

Saugus Board of Selectmen
March 23, 2010

The Saugus Board of Selectmen met on March 23, 2010 at 7:00PM 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 Chair called the meeting to order and said he will abstain from the following hearing and excused himself from the table. Vice Chairman Scott Crabtree took the Chair.

The Vice Chair announced an all alcoholic beverages license is available and the Board will set policy on how to handle applications. Mr. Serino said past practice is the Board will announce availability of a license and contact any on the list of interested parties and suggest hearings be scheduled on May 4, feeling April 20th would not be enough time. The Vice Chair said applicants submitting early should waive the hearing notice time requirement and schedule all hearings on May 4th, an announcement put in the papers and deadline for applications set for April 13th.

Mr. Serino moved the Board place announcement of available all alcoholic beverages license in the local newspapers with deadline of April 13th for applications and to schedule hearings on May 4th with condition the applicant waives hearing notice time requirement. Mr. Horlick added notice be put on cable also. Vice Chair seconds motion as amended. Vote: 4-0.

Mr. Serino said the Board has license renewal application for seasonal Beer & Wine Common Victualer's at Cedar Glen.

Mr. Serino moved the Board vote to renew for 2010 the seasonal Beer & Wine and Common Victualer's License of Cedar Glen Golf. Vice Chair seconds. Vote: 4-0.

Mr. Serino announced the Saugus High School Hockey Cheerleaders won.....

Mr. Serino moved the Board invite them in to the April 20th meeting. Vice Chair seconds. Vote: 4-0.

Mr. Horlick said he was unable to make the last meeting and thanked everyone that called, sent cards, e-mails and said he appreciates the fundraiser and what the community has done for him and said this is what the community is all about and thanked all of Saugus. Mr. Kelleher said he agrees 100% Saugus is one of the greatest communities and is proved in this case that we take care of each other and said he is glad to see Mr. Horlick back. Mr. Horlick thanked the Manager for keeping in contact with him and keeping him abreast of what's going on and thanked the Board for keeping him informed and said he will be here on March 30th. Mr. Serino welcomed him back and said working with Mr. Horlick, that he has seen that he has Saugus' interests at heart. Mr. Crabtree also welcomed him back and said he is glad he is feeling better and reminded the public of Steve's event tomorrow and anyone that wants to come by the Yacht Club is welcome to come celebrate his recovery.

Continued hearings: JLMT Enterprises re: Mobil on the Run;
JLMT Enterprises re: operating without proper licenses;
Mezzanotte, LLC re: operating without proper licenses.

Attorney Frank Russell, 11 Dartmouth Street, Malden representing attorney was present and said last week he submitted proposal and the Board has taken under advisement and today he sent in addition to the documents provided, a signed offer from a restaurant and noted the sale excludes the lounge and sound equipment and understands it's a 1AM license and will be before the Board with transfer application and asked the

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Board consider proposal. Vice Chair asked if the Board Members had opportunity to look at agreement and offer and review materials.

Mr. Serino moved for a recess. Vice Chair seconds. Vote: 4-0.

Meeting recessed at 7:19PM.

Vice Chair called the meeting back to order at 7:28PM.

Vice Chair said he allowed time for Board Members to look at the proposal and thanked them for trying to work things out in the best interest of the community and said he looked at the offer and is leaning toward going forward with show cause hearings while it is fresh in mind for those to testify. Mr. Horlick said as he said last week he thinks the Board should go forward with the hearings and make decision and they can still discuss proposal after.

Mr. Horlick moved the Board continue with the show cause hearings. Mr. Serino said the Board shouldn't be discussing proposals at this time and would rather continue with business. Atty. Russell asked if he could have 5 minutes to discuss with his client if the Board intends to go forward with the hearings. Mr. Kelleher agreed the Board should go forward with hearings at least to some point.

Mr. Kelleher moved for a recess. Vice Chair seconds. Vote: 4-0.

Meeting recessed at 7:32PM.

Meeting was called back to order at 7:38PM.

Atty. Russell thanked the Board for opportunity to speak with his client and if the Board wants to continue to proceed they will in good faith, hope to resolve things and said the business is closed and a proposed business was submitted and said he wouldn't think the memory of trained professionals would fade and feels the police are going to remember 6 months, a year later and respects the Board's wishes and will leave offer on the table. Vice Chair said his witnesses are not trained professionals and feels there is unfinished business and the Board voted to go forward with the hearings at this time and said he is please there is an offer and is receptive to that.

