

Saugus Board of Selectmen  
February 8, 2011

\*\*\*\*\*MEETING MINUTES\*\*\*\*\*

AGENDA  
Saugus Board of Selectmen  
February 8, 2011 at 7:30 PM  
Town Hall Auditorium  
298 Central Street

- 1.) Call to order.
- 2.) Invited Guests: 0
- 3.) Approval of minutes: January 25, 2011  
December 17, 2009 Executive Session & February 16, 2010 Executive Session
4. Continued hearings: - Melrose Auto Body (from 1/25)  
(Avedisian from 11/30/10 & 12/7/10 to 3/1)  
(Jeff's Place from 1/25 to 3/1)

5. Public Hearings:

7:45 public hearing to amend the Town's Traffic Rules & Regulations ARTICLE IX, Section 8: "Obedience to Isolated Stop Signs" by designating two "Stop" signs on Palmetto Street at the intersection of Desota Street.

7:55 TMC Donuts, Inc. d/b/a Dunkin Donuts, 533 Broadway, for Entertainment License for one television only.

8:00 Hamilton Donuts, Inc. d/b/a Dunkin Donuts, 42 Hamilton Street, for Entertainment License for one television only.

8:05 North Side Donuts, Inc. d/b/a Dunkin Donuts, 86 Broadway, for Entertainment License for one television only.

Correspondence

- 1.) Knights of Columbus re: submission of Beano Report.
- 2.) Blessed Sacrament Stephen Ministry re: request for 1 day Special Beer & Wine License.

Manager's Report  
Member's Motions  
Citizen's Forum

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The Saugus Board of Selectmen met on February 8, 2011 at 7:30pm in the Town Hall Auditorium, 298 Central Street. Present were: Selectmen Scott Crabtree, Stephen Horlick, Michael Kelleher, Michael Serino and the Chairman Donald Wong. The Town Manager Andrew Bisignani was also present.

Invited Guests: None.

Approval of minutes: January 25, 2011

December 17, 2009 Executive Session & February 16, 2010 Executive Session

Mr. Serino moved to approve the January 25<sup>th</sup> minutes. Chair seconds. Vote: 4-0 and 1 abstention by Mr. Kelleher.

Mr. Serino moved to accept the minutes of December 17, 2009. Chair seconds. Vote: 5-0.

Mr. Serino moved to accept the minutes of February 16, 2010. Chair seconds. Vote: 5-0.

Continued hearings: - Melrose Auto Body

Jeffrey M. Loeser d/b/a Melrose Auto Body, for Special Permit (S-2) to allow off street parking and storage of vehicles for sale, to be located at 177 Central Street. Application is also being made for Class II Auto Dealer's License.

Jeff Loeser, 64 Auburn Street, was present and said he is requesting a Class II Auto Dealer's License and would like to speak to some misinformation and explained he is not expanding his business and customers are asking for a service he cannot provide and would like to be able to buy, repair and sell vehicles and said regarding comments at last meeting regarding paint smell and noise that the muffler is still on as it has been since installation and said he had an air quality test conducted because of complaints before and the odors are not coming from his business and said regarding other comments made at last meeting that he has no control over what neighboring businesses do and he did not cut down any trees and said the business has been operating for 47 years, 23 years he has run it and 37 years at this location. Mr. Serino asked how long the muffler was installed. Mr. Loeser said when it was installed around 1999. Mr. Horlick said approximately 10 years ago he received complaint and talked to him about it and a study was done and asked where he would store cars. Mr. Loeser said on the property facing Central Street or inside if being worked on.

Any to speak for or against? Jean Rossi, 11 Hull Drive, lived there for 50 years and still smell paint and hears noise at 8AM to the late evening and more cars will mean more paint smells and more noise and is against it and said last meeting a petition was submitted signed by 18 neighbors.

Mary McKenzie, 9 Hull Drive, against it and said there are continual violations by parking on conservation land and said the odors could cause illnesses and listed some effects to exposure and questioned why he hasn't had any oil leaks because nothing is listed on the DEP website and said she doesn't think the neighbors should have to live with more industry.

