

Saugus Board of Selectmen
February 17, 2009

The Saugus Board of Selectmen met on February 17, 2009 at 6:00 PM in the Town Hall Auditorium, 298 Central Street. Present were: Selectmen Stephen Castinetti, Stephen Horlick, Michael Kelleher, Peter Rossetti Jr. and the Chairman Donald Wong.

- Nick Nicosia re: request for reappointment as constable.

Mr. Horlick moved to reappoint Nick Nicosia as constable. Chair seconds. Vote: 5-0.

- Theatre Company of Saugus re: re: request for banner.

Mr. Rossetti moved to approve the request. Chair seconds. Vote: 5-0.

Liquor Rules & Regulations

The Board discussed the following:

- Pocket Licenses;
- Capacity;
- Night Club License;
- Outside premises;
- License readers.

Mr. Castinetti moved to recess the meeting. Chair seconds. Vote: 5-0.

Meeting recessed at 6:39 PM.

The Chair called the meeting back to order at 7:00 PM.

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The Saugus Board of Selectmen met on February 17, 2009 at 7:00 PM in the Town Hall Auditorium, 298 Central Street. Present were: Selectmen Stephen Castinetti, Stephen Horlick, Michael Kelleher, Peter Rossetti Jr. and the Chairman Donald Wong. Special Counsel Ira Zaleznik was also present.

Continued hearings:

Mr. Wong excused himself from the table and Vice Chairman Stephen Castinetti took the Chair.

Show Cause Hearing being held under MGL c.138 Section 12 & MGL c. 140 Section 183A and the Town of Saugus Liquor Rules & Regulations and the Town of Saugus Entertainment Rules & Regulations, for the purpose of the possible suspension, modification, revocation and / or cancellation of the of the Entertainment License and the All Alcoholic Beverages License of JLMT Enterprises, Inc. d/b/a Tabu Ultra Lounge and Nightclub, Carl Amato, manager, 168 Broadway and / or any such other action the Board deems necessary or appropriate. Said action is based on police reports submitted to the Saugus Board of Selectmen alleging violation of MGL c. 138 section 64 and violation of Sections 1.12(a)(1), (2), (3) & (5) and Section 1.04(a) of the Town of Saugus Liquor Rules & Regulations and Sections 1.12(a)(2) & (4) and Section 1.04(a) of the Town of Saugus Entertainment Rules & Regulations. Full reports are on file in the Board of Selectmen's Office. The Board will also hear evidence pursuant to the provisions of MGL c. 138, Section 12, sixth paragraph, as to the public need for the licensed premises to remain open until 2:00 AM.

Including Supplemental Notice voted 1/20/09.

Special Counsel noted for the record that Selectman Wong recused himself for the purpose of this hearing and the Board as licensing authority will judge the facts and ultimately reach a decision and it is important the Board has an open mind and willingness to decide and as public figures, statements in the past regarding the licensee, the Board, if not receptive to hearing evidence and has reached a decision in advance, asked the Board Members if any member is closed mind to evidence it is best to recuse themselves from further proceedings. Special Counsel noted no comments offered and said there are a number of legal issues they will be asked to rule on and explained the licensee's position that the incidents that took place in the parking lot are not the "licensed premises" and that in April 2008 the Board the Board considered a show cause and the motion failed and the licensee contends the issue was disposed of at that time and the licensee contends that upon license renewal it wipes the slate clean and said his position is that is not correct and said what the Board will hear tonight the Board will decide if the licensee is conducting business safely for the patrons and public and will hear evidence of a number of calls for police response and a number of violent incidents and arrests and will also hear about the security plans proposed and implemented and said subpoenas were issued to 11 police officers and it is his intention to proceed with the Police Chief and perhaps the list can be pared down.

Attorney Frank Russell was present with Attorney Kate Miele, and owners Joseph Lewis and Mark Trudeau and the manager Carl Amato. Atty. Russell thanked the Board for continuing the hearing and said he believes the evidence will show the license holder complied with the Liquor Rules & Regulations including the Entertainment Rules &

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Regulations and said there are 24 allegations and all but 1 occurred outside and the licensee has cooperated fully with Saugus Police and reports are due to being proactive in summoning the police and contend the incidents prior to JLMT holding the license should be excluded and contend under the Town Rules & Regulations the Board disposed of the matters by denying to hold a show cause hearing and when a vote was defeated to suspend the license and explained his position regarding renewal of license implies they are operating to benefit the community and asked if the Board was willing to discuss the roll back of hours of operation and if they were inclined to remove the option it may eliminate the need for additional time and resources and did informally propose alterations in security, closing plan and asked the Board if they were willing to discuss.

The Vice Chair swore in those to testify.