Vice Chair said the Board will hear opening statements and then he will swear in those to testify and explained those that want to speak will be subject to cross examination and said this is different than a public hearing and the public will not be allowed to weigh in on speaking in favor or in opposition.

Special Counsel Ira Zaleznik was present and gave opening statement that there are 2 principal issues raised, 1.) Whether or not the licensee permitted disorder, disturbance or illegality in or around licensed premise relating to incident of altercation including discharge of firearm at Mobil on the Run and question focus on whether or not licensee knew trouble was brewing, step in to intervene, in what became a violent altercation which is different than if it happened in licensed premise and the Board will hear something happened in the nightclub and culminated into shots fired at Mobil on the Run and said the second issue 2.) Mezzanotte and JLMT, another set of facts will be presented and will be up to the Board to determine those facts and said in mid January Mezzanotte sent notice they were foreclosing on pledge and explained the pledge was a type of security interest and it's undisputed and said the same notice indicated intention of Mezzanotte to continue operation under existing licenses and counsel for the ABCC issued opinion that foreclosure doesn't empower them to operate and after opinion in fact JLMT continued to operate and said license inspections by police officers it appeared Frank Amato & Carl Amato were in charge, and said Carl Amato is manager of record

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for JLMT and Frank Amato is principal of Mezzanotte and not JLMT and it will be up to the Board to determine in fact the security holder, Mezzanotte, in fact took over operation under JLMT or if JLMT resumed operating the premises.

Atty. Frank Russell gave opening statement that in respect to the disturbance at Mobil on the Run, it is obvious the licensee is not in control or responsible for what occurs on the other side of the highway and said this case is different from other cases where the Board considered whether issues in the parking lot were violations, here the disturbance took place in a remote location and can't control and the evidence will be a single statement that a male grabbed the arm of a female and the disagreement was broken up by security staff and they left the premises peacefully and what happened up the road has nothing to do with the conduct of the license holder and said it was unfortunate, but they can't control or be held responsible for it and said regarding operating without proper licenses, the evidence will show at the time of foreclosure he notified the Board and spoke with Special Counsel and they had a conference call with ABCC general counsel that educated both and issued written opinion and he also notified the Board the licenses would be exercised by JLMT even though Mezzanotte had control of the lease and allowed JLMT to operate and did furnish documents that show everything was done under the manager of record Carl Amato and said the evidence will show they did what was agreed upon to pay down debt and respect the inquiry and said JLMT has continued to operate until Tabu voluntarily closed.

Vice Chair said he has been through the packet and asked if there is a document in reference to foreclosing. Atty. Russell said yes dated 1/2/10. Special Counsel read and said that followed by letter dated 1/14/10 and introduced packet presented by attorney Russell today and marked as "Exhibit 1".

Vice Chair swore in those to give testimony.

Vice Chair said the Board will hear Dec. 13 issue first. Atty. Russell said he is willing to stipulate to the facts as stated in police reports. Vice Chair said the Board discussed that last week and said the Board may have questions. Special Counsel submitted notice of hearing with attached please reports as "Exhibit 2".

Special Counsel called Det. Forni: Detective Frederick Forni, SPD was present. Special Counsel asked if investigation 09-1999-OF was his report of investigation. Det. Forni said yes. Counsel asked he briefly described what he investigated. Det. Forni said it is still an active investigation and will discuss in broad terms not to jeopardize investigation and said an altercation took place, shots were fired and evidence obtained and evidence that the incident was precipitated from an earlier incident at Tabu. Counsel asked if happened inside or outside. Det. Said outside. Counsel asked if incident at Tabu got physical inside. Det. Said yes. Counsel asked if captured on surveillance tape. Det. Said yes. Counsel said photographs were submitted and asked if from that tape. Det. Said yes. Counsel asked after viewing the tape if a battery took place. Det. Said yes. Counsel asked what he found. Det. Said it was a metal magazine stand used to strike the victim. Counsel asked if the victim had 2 friends with him. Det. Said yes. Counsel asked how many were involved in assault. Det. said several, estimated at a dozen. Counsel asked if those people got out of a Hummer. Det. Said the main combatants got out of a caravan. Counsel asked how he made determination they were at Tabu. Det. Said it was confirmed through interviews. Counsel asked if found on surveillance tape. Det. Said yes. Counsel