Mr. Loeser said there are odors in the neighborhood but he has proven by test the odors are not coming from his building and explained the study conducted with the Town Health Director and explained the noise study was also conducted and the decibels were below and said he is not changing his business and will not increase business and parking on conservation land will not happen again. Mr. Kelleher asked his anticipated increase in painting and repairs. Mr. Loeser said he doesn't anticipate an increase because he can only do so many in a day and it

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would be for a customer or for cars for sale. Mr. Kelleher asked how many more cars will be painted in a year. Mr. Loeser said same as now. Mr. Kelleher asked if he was replacing existing business. Mr. Loeser said no and explained he paints and repairs vehicles and can only do so much in a day so it will not increase activity. Mr. Horlick said this kind of business has cycles when it's busy and when it's slow. Mr. Loeser agreed and said he has 4 employees and paints 4-6 cars a month. Mr. Serino said the Board has approved several licenses allowing a couple of cars and said his permit to operate was issued some 40 years ago with no conditions and he did a site visit and feels there's no way 6 cars and would be agreeable to two cars and said he would like conditions on the auto body business and asked if he would consider conditions. Mr. Loeser said he would agree not to run paint booth at night but some evenings he does have to work until 9pm. Mr. Serino asked when he stops painting. Mr. Loeser said 6pm. Mr. Serino asked if he would agree to restrict use of spray booth from 8am to 6pm. Mr. Loeser said yes. Mr. Serino said the auto body business 8am to 9pm Monday through Saturday. Mr. Loeser said yes and said sometimes customers will drop off at 7am and said he tries to accommodate his customers.

Judy Lubov, 15 Hull Drive, opposed and said if he gets it the cars should be on his property.

Betty Neth, 17 Hull Drive, wanted to be recorded in opposition.

Debra Hart, 10 Fairchild Avenue, asked they limit the number of cars on the property and said most people wouldn't want to hear machines until 9pm.

Mr. Serino said there are no restrictions now and the permit was issued over 40 years ago. Mr. Loeser said he has agreed to give up quite a bit but to not work on Saturdays is quite a request because sometimes he has to work until 9. Mr. Serino said maybe they should continue the hearing so he can work it out with the neighbors. Mr. Horlick said as it stands now, he could withdraw and be able to work until 2am and asked they try to come to an agreement. Mr. Crabtree said he is sensitive to the neighbor's concerns and noted it is an industrial zoned area and the existing license has no restrictions and said maybe this isn't the best forum to resolve and maybe he should consult an attorney and said the neighborhood has a lot to gain if the license holder is willing to give concessions and feels the use will not significantly impact the neighborhood. Mr. Kelleher agreed this is probably not the best forum and should continue. Ms. KcKenzie asked if 5pm-6pm and agree to 2 vehicles and keep off conservation land. Mr. Crabtree said it would be helpful in the future if there's noise to call the police dept. to document. Mr. Loeser asked for two minutes.

Mr. Crabtree moved for recess. Chair seconds. Vote: 5-0.

Meeting recessed at 8:25pm.

The Chair called the meeting back to order at 8:36pm.

Mr. Kelleher moved to table the hearing. Chair seconds. Vote: 5-0.

7:45 public hearing to amend the Town's Traffic Rules & Regulations ARTICLE IX, Section 8:  
"Obedience to Isolated Stop Signs" by designating two "Stop" signs on Palmetto Street at the intersection of Desota Street.

Mr. Kelleher moved to approve the request as recommended by Lt. O'Brien. Chair seconds. Vote: 5-0.

7:55 TMC Donuts, Inc. d/b/a Dunkin Donuts, 533 Broadway, for Entertainment License for one television only.

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Billy Panzini, Marshall Street, North Reading was present for the three Dunkin Donuts hearings and explained he is asking for 2 TVs at TMC and 1 TV at Hamilton St. and 1 TV at North Side.

Any comments? None.

Mr. Kelleher moved to close the hearing. Chair seconds. Vote: 5-0.

