

Saugus Board of Selectmen

June 9, 2009

The Saugus Board of Selectmen met on June 9, 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.

The Chairman called the meeting to order and explained Mr. Castinetti and Mr. Kelleher have not arrived yet and the Board is waiting for Special Counsel also.

Mr. Horlick moved the Chair call a recess until all arrive. Chair seconds.

Vote: 3-0.

The meeting recessed at 7:01 PM.

The Chair called the meeting back to order at 7:19 PM. All Board Members were present and Special Counsel Ira Zaleznik was also present.

The Chairman explained the Board has a scheduled meeting with their State Delegates on June 22 and Town Meeting is scheduled to vote the budget that evening and would like a motion to ask the Delegates to reschedule.

Mr. Castinetti moved to request State Delegates reschedule meeting. Chair seconds. Vote: 5-0.

The Chairman excused himself from the table and Vice Chairman Castinetti took the Chair.

7:00 PM Show Cause Hearing under MGL c.138 Section 12 & MGL c. 140 Section 183A and the Town of Saugus Liquor and 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 potential violations of the laws, rules and regulations applicable to the licenses. Full reports and the complete notice of hearing 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.

Vice Chair read notice for show cause hearing. Special Counsel referenced hearing notice given May 19, 2009 with incident reports attached he will offer into evidence of 2/19, 3/2, 3/8, 3/15, 3/16, 3/29, 4/12, 4/15, 5/3, 5/8 and 5/10 2009 and said the matter before the Board as licensing authority will be heard with an open mind and determination to act on evidence received and heard and if any Board Member for any reason cannot sit and preside with an open mind he suggests they recuse themselves and seeing no such determination and referred to disposition dated 3/10/09 which was a result of settlement agreement and those issues are not before the Board, but what is important is incidents with violation of the laws, rules and regulations and the Board's concern if there was an illegality, disruptive conduct on or about the licensed premises and to determine if the security plan is working and if the Board believes additional measures need to be taken and noted witnesses to testify: Police Chief, Police Officers and neighbors may wish to testify and said Atty. Russell has motions to present to the Board.

Vice Chair swore in those to testify.

Atty. Frank Russell, 15 Ferry Street, Malden was present representing JLMT Enterprises, Inc. and noted objection in counsel's instruction of considering incidents disposed of as noted in agreement and read and said his second objection in counsel's instruction is the

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use of “in or around licensed premises” stating the licensed premises are within the 4 walls of the establishment and said neighbors, abutters to testify he objects he was not aware prior and information was not disclosed and said he does have a couple of motion to present to the Board and passed out (marked “A”) and explained he believes Mr. Castinetti and Mr. Rossetti should be disqualified to sit on the hearing as they have demonstrated predisposition by comments in the Lynn Item and the comments indicated they have their minds made up and ask they remaining 2 Members to preside or to appoint an impartial 3<sup>rd</sup> party.

Special Counsel said to his 1<sup>st</sup> objection that he made it clear the purpose was for background not to consider incidents prior; and said they are in disagreement over regulations regarding licensed premises and feels the Board has the authority and under c.140, section 183A it is clear they have the authority and to the objection of neighbor testimony that this is a public hearing and members of the public may speak and the hearing was noticed and advertised and said he cannot provide advance notice if he doesn't have information and said on motion to disqualify or recuse that in his initial statement it was clear the members were satisfied they could sit and hear with an open mind and explained it's different for elected officials and reports may not be quoted correctly or taken out of context. Mr. Castinetti said he has been the most understanding and he is unbiased and listens to evidence. Mr. Rossetti concurred and said his comments reflect he said “personally” and not intended to be printed and said he feels he can sit and be impartial and make judgment on the facts presented. Atty. Russell said he is obligated to raise the issue and asked the Board allow the court to review before the hearing process. Special Counsel said it's not an appropriate exercise of court powers. Vice Chair denied the motion to disqualify or recuse.

Atty. Russell presented a second motion (marked “B”) and requests they dismiss alleged incidents that occurred outside the building and explained the statutory description of premises and said he is aware the Board heard the same from a consultant retained by the Board and said the establishment has common parking and contends the Board has no authority to adopt regulations to the contrary. Special Counsel disagreed and said this has been expressed in the past proceedings and said the Town's Liquor Rules & Regulations are not in conflict and the Board does have the authority to regulate and suggested the Board hear evidence and if they decide and dispose at that time. Vice Chair denied the motion based on Counsel's recommendation.

Special Counsel called Police Chief as witness and asked questions, Police Chief Domenic DiMella was present and answered questions as follows:

The Chief said he has opportunity to review police reports and did review the police reports prior to this hearing and submitted the incidents including calls from February to May 10, 2009 and explained when he reviews police reports he forwards copy to the Board for review. Special Counsel offered packet of notice with attached reports as “Exhibit 1”. Chief said two reports indicate disturbance in parking lot and officers noted level of intoxication and people were arrested and answered a common thread in the reports is intoxication and violence. The Chief answered that he recalls the security plan from prior hearing. Special Counsel asked based on incidents of this hearing his opinion. Atty. Russell objected. Chief said in his opinion it has not been effective. Special Counsel asked what the shortcomings of the plan were. Atty. Russell objected. Vice Chair overruled. Chief said each security plan is better than previous and said he