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asked if he reviewed the tape. Det. Said yes. Counsel asked what he found. Det. said it confirmed the victim and combatants were patrons. Counsel asked if he determined when the victim and combatants left and when they arrived at Mobil on the Tun. Det. said according to the tape the victim left at 1:48AM and the combatants left at 1:42AM. Counsel asked if they left roughly simultaneously. Det. said yes. Counsel asked during his interview what he learned. Det. said the victim and female friend were in the club and the female was approached by a male and the victim interceded and a verbal heated exchange in presence of security staff. Counsel asked if he interviewed security staff. Det. said no. Counsel asked if he requested to. Det. said he asked for employee list and did receive that, but did not receive list of security staff. Counsel asked name of security company. Det. said he wasn't sure. Counsel asked if the investigation disclose that the argument got heated. Det. said yes. Counsel asked what did he learn. Det. said a second encounter in the parking lot when the victim left and was followed. Counsel asked if employees witnessed what happened in the lot. Det. said he didn't know. Counsel asked what type car the victim left in. Det. said Mercedes sedan. Counsel asked who was with him. Det. said 2 in his car and was followed by vehicle with 3 occupants. Counsel asked what kind of vehicle. Det. said he would need to refer to report and said he doesn't see it noted. Counsel asked if assailants were in a minivan. Det. said yes. Counsel asked if he saw it when they were stopped at the toll booths on the Tobin Bridge. Det. said yes. Counsel asked how many were in it. Det. said 6. Counsel asked if there was another car. Det. said there was, but not during the stop. Counsel said in report on page 3 and read and asked if he was ever able to identify member of security staff. Det. said no. Counsel asked prior to this he has come to show cause hearings. Det. said yes. Counsel asked if he recalled the head of security testifying. Det. said yes. Counsel asked if based on description if it was him or someone else. Det. said someone else. Counsel asked if because of his height. Det. said yes. Counsel asked if security person was on video. Det. said yes. Counsel asked if he was in pictures. Det. said no. Counsel asked if criminal charges are still pending. Det. said this is still an open investigation and charges will be filed.

Vice Chair asked while investigating he asked to be provided a list of security staff and it was never provided. Det. Forni said he asked for video surveillance tape, club employee list, not security staff.

Attorney Russell asked if investigation is still open. Det. Forni said yes. Atty. asked why it's still open. Det. said he doesn't want to say at this point other than investigation is not complete. Atty. asked if determination still needs to be made as to cause. Det. said yes.

Special Counsel called Det. Moynihan. Det. Sean Moynihan, SPD was present.

Special Counsel asked if he was involved in the investigation. Det. Moynihan said yes. Counsel asked if he wrote a report. Det. said yes. Counsel asked what his assignment was that night. Det. said overtime patrol and was assigned to front desk at the station. Counsel asked after reports of shots fired if he responded to the scene. Det. said yes. Counsel asked if he interviewed people. Det. said he did. Counsel said his report indicates he spoke with Lopez. Det. said correct. Counsel asked if interviewed at hospital. Det. said yes. Counsel asked if he said where he was prior to the incident. Det. said yes. Counsel asked where. Det. said Tabu and read from report. Counsel said report references

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he was hit by a car, a gold Mercedes and asked if he made a determination who was in it. Det. said the victim of the assault. Counsel asked if he was hit by it. Det. said yes that Lopez said he was struck in the leg. Counsel asked based on that was it before or after shots fired. Det. said he believes it was after. Counsel asked if he made a determination if Lopez was involved in the shooting. Det. said he did not. Counsel asked if he reviewed video at Tabu. Det. said no, but did review video at Mobil on the Run. Counsel asked if he saw Lopez on it. Det. said yes. Counsel said at the end of his report he stated he gave Mr. Lopez his card and said he could contact him and asked if he had. Det. said no. Counsel asked if he has spoken with him. Det. said no.

Attorney Russell said bottom of first page of report he spent the night at Tabu. Det. Moynihan said correct. Atty. said he didn't mention disturbance at Tabu. Det. said he stated and read from report. Atty. said he didn't mention altercation in the club. Det. said no.

Vice Chair asked if he seemed responsive and if considered him cooperative. Det. Moynihan said no, he was not forthcoming and was uncooperative.

Special Counsel called Lt. Giorgetti. Det. Lt. Ronald Giorgetti, SPD was present.