Mr. Kelleher moved to grant the Entertainment License for 2 TVs. Chair seconds. Vote: 5-0.

8:00 Hamilton Donuts, Inc. d/b/a Dunkin Donuts, 42 Hamilton Street, for Entertainment License for one television only.

Any comments? None.

Mr. Kelleher moved to close the hearing. Chair seconds. Vote: 5-0.

Mr. Kelleher moved to grant Entertainment License for 1 TV. Chair seconds. Vote: 5-0.

8:05 North Side Donuts, Inc. d/b/a Dunkin Donuts, 86 Broadway, for Entertainment License for one television only.

Any comments? Ray Lawrence, 83 Auburn Street asked if there's any time restriction. Mr. Kelleher said it would be same hours of the business.

Mr. Kelleher moved to close the hearing. Chair seconds. Vote: 5-0.

Mr. Kelleher moved to grant the Entertainment License for 1 TV. Mr. Serino added hours of operation 5am to 11pm. Chair seconds. Vote: 5-0.

Mr. Kelleher moved to take the continued hearing off the table. Chair seconds. Vote: 5-0.

Jeffrey M. Loeser d/b/a Melrose Auto Body, for Special Permit (S-2) to allow off street parking and storage of vehicles for sale, to be located at 177 Central Street. Application is also being made for Class II Auto Dealer's License.

Ms. McKenzie said the neighbors and applicant have agreed to concessions and request 6pm on auto body work. Mr. Serino said he's glad they worked it out.

Mr. Serino moved to close the hearing. Chair seconds. Vote: 5-0.

Mr. Serino moved to grant Special Permit (S-2) to allow off street parking and storage of vehicles for sale, to be located at 177 Central Street and grant Class II Auto Dealer's License with the following conditions: paint booth hours of operation 8am to 6pm Monday through Saturday; auto repairs hours of operation 8am to 9pm Monday through Friday and 8am to 6pm on Saturday; and to allow the sale of vehicles Monday through Saturday 8am to 6pm; limit of two vehicles for sale at any one time; and no parking on conservation land. Chair seconds. Vote: 5-0.

Correspondence

1.) Knights of Columbus re: submission of Beano Report.

Mr. Horlick moved to accept the report and refer to the file. Chair seconds. Vote: 5-0.

2.) Blessed Sacrament Stephen Ministry re: request for 1 day Special Beer & Wine License.

Mr. Kelleher said they have requested to withdraw and apply when they set a new date.

Mr. Kelleher moved to allow petitioner leave to withdraw without prejudice. Chair seconds. Vote: 5-0.

Manager's Report

- recommended the appointment of Eleanor Gallo to the Council on Aging.

Mr. Serino moved to confirm the appointment. Chair seconds.

Roll call vote: Mr. Crabtree, yes; Mr. Horlick, yes; Mr. Kelleher, yes; Mr. Serino, yes; Mr. Wong, yes.

- recommended the appointment of Linda Bolduc to the Commission on Disability.

Mr. Serino moved to confirm the appointment. Chair seconds.

Roll call vote: Mr. Crabtree, yes; Mr. Horlick, yes; Mr. Kelleher, yes; Mr. Serino, yes; Mr. Wong, yes.

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- requested the Board call a Special Town Meeting on March 7, 2011 and read Articles he would like inserted in the warrant and said he is in process of finalizing a street acceptance Article and requested the Board keep the warrant open. Mr. Serino said they may need to insert Charter Articles also and said the Cemetery has an Article regarding the Curley property that was referred to the next Special and should insert that also.

Mr. Horlick moved to call a Special Town Meeting on March 7, 2011. Chair seconds. Vote: 5-0.

Mr. Horlick moved to insert the Town Manager's Articles into the warrant and to leave the warrant open for the Manager until February 17. Chair seconds. Vote: 5-0.

Mr. Serino moved to insert Cemetery Article. Chair seconds. Vote: 5-0.

Mr. Serino moved to insert filling a School Committee vacancy Article into the Special Town Meeting Warrant. Chair seconds. Vote: 5-0.

