. This goes back to the original supposition that the job of the Board is strictly to determine if the procedure was correct. The outcome will be the same, but the staff can go back and make sure Mr. Garwood did not make the statement that they could appeal it to the Board. If he did then that needs to be corrected. Also, making sure that Mr. Garwood understands the process of what the Board's job is and makes the change. Just for the future, and hope that this gentleman did not understand because it was not communicated to him what the effect of appealing puts off his suspension till the month before Christmas. Which is material, and might have played into his decision whether to appeal or not appeal. **Ken Johnson** makes a motion that this be remanded back to the hearing officer asking that he come up with a date, that he makes the date an official date of when the suspension should begin, and see that at our next Board meeting. **Brandan Quinney** responds to Ken Johnson that there is a start date and end date on the documentation. The business owner had the opportunity to accept that start date of knowing the violation occurred and not appeal to the Board. Instead, he chose to appeal to the Board, which essentially put that on the shelf until appeals can be resolved. Leonard Call states that the start and end date are not the concern. The concern is if the hearing officer made a misstatement. The staff can then come to the next Board meeting and based on the outcome this will help the practice going forward and there will be clear communication to every appeal to make sure everyone understands what the rules are. **Sharon Bolos** is requesting the same consideration for all the previous businesses. **Brandan Quinney** states with general guidance is as long as the meeting's still open, you can reopen an issue and revisit it the Board can withdraw the old action by motion, and make a new one. He states the meeting is still alive, so the action can be revisited, and a decision be made. Angela Choberka states the process should be the same for all three appeals. Ken Johnson suggest to withdraw the motion and bring all three owners back in January and inform them of the process clean up or make it clear that the Board cannot change anything. A **MOTION** is made by **Jason Boren** and **SECONDED** by **Ken Johnson** to remanded back to the hearing officer's records for clarification on what was communicated to the business owners around the appeal process and the verbiage in the appeal process letter. Roll call is taken all vote aye. The **MOTION** passes unanimously.

Tobacco appeal Midland Market and Cloud Nine

Motion Passes

Ali Martinez suggests a motion to reconsider. A **MOTION** is made by **Ken Johnson** and **SECONDED** by **Cheryl Allen** to reconsider both motions made to remand back to the hearing officer records for clarification on what was communicated to the business

owners around the appeal process and verbiage in the appeal process letter for both Midland Market and Cloud Nine.

Chairs Report- Ali Martinez

Information Only

Ali Martinez requested the remaining agenda items be moved to the next Board of Health meeting on January 22, 2024.

Dr. Lee Schussman has no report
The meeting adjourns at 5:18 pm.

DRAFT

**WEBER-MORGAN HEALTH DEPARTMENT
REQUEST FOR DEPARTMENTAL APPEAL**

Name Trinity Jordan Phone (801) 401-1613

Mailing Address 222 South Main Street, Suite 1830

City Salt Lake City State Utah Zip Code 84101

Statement of the relief of action sought _____

Grant the location restriction exemption to the change of ownership for Tommy's One Stop Smoke Shop retail tobacco specialty license.

Statement of the disputed facts and reasons forming the basis for relief of action
(additional pages may be attached) _____

Please See Attached Pages _____

A departmental appeal may be requested within ten days of completion of a departmental conference or receipt of a notice of agency action. A departmental appeal will be scheduled before the Board of Health within thirty (30) days from the receipt of the request for appeal, unless the parties agree to a later date, not to exceed sixty (60) days from the receipt of the request for appeal.

You may request a copy of the Weber-Morgan Health Department Administrative Procedure Policy. This policy outlines the procedures followed for departmental appeals. All appeals are open to the public. The department will not provide legal counsel and all costs for legal counsel will be the sole responsibility of the parties.

Signature  Date 1/12/2024

Date request received _____ Time _____

Departmental Appeal Date _____ Time _____

Attendees _____

Action _____

Basis for Relief of Action

The current owner of Tommy's One Stop Smoke Shop has complied with all laws and regulations for the legal operation of a retail tobacco specialty business. He would now like to sell this business to a new owner. Because the ownership of the store is changing, the retail tobacco specialty license needs to be updated with the contact of the new owner. After submitting the proper application, providing all necessary information, and paying all required fees, the permit was denied. Even though the business is not changing location or any material functions or services, the new owner was informed that he could not receive the permit due to location restrictions. The current owner is being considered to be exempt from the location restrictions under a grandfather provision of the state statute, however, the Weber County Health Department has stated that a change in ownership would defeat the grandfather status.

This reasoning is a hyper technical and erroneous reading of the statute. Likewise, it does not meet the purpose of recent legislative changes, intending to prevent the sale of tobacco products to minors. Further, the result of this reasoning would be a regulatory taking of the private property of this retail tobacco specialty business requiring just compensation because it would force the current owner to run the business in perpetuity to benefit from his property and not be able to sell the business to others. Davis County and Salt Lake County have not interpreted the statute the same way Weber County. They have allowed the change of ownership of a store to take place and still allow the grandfather exemptions to remain with the store.