Special Counsel said on December 13, 2009 he received a call to respond to a shooting and asked if he was home at the time. Det. Lt. Giorgetti said yes. Counsel asked if he arrived to assist with investigation. Lt. said yes. Counsel said he has a 4 page report. Lt. said yes. Counsel asked if the incident that evening if he participated in traffic stop of a gray caravan on the Tobin Bridge. Lt. said he preceded there after the stop was made. Counsel asked who made the stop. Lt. said Officer Cash and other Saugus police. Counsel asked if he spoke with the occupant. Lt. said yes. Counsel asked what was told of the incident. Lt. said at the Mobil on the Run shots were fired and they didn't witness who discharged. Counsel asked after vehicle was secured if he went back to Mobil on the Run. Lt. said yes. Counsel asked what he found there. Lt. said he was updated on status and located spent shells casings. Counsel asked if found any other evidence. Lt. said recovered a belt buckle. Counsel asked if number of casing was consistent with witness statements. Lt. said no, several witnesses said 3 shots were fired. Counsel asked if their search found 2 casings. Lt. said correct. Counsel asked if he reviewed video tape. Lt. said yes with Det. Forni. Counsel asked if the individual was at Tabu earlier. Lt. said yes. Counsel asked who conducted interview. Lt. said Det. Forni.

Attorney Russell asked if the shooter was identified. Lt. Giorgetti said no. Atty. asked if not identified how did he know the shooter was at Tabu. Lt. said based on eye witness reports. Atty. asked how many individuals involved in Mobile on the Run incident. Lt. said a minimum of 6. Atty. asked which video surveillance he identified from. Lt. said Mobil on the Run. Atty. asked if referred to individual in photograph. Lt. said from the still photo compared to video from Tabu. Atty. asked if he reviewed footage. Lt. said yes. Atty. asked what he saw. Lt. said the person identified entered the establishment and exited. Atty. said there are names of individuals in report and asked if suspects are listed. Lt. said yes. Atty. showed list and if it was the list of suspects. Lt. said yes. Atty. asked which was identified from. Lt. said photograph. Atty. said without looking at the photo asked if the 6th can't be named because not sure was there or not sure of individual. Lt. said he cannot definitively say. Atty. asked how they put name with photos. Lt. said identified in regular photo and matched to tape by appearance and

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clothing. Atty. asked if he spoke with detail officers. Lt. said no. Atty. asked if anyone spoke with detail officers. Lt. said no. Atty. said there's no reference to them in reports. Lt. said no. Atty. asked who they were. Lt. said Officer McCarthy and Officer Wells. Atty. asked reason why investigation remains open and if it was because there weren't reports from them. Lt. said no. Atty. asked if relevant. Lt. said if they observed something they would have reported it.

Vice Chair asked if he had conversation with detail officers. Lt. Giorgetti said he did not personally speak with them. Mr. Serino asked why the attorney didn't bring the officers in tonight. Atty. Russell said it's not on him. Vice Chair said it is and said the hearing notices states he must show cause reason the Board should not take action. Mr. Kelleher asked if the detail officers were not on duty but working private detail. Atty. said correct they were requested by establishment.

Atty. Russell asked if victim or combatants knew each other prior to the incident. Lt. Giorgetti said the groups live in general vicinity of each other. Atty. asked if they indicated a prior disagreement. Lt. said not to his knowledge. Atty. asked if he interviewed security staff at Tabu. Lt. said no. Atty. asked if witnesses described altercation at Tabu. Lt. said no. Atty. asked if Tabu has any control of what happened at Mobil on the Run. Lt. said the question is vague.

Vice Chair asked if he investigated disturbances in the past. Lt. Giorgetti said yes. Special Counsel said he was asked if there were prior disagreement and he said not aware of any and asked in his investigation did individuals that live near each other have any gang affiliation. Lt. said Federal, State and local law enforcement are investigating and some individuals do assemble as what could be referred to as a gang. Counsel asked if one gang. Lt. said with ties to one location in Boston. Vice Chair asked if he was aware of security staff that had come before the Board in the past. Lt. said he has had past dealings with security manager. Vice Chair asked if aware of his testimony and if familiar with his expertise in gang members. Lt. said yes. Mr. Serino asked if he knew of any that are frequent visitors of Tabu. Lt. said based on interviews at least one is a frequent visitor of Tabu.

Special Counsel called Sgt. Paul VanSteensburg. Sgt. Paul VanSteensburg SPD was present. Special Counsel asked if he was involved in investigation. Sgt. VanSteensburg said no. Counsel asked in his work if he makes inspections of liquor premises. Sgt. Said yes. Atty. Russell said he thought the Board was splitting the 2 hearings. Vice Chair agreed and asked Sgt. To step down at this time.