- said the Belmonte Middle School Renovation Committee met and signed a contract for architectural services for feasibility study and he will be drafting an Article for the Annual Town Meeting for an appropriation for the project and said it is going along and everyone is working together and it looks like it's going to be a very successful endeavor.

- said there was discussion on the integrity of roofs and did receive an advisory to inspect public buildings and did bring in a structural engineer and recommended snow removal in certain areas and engaged a company as well as the Building Dept. personnel and working with the school department, over 2 days got the snow off the roofs.

Member's Motions

Mr. Crabtree: would like to set a budget meeting.

Mr. Crabtree moved to schedule a budget meeting on Feb. 17<sup>th</sup> at 6pm and invite Town Meeting Members, Department Heads and Finance Committee. Chair seconds. Vote: 5-0.

- said the Manager has informed the Board of Sgt. MacDonald's actions in saving a life and would like to invite him in March 1<sup>st</sup> meeting for citation.

The Chair excused himself from the table and Vice Chair Crabtree took the Chair.

- read the findings and order regarding Avedisian: *FINDINGS AND ORDER*

*PROCEDURAL BACKGROUND*

*This matter came on for hearing before the Board of Selectmen (the "Board") as a result of a notice of hearing issued on November 12, 2010 directed to Pamela Avedisian ("Avedisian"), 60 Salem Turnpike, Saugus, MA 01906. The notice of hearing directed Avedisian to show cause on November 30, 2010, pursuant to G.L.c. 138, Section 12 and G.L.c. 140, Section 183A, why its licenses issued pursuant to G.L.c. 138, Section 12 and G.L.c. 140, Section 183A should not be revoked, suspended, modified, cancelled or why additional conditions upon the exercise of the licenses ought not to be imposed. Specifically, Avedisian was directed to show cause that she was not in violation of G.L.c. 138, Section 77 and Section 12A, and Section 1.07 and Section 1.12 of the Town of Saugus Liquor Rules and Regulations for failing to conduct a business and/or use its licenses issued in connection with the business at the location designated.*

*At the hearing on November 30, Avedisian did not appear, but a person, identified as Dustin DeNunzio, purported to appear on Avedisian's behalf. The Board voted to continue the show cause hearing until December 7, 2010, to permit Avedisian to appear at the hearing. The continued hearing was held on December 7, as scheduled, and Avedisian appeared, along with counsel.*

*Based upon the evidence received at the hearing, the Board finds the following facts:*

*FINDINGS OF FACT*

- 1. In March of 2009, the Board approved a transfer of a liquor license to Avedisian for exercise at 60 Salem Turnpike in Saugus.*
- 2. The Board renewed the license at the end of 2009 for calendar year 2010, and at the end of 2010 for calendar year 2011.*
- 3. Notwithstanding Board action, Avedisian has yet to exercise the license and/or conduct business operations at the location at 60 Salem Turnpike in Saugus.*

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4. From the testimony adduced at the hearing, it appears that there was a fire loss at the premises, and that Mass. DEP has conducted an investigation involving activities at the licensed premises.

5. Additional permits from DEP appear to be required for Avedisian to secure permission to commence construction at the licensed premises and DEP may be in the process of commencing an enforcement action against Avedisian.

6. Avedisian appears to have no definitive plans as to how to proceed to secure the necessary permits with which to operate the licensed premises. Representatives of the Licensee represented to the Board that permits would be applied for within 90 days.

7. The Board is extremely concerned about the non-use of Avedisian's license, and is not prepared to sit by idly while the license is not exercised, and may not be capable of being exercised in the foreseeable future.

LEGAL FRAMEWORK

The Board takes note of the following laws and decisions in connection with this matter:

1. G.L.c. 138, Section 77 provides that a licensing authority may cancel a license for non-use.

2. In 1992, the Appeals Court decided the case of Board of Selectmen of Saugus v. Alcoholic Beverages Control Commission, 32 Mass.App.Ct. 914 (1992). In this case, the Appeals Court upheld the determination of the ABCC that a Board decision to not renew a license was, in fact, a cancellation of the license for non-use. The Appeals Court further upheld the ABCC in determining that the Board did not provide the licensee with sufficient notice that its license was subject to cancellation under Section 77 for non-use.