Special Counsel introduced Police Chief Dominic DiMella. Atty. Russell asked if the Board would view some issues and move on his requests before hearing testimony.

Atty. Russell presented request to preclude police reports from before JLMT took ownership and explained. Special Counsel commented that if those incidents, and disciplinary action was predicated on those, he would agree, but on the other hand, the Board can take evidence for the purpose of background information and suggest the motion be denied without prejudice. Mr. Rossetti said he is inclined not to include if they were prior to this management. Mr. Horlick said the Board can hear evidence and dispose of later. The Vice Chair said he knows they are not responsible for the past, but it was the same security plan and denied the motion without prejudice. Atty. Russell asked if the Chair was to rule on each motion and not a roll call of the Board. Mr. Rossetti said the Chair has ruled in the past.

Atty. Russell presented request that the Board has disposed of the incidents cited based on the vote not to call a show cause in April and on the vote in October to suspend the license and upon renewal of the license and the hearing will cause a double jeopardy. Special Counsel said he disagrees with the interpretation and recommend it be denied. Mr. Rossetti agreed and explained the Board did not dispose of the issues and at the time requested the Police Chief to review and report back to the Board. The Vice Chair also agreed and denied the motion to dismiss.

Atty. Russell presented that the vote of October 21 disposed of incidents and the matter was disposed of. Special Counsel recommended the motion be denied and said the greater importance is what the Board did do, they voted to continue the hearing keeping the issues open. The Vice Chair agreed and denied the motion to dismiss.

Atty. Russell presented that licenses are issued for the calendar year and the Board has the ability to inquire about businesses when they renew the license. Special Counsel suggested the Board deny the motion and explained the "disposed of" language is quite clear. Mr. Rossetti agreed. The Vice Chair said all incidents 2008-2009 not disposed of and denied the request.

Atty. Russell said all but 1 incident happened outside in the parking lot and State Law says "on the licensed premises" and questioned whether the Board can take action and explained the licensed premises is within the 4 walls of the building and said nothing is happening inside and the security plan is working and the Board cannot take away license for outside, they could get a court order for public nuisance etc., but not suspend. Special Counsel said under the Rules & Regulations the licensee is responsible in and around the license premise and if evidence develops other than patrons causing problems,

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yes, but the evidence will show the disturbances were caused by patrons. Atty. Russell said if correct and there is authority for this, and asked before the Board consider, asked would they be willing to discuss what they are willing to do to address security inside and outside. Special Counsel said the need to be productive and have the Board hear the proposals and act as they deem appropriate be presented in open session. Atty. Russell said he is not prepared to discuss in open session. Mr. Rossetti read a section regarding "licensed premises" and said he believes they have the parking lot in the agreement and work with the Chief on security plan. Atty. Russell said the security agreement was developed in executive session and approved in open session. Mr. Kelleher agreed and said 10-15 minutes they will not lose anything.

Mr. Kelleher moved the Board vote to go into executive session in the 1st floor conference room, and to reconvene in open session. Those to be present: Selectmen Stephen Castinetti, Stephen Horlick, Michael Kelleher and Peter Rossetti; Special Counsel Ira Zaleznik; the Police Chief Dominic DiMella, Attorney Frank Russell, Attorney Kate Miele, principals Joseph Lewis and Mark Trudeau and their clerk Wendy Reed. Vice Chair seconds. Vote: 3-1 with Mr. Horlick voting in opposition.

The Vice Chair called the meeting back to order said their clerk asked for clarification of vote.

Mr. Kelleher moved the Board vote to go into executive session for the purpose of possible settlement of pending litigation, in the 1st floor conference room, and to reconvene in open session. Those to be present: Selectmen Stephen Castinetti, Michael Kelleher and Peter Rossetti; Special Counsel Ira Zaleznik; the Police Chief Dominic DiMella, Attorney Frank Russell, Attorney Kate Miele, principals Joseph Lewis and Mark Trudeau and their clerk Wendy Reed. Vice Chair seconds.

Roll call vote: Mr. Kelleher, yes; Mr. Rossetti, yes; Mr. Castinetti, yes. Vote: 3-0.

The Board entered into executive session at 8:24 PM.

The Board reconvened in open session in the auditorium at 8:56 PM.

Mr. Kelleher moved to take advice of Special Counsel to continue the hearing for two weeks to work through several legal issues in hopes to avoid lengthy hearing. To continue the hearing to March 3 at 7PM. Vice Chair seconds. Mr. Rossetti speaking on the motion said for the first two hours the Board has dealt with administrative details and a number of legal issues are to be discussed and worked out. Vote: 4-0.

Mr. Kelleher moved to adjourn. Vice Chair seconds. Vote: 4-0.

Meeting adjourned at 9:00 PM.

Respectfully submitted,
Wendy Reed, Clerk