Special Counsel called the Chief. Saugus Police Chief Dominic DiMella was present. Special Counsel asked if he had opportunity to review reports. Police Chief DiMella said yes. Counsel asked if he had opportunity to speak with officers involved. Chief said yes. Counsel asked if he was up to date on the status. Chief said yes. Counsel asked based on his knowledge of precipitating events inside Tabu, was the practice or procedures on the part of private security in the situation. Chief said when an altercation, disturbance or argument occurs usually one is brought out before the other leaves so they don't meet up outside. Counsel asked what is needed is separation. Chief said correct. Counsel asked what should've taken place. Chief said maybe inside, one was not taken out and they ended up in the parking lot and more words were exchanged. Counsel asked what the licensee could have done to prevent meeting at Mobil on the Run. Chief said at the establishment made sure one was gone before the other left. Counsel asked based on

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information the assailant followed them out. Chief said he looks at it as continued events, an incident inside, words outside and erupted at Mobil on the Run. Counsel asked if he liked to add anything. Chief said how he sees it as continued events and look at the timeline.

Vice Chair said procedures on how to handle is to talk, separate and agree time will also defuse a situation. Chief said yes. Vice Chair asked if in the past he met with license holder in attempts to improve security. Chief said yes and with previous owners and explained some changes. Vice Chair asked if he was familiar with security. Chief said yes. Vice Chair asked if he had conversations with him. Chief said yes. Vice Chair asked if there was something he should have done. Chief said had professional certificate and believe he would have known how to handle it. Mr. Horlick said the head of security said he breaks it up and in the past he testified he would separate individuals and if they had an incident inside the 2 detail officers could tell them to leave correct. Chief said correct. Mr. Horlick said with the minimum amount of security and said it bothers him we don't know how many security were there and don't know if it was enough. Chief said they never got the list. Mr. Horlick said it's going on 2 ½ months. Chief said since December 13.

Attorney Russell asked if Tabu provided video. Police Chief DiMella said yes. Atty. asked if police asked for security personnel list. Chief said yes. Atty. asked if he understood that security is not employed by JLMT. Chief said yes. Atty. said they are employed by a private company and are not licensed to sell alcoholic beverages. Chief said correct. Atty. asked if he is questioning the level of security that night. Chief said he doesn't know. Atty. asked if the detail officers know. Chief said most likely they do. Atty. asked in his experience if they should have been interviewed. Chief said he spoke with one and he didn't see anything. Atty. asked which officer. Chief said McCarthy. Atty. asked if he issued report. Chief said no. Atty. asked when he spoke with him. Chief said half hour ago. Atty. asked if reason he believes they were not at agreed upon staffing levels. Chief said the incident would have been spotted and individuals followed. Atty. asked if fight inside in report. Chief said no. Atty. asked if there was a fight inside. Chief said it was called an argument. Atty. asked the only indication that connects them was a male grabbing arm of a female. Chief said he cannot say. Atty. said it was broken up by bouncer. Chief said correct. Atty. said separation took place and report indicates Valdez left at 1:42 and then the victim left 6 minutes later. Chief said correct. Atty. asked if he agrees the victim left last. Chief said correct. Atty. asked reason to believe the victim would exit if in fear of safety. Chief said he didn't know. Atty. said it doesn't make sense and asked if Tabu staff had any reason to believe it was not resolved. Chief said time line is clear, altercation inside, verbal outside and incident at Mobil on the Run. Atty. asked time incident when female arm was grabbed occurred. Chief said end of night, did not see the time. Atty. asked if he agreed Tabu security plan exit at 1:30. Chief said not sure. Atty. asked if the end of night was 1:30 or before. Chief said yes. Atty. asked assuming the plan was followed they were almost 15 minutes inside without incident. Chief said 6 minutes. Atty. asked if outside they were in a group that left first. Chief said correct. Atty. said at 1:48 the woman and boyfriend left. Chief said right. Atty. asked if they should have waited. Chief said yes until off the premises. Atty. asked how many on the property. Chief said he didn't know.

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Vice Chair asked if he had security to ask some of these questions. Attorney Russell said no.

Atty. Russell asked about disturbance outside. Police Chief DiMella said looks gestures between them. Atty. asked of looks at each other. Chief said they were still angry at each other. Atty. asked if argument. Chief said the bouncer moved in. Atty. asked in the parking lot. Chief said in the parking lot were words, gestures and looks. Atty. asked if he doesn't know what happened in the parking lot why claim Tabu should have done to prevent. Chief said an arm was grabbed inside to words outside and Mobil on the Run and should have got one party off the property before the other left. Atty. said if altercation in parking lot details would have reported it and asked if he has dealt with Mr. Lewis and Mr. Trudeau. Chief said yes. Atty. asked if there was a sign of altercation inside security would notify detail officer. Chief said yes. Atty. asked if grabbing of the arm may not rise to the level of concern. Chief said possibly.