3. Since the Appeals Court decision referenced above was released, the ABCC has developed further policies and procedures regarding a cancellation of a license under G.L.c. 138, Section 77. Most recently, in Turnpike @ Winona, LLC v. Licensing Board of the City of Peabody, decided May 14, 2010, the ABCC enunciated further standards for the cancellation of a license under Section 77. According to the ABCC in Turnpike @ Winona, "It is this Commission's practice to allow the licensee six (6) months from the date of the notice of the risk cancellation to cure the non-use by either operating its premises or filing the appropriate application to transfer the license. . . [T]he time within which the Licensee must act does not begin to run until the Licensee is first put on notice that there is a potential enforcement of Massachusetts General laws chapter 138, §77."

CONCLUSION AND ORDER

Based upon the foregoing, the Board concludes and orders as follows:

1. To eliminate any uncertainty or confusion, this Board unequivocally states that this proceeding involves potential cancellation of the alcoholic beverages license under G.L.c. 138, Section 77.

2. Avedisian is hereby put on notice that, as of the date of adoption of this decision, pursuant to the policy of the current ABCC, she will have six (6) months within which to exercise the license or file an appropriate application to transfer the license to someone who will exercise it for the benefit of the public.

3. The Board shall conduct further hearings to monitor Avedisian's progress, and the next hearing shall be scheduled for March 1, 2011.

4. Nothing in this decision shall prevent the Board from exercising any powers that it may have pursuant to Chapter 138 of the General Laws or the rules and regulations of the Town of Saugus.

Mr. Serino moved to accept the findings and order as read. Vice Chair seconds.

Vote: 4-0. Vice Chair asked it be served in the usual manner.

Mr. Wong returned to the table and resumed the Chair.

- said we have had some issues with License holders and bounced checks and would like to add wording to the notification letter to better enforce and read: *In the event that someone fails to pay for the liquor license, or the check bounces, suggested language: "Be advised that payment [has not been made] or [payment has been returned from the Bank]. Under Mass. General Laws Chapter 138, Section 70, the payment of the license fee is a precondition for the issuance of the license. Under Mass. General Laws Chapter 138, Section 16B, the failure to pay a license fee in a timely manner will cause the forfeiture of the license. In the event that the Town does not receive the required fee, with good funds, within 14 days from the date of this letter, the license will be considered forfeited to the Town, and any interest that you may have had in the license will be automatically at an end. After 14 days without payment, the Board of Selectmen shall have the right to issue the license to another person."*

Mr. Kelleher asked if 14 days would be enough time. Mr. Crabtree said that's what's allowed under the statute.

Mr. Serino moved the Board vote to adopt the language. Mr. Crabtree seconds. Vote: 5-0.

Mr. Serino: asked for update on grant application regarding Elm Street bridge. The Manager said he won't probably hear until May.

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Mr. Horlick: thanked the Manager for addressing his memo of Jan. 28<sup>th</sup> regarding corners and snow banks and checking the buildings and said there's one area on Wildwood Terrace that needs to be addressed.

- said he has received calls regarding snow removal and sidewalks and would like a meeting with the Manager and DPW Director to discuss it. The Board will meet on Feb. 16<sup>th</sup> at 6pm.

- said the Board received a letter from Mr. Decareau and asked the Manager contact him at his convenience to work out the issue.

Mr. Kelleher: asked for overview effect on the budget snow removal has had. The Manager said we have spent over \$600,000 and all the bills aren't in yet. Mr. Crabtree asked if that includes reimbursements. The Manager said no and explained the records are being put together for reimbursement.

Citizen's Forum        None.

Mr. Kelleher moved to adjourn. Chair seconds. Vote: 5-0.

Meeting adjourned at 9:20pm.

Respectfully submitted,  
Wendy L. Reed, Clerk