Vice Chair asked if he new if security was pushing patrons out the door. Police Chief DiMella said not in report. Vice Chair asked if altercation inside if 6 minutes was adequate. Chief said depends on parking lot clearing out. Vice Chair asked based on individual argument inside in his opinion is 6 minutes adequate. Chief said not. Mr. Serino asked according to the video were they followed out. Police Chief DiMella said yes within minutes. Mr. Serino asked if possible or was there evidence the attackers waited and followed them. Atty. Russell objected. Vice Chair said the question is fair. Chief said it's possible. Vice Chair asked if security followed parties as they left. Chief said no.

Mr. Kelleher said testimony of 3 officers and the Chief he has no doubt originated at Tabu and asked if could move on to next. Vice Chair asked Special Counsel if any other witnesses. Special Counsel said he has concluded witnesses on Mobil on the Run incident.

Attorney Russell said he had no witnesses. Vice Chair said there're a lot of questions regarding security. Atty. said it's not his job to establish a violation and the Town has not met the burden. Vice Chair said the burden is on him and he was given notice stating so.

Special Counsel in closing said the evidence presented and testimony are sufficient for the Board to find there was a violation and the licensee did allow disorder, disturbance on the licensed premise, that an altercation took place in the club, an altercation took place a short time after they moved outside words were exchanged in the parking lot followed by cars meeting up at Mobil on the Run with violent assault and discharge of firearm, the licensee asks what could they do when in fact it is the responsibility of the licensee when an incident takes place to make sure violence doesn't escalate, if assailants waited to exit might break the chain of events not evidenced here, the evidence shows they left 6 minutes apart words and gestures and down the road an extremely violent incident and evidence indicates in part gang related and head of security testified in the past he was sensitive to gang issues and said it's a last of violent incidents over a period of time, not the first time.

Vice Chair asked if they had someone to witness, to testify. Attorney Russell said no.

Attorney Russell in closing said there is absolutely no evidence, no question that Mobil on the Run extremely violent and not to be tolerated, only evidence indicates the

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license holder did not permit disorder inside the premises, that the incident was immediately broken up and no further incidents took place inside the club that 2 detail officers were on duty and past practice would be they would be notified, no fight, was resolved, nothing illegal occurred inside, yet there were 12 involved at Mobil on the Run, the license holder had no reason to foresee 12 people embroiled in assaults and not logically follow a benign incident inside to what happened down the road, they left first, in report thought it was resolved the victim felt safe to leave, 2 detail officers and incident in parking lot was not an incident, no information no one saw anything, disturbance that night suggesting the club did or could have prevented and suggested they know each other and asked where you draw the line and don't dispute the facts what could they do to stop this, the licensee has to comply but the Board hasn't called Mobil in, but blame on license holder when nothing would have prevented it.

Mr. Kelleher moved to close the record of evidence. Vice Chair seconds.

Vote: 4-0.

Mr. Serino moved a recess. Vice Chair seconds. Vote: 4-0.

Meeting recessed at 9:40PM.

Meeting was called back to order at 9:57PM.

Vice Chair said the Board will move on with other two hearings before comments or discussion and asked combine them. Special Counsel agreed to combine the two hearings on operating without proper licenses and submitted the documents produced by Atty. Russell as "Exhibit 1" and police reports as "Exhibit 2" and the documents submitted by the Health Department offered as "Exhibit 3". Vice Chair said the Board did receive the requested documents and asked if they did not receive any or if any were missing from the request. Special Counsel said there were 8 categories of documents requested and read list with Attorney response and noted no bank resolution on escrow account. Attorney Russell said there are none and said he gave the Board all information they had on it.

Special Counsel called Sgt. VanSteensburg. Sgt. Paul VanSteensburg SPD was present. Special Counsel asked his rank. Sgt. VanSteensburg said Sergeant. Counsel asked if he was assigned as patrol supervisor on 5-1 shift. Sgt. Said yes it's called that but it's really 4:30-12:30. Counsel asked if he inspected premises. Sgt. Said yes on 3 occasions. Counsel asked if reports. Sgt. Said yes in some capacity. Counsel asked if he conducted inspection on January 15. Sgt. Said yes. Counsel asked what he saw. Sgt. Said he spoke with Carl Amato the manager. Counsel asked if he saw liquor license. Sgt. Said yes. Counsel asked who showed it to him. Sgt. said Carl Amato. Counsel asked if anyone else. Sgt. Said Frank Amato was in the office. Counsel asked if Frank Amato was in the office or accompanied him. Sgt. Said was in the office. Counsel asked in his report in speaking with Mr. Amato was that Carl or Frank. Sgt. Said Carl Amato. Counsel asked on any of his visits if he saw Mr. Lewis or Mr. Trudeau. Sgt. Said no. Counsel said he reported operating in good order, no violations. Sgt. Said yes. Counsel said his next visit was on February 5. Sgt. Said correct. Counsel asked if he conducted inspection. Sgt. Said yes. Counsel asked in his report he spoke with Carl Amato. Sgt. Said correct. Counsel asked if he asked Carl Amato about Frank Amato. Sgt. Said yes. Counsel read from report and asked if he saw Mr. Lewis or Mr. Trudeau. Sgt. Said no. Counsel said 3rd visit was February 20. Sgt. Said correct. Counsel asked if he inspected the premises. Sgt. Said yes. Counsel asked if he observed food service. Sgt. Said correct. Counsel asked if he

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spoke with Carl Amato. Sgt. Said he did. Counsel asked if Frank Amato was present. Sgt. Said he did not see him. Counsel asked if Mr. Lewis was there. Sgt. Said he did not see him. Counsel asked if Mr. Trudeau was there. Sgt. Said he did not see him. Counsel asked if he was familiar with Mr. Lewis and Mr. Trudeau. Sgt. Said yes they are the previous owners. Counsel asked if he was referring to JLMT Enterprises, Inc. Sgt. Said yes. Counsel asked in his knowledge that JL & MT stood for Joe Lewis and Mark Trudeau. Sgt. Said he didn't know but it makes sense. Counsel asked prior to January 2010 if he worked paid details. Sgt. Said yes. Counsel asked when he did who the owners were. Sgt. Said Mr. Lewis and Mr. Trudeau. Counsel asked if they were always present with exception to January and February inspections. Sgt. said in the past, yes.

Attorney Russell asked who requested he ask the manager on duty. Sgt. VanSteensburg said the first time on January 15 he took it upon himself because her heard they were closed. Atty. asked if he met Carl Amato. Sgt. said he did. Atty. asked the name of the manager appointed by the Selectmen. Sgt. said yes the name on the license. Atty. asked if he examined the license. Sgt. said yes. Atty. asked if he was familiar with requirement the manager be on premise 40 hours a week. Sgt. said no. Atty. asked if he was familiar with MGL chapter 138. Sgt. said no. Atty. asked what his duties are. Sgt. said to oversee day to day operations. Atty. asked if it's a requirement the owners be on premise. Sgt. said he doesn't believe so.

Vice Chair asked if the Amato's inferred they were owners at the time of inspection. Mr. Serino said the police are agents of the Board and they do inspections.

Special Counsel said he had no more witnesses. Atty. Russell said he will rely on documents presented and cross examination of Sgt. VanSteensburg.

Special Counsel said a number of documents were introduced as evidence and looked at by the Members of the Board and sequence of events are undisputed that an effort was made to declare default, foreclosing party contends foreclosure was suspended or rescinded and back in the hands of JLMT and did in fact owner / operator go back or remain in the hands of Mezzanotte, evidence of bank accounts labeled escrow used to recover money to pay bills and don't see operating agreement, no agreement to disperse funds, and if in fact foreclosure was rescinded or reversed he would expect to see something regarding control of funds and the manager was the same for Mezzanotte and after transfer to JLMT remained as manager giving the ability to say JLMT not Mezzanotte was operating and some difficulties to note for consideration are absence of documents expected to see in circumstances and one menu and was a report on one day there was no food service and the application to the Board of Health states Frank Amato as owner and service agreement for JRM Hauling signed by Frank Amato and testimony Lewis & Trudeau were not on the premises after January 2010 and were on premises prior to that time and suggest evidence is sufficient for the Board to infer a change of ownership and operation of the club at that time and operation was conducted by Mezzanotte and said the position of the ABCC was clear that pledge did not authorize operation of holder of pledge without approval of the Board and ABCC and evidence transfer of control and the Board is authorized to take action.

Attorney Russell said it's a shame misleading the Board and said Counsel was involved every step of the process and in fact prior to notifying he spoke with Counsel and told him and suggested to notify the Board and ABCC and did that same day and had a conference call with ABCC who advised they could not operate without transfer and to

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apply and did and withdrew application last week and indicated JLMT could operate and read from 1/14/10 letter.

Vice Chair asked if he had a document sent between Mezzanotte and JLMT regarding foreclosure. Atty. Russell said it's consistent with testimony. Vice Chair said he didn't see a document regarding the change. Atty. said no document and explained foreclosure was never rescinded and continued with JLMT operating and agreed to establish a separate escrow account to pay bills and have represented consistently and in the packet see what he describes and said the only question came from initial correspondence and that was changed that day after conference call and have been up front about what they're doing and voluntarily closed and records indicate Carl Amato remained manager and explained this is not an issue where foreclosing party sends notice and so was not rescinded and sent letter dated 1/20/10 and can't stress enough they have been straight forward with counsel, the Board and the ABCC and no operation by anyone other than approved license holder. Vice Chair asked if his clients are willing to testify. Atty. said they don't need to the documents speak for themselves. Vice Chair said it would be helpful if they answered questions. Atty. said all records are in front of them. Special Counsel said the only thing clear from the outset is all conversations he had he was not in position of authorize and did listen and submit to the Board of no operation pending submitting and receiving approval of the Board of transfer application and the question to be determined is are things operating at face value or are different things going on and if JLMT operating then Lewis & Trudeau would be present and when this happened they were not present and Frank Amato was present and asked the Board consider all the evidence in totality and what they don't have and said make a determination. Atty. Russell said to remind the Board JLMT is closed, Tabu is closed and said they had an escrow account and explained at the time to pay debt and made sense to operate to pay debt and see the account and where the money went, no mystery and to suggest simply because Frank Amato, the son of Carl Amato was present and have been open from the beginning, not trying to mislead the Board, they are closed and are seeking to sell to 3rd party restaurant and asked what more does the Board want to do, they are closed and out of business. Vice Chair said he has concern with documents for escrow account that 90% of the checks are written to cash. Atty. Russell said yes because the liquor wholesalers required cash and said they match up with invoices.

Vice Chair asked if anyone in the audience wished to testify. – None.

Mr. Kelleher moved to close the record. Vice Chair seconds. Vote: 4-0.

The Vice Chair said he will open to Board discussion and said they are looking at proposal submitted by license holder and am not inclined to agree with terms set out and is helpful they have a buyer and said regarding the 1st incident he would like to hear from the Chief his recommendation. Police Chief DiMella said he doesn't have a specific recommendation but with progressive discipline more than 6 day suspension and said he is not privy to the document and cannot give an educated recommendation on it.

The Vice Chair said he does find the reports and testimony credible and they didn't present any evidence to call into question and said they did not protect the public and security problem and they voluntarily closed but an ongoing pattern that has been a drain on the community and the severity is alarming and did have security staff trained and should have seen and also feel the operation based on paperwork and evidence presented feel Mezzanotte was circumventing a transfer and this is revocable offence and

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in light of offer on the table propose to take action and suspend action to make sale happen pending. Mr. Kelleher said he doesn't disagree with a lot he said and some subjectivity, falls with police department and compelling evidence both cases incident rely on police and said complicated occurrence and sequence of events.

Mr. Horlick said on issue of selling alcohol they didn't have anything and conversations between attorney and Special Counsel was a transfer was needed and why not put in for transfer and should put in and make sure through the process and when owners were there and testimony given, someone else was in the office and wouldn't be in the office if not running it and question of adequate security and believes the officers credible and believe security should have noticed.

Mr. Serino said he doesn't think they should discuss transfer and there are two issues before the Board.

Mr. Serino moved, based on video, pictures, testimony that a confrontation to place inside Tabu and continued to Mobil on the Run where shots were fired and one gang member involved and said there's a history, a pattern of violence that have resulted in a 4 day and then a 6 day suspension and moved the Board vote to roll back hours to 12:30 AM closing. Vice Chair seconds. Vote: 4-0.

Mr. Serino said regarding the issue of operating the premises without proper license that the time line of documents from January 14 memo and letter from ABCC, Mezzanotte had no right to operate, attorney sends letter that JLMT is operating but unfortunately inspections on January 15, January 23 & February 5 Carl Amato admits Frank Amato on the premises and Joe Lewis and Mark Trudeau were not at establishment and the application to the Board of Health to operate a food establishment was signed by Frank Amato and did not see anything signed by Lewis or Trudeau and did not see any agreement between JLMT or Mezzanotte and no evidence JLMT in control of establishment and his opinion Frank Amato and Carl Amato are in control of Tabu and no foreclosure documents were submitted and his opinion operating without proper authority.

Mr. Serino moved the Board vote to revoke the All Alcoholic Common Victualer's License and Entertainment License of JLMT Enterprises, Inc. and Mezzanotte, LLC. Vice Chair seconds. Vote: 4-0.

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

Meeting adjourned at 11:15PM.

Respectfully submitted,

Wendy Reed, Clerk