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met with new security director, but as of now, it is not working and explained some ideas for zoning the parking lot with assigned personnel to each zone and for vehicle flow. Special Counsel referenced prior disposition's plan for patrons to leave at staggered times and if implemented and if effective. Chief said it is implemented and is somewhat helpful but the bottom line is there are still problems with violence and intoxication. The Chief explained the entire division was tied up at one place. Special Counsel asked about details. The Chief didn't have information with him. The Chief answered that yes detail officers do call for assistance when needed and if available on duty officers help at closing to clear the lot; said he had no reason to doubt accuracy of reports and did get report from State Police and did copy to the Board and said the whole division was there at 00:36 and did not see "cleared" time and they added lighting in the parking lot, but the cameras are not done yet and said they have been honoring prior agreement. Special Counsel asked if he had a view of what additional security measures can be taken to reduce or eliminate incidents. Atty. Russell objected. Vice Chair overruled. Chief said with security they can reduce the number of intoxicated patrons leaving the club. Mr. Horlick said his biggest concern is intoxication and said the chief and the owner can meet without show cause. The Chief said they have been talking and said this is the 3<sup>rd</sup> security director. Mr. Horlick asked about use of pepper spray by a bouncer. The Chief said the bouncer had FID and there's no law requiring notification he carries and doesn't know the level of training. Mr. Kelleher asked commonality and if there is anything more than can do. The Chief said possibly more security, lights, cameras, traffic pattern, staggered closing and said nothing guarantees. Mr. Rossetti asked if the entertainment promotes or causes violence. The Chief said it is a younger crowd and believes younger patrons are affected by alcohol and react differently to violence. Mr. Horlick said most incidents happen after 1AM and feels last call should be earlier and entertainment should be off earlier. The Chief said they talked about that. The Vice Chair asked all to try to not reiterate so they can get through testimony. Special Counsel asked if any other businesses in that strip mall are open after midnight. The Chief was not sure.

The Vice Chair called a recess at 8:35 PM.

The Vice Chair called the meeting back to order at 8:43 PM.

Atty. asked about meetings and dialogue since March 10 with business and security firm. The Chief said they just met and didn't realize it was a firm and doesn't know individual qualifications but resume appears qualified. Atty. asked about his comment earlier that each plan is better than the last and asked what he likes and doesn't like. The Chief said he likes staggered closing, more lights and more security and doesn't like that they continue having problems and said new ideas are not in place yet and just started discussing them and they will be improvements, but issues resolved will remain to be seen. Atty. said some incidents predate security plan implemented March 10 and asked regarding security agreement that they did secure a consultant and did submit security for review and it is working inside. The Chief agreed and said there was an issue of intoxicated patron reported. Atty. asked of 11 incidents if anyone was cited for over serving any patron and said they could have cited and said he only sees one arrest for intoxication. The Chief said protective custody that was highly intoxicated. Atty. asked in his opinion if Tabu staff is cooperative. Chief said yes as far as providing video but pepper spray incident they were not forthcoming. Atty. asked 2/16 incident predates security plan and reports 2 arrested charged with disorderly conduct and asked if

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occurred inside and no mention of entertainment. Chief said yes they dispersed and said it has nothing to do with entertainment. Atty. asked March 2 patron alleged assault. Chief said it happened out of police presence and were advised to seek own complaint. Atty. asked if he agrees no mention of alcohol or entertainment in report. Chief agreed. Atty. said March 8 caller reports fight officer investigated was a verbal disagreement lot was cleared without incident and no alcohol mentioned in report and no entertainment mentioned. Atty. said March 8 caller reports a fight, officers investigate verbal disagreement and lot was cleared without incident and asked if no alcohol, no entertainment mentioned in report. The Chief said yes. Atty. said March 13 not sure why its here they cleared the lot. Chief said it came in as a disturbance, does not appear to be according to the narrative. Atty. said no mention of alcohol or entertainment being a factor; March 16 a State Trooper was on site routine MV stop and asked if customary to request reports. Chief said it was one of the dates on notice and important to get and if a show cause he would request report. Atty. asked when he knew the show cause was called. Special Counsel said May 13. Vice Chair checked date and said yes at 7PM. Atty. said there was liquor stolen from the club. Chief said yes, larceny, A&B, Disorderly conduct, resisting arrest. Atty. said the larceny was reported by Tabu and after the bouncers confronted and stopped him. Chief said yes and agreed not related to service of alcohol or entertainment and didn't know the disposition. Atty. said March 29 consists of domestic A&B and asked what if anything did Tabu do to cause disturbance. Chief said he did not know if they did anything. Atty. asked if Tabu staff did what expected to do. Chief said yes and agreed no mention of intoxication or entertainment and didn't know the disposition. Atty. April 12 appears 3 calls from employees and asked if expect Tabu staff to call for assistance in regards to a person's conduct being disruptive inside and removed to outside and appears major disturbance was outside as try to get back in and police asked for video and it was provided and the woman assaulted was non substantiated from the video and did not follow up file a complaint and it was determined by the police dept. the allegation was non truthful fabricated. Chief said yes and noted several places in report noting alcohol and agree entertainment not mentioned. Atty. asked why not perform sobriety test. Chief said he believes the person was too violent and non cooperative to and it appears the story told to the officer was not accurate. Atty. said April 15 relates to April 12 and asked about May 3 in his view is the only incident related to alcohol, a person taken into protective custody in the parking lot and only statement was he drank too much. Chief explained sobriety check isn't needed if no crime involved and he refused a breathalyzer and agreed it appeared no one spoke with Tabu or follow up and agreed entertainment not mentioned. Atty. said May 8 disturbance in parking lot. The Chief agreed it was proper for Tabu staff to call and it appears a person was escorted outside too intoxicated to be served any longer and agreed entertainment not mentioned. Atty. said May 10 allegation of discharge of firearms reported by Sgt. Lopresti. Chief said an employee stated a person pointed a gun at him and agreed no gun was recovered but did find ammunition in the suspect vehicle and explained his concern for public safety and agreed security staff was cooperative and agreed they did what expected of them and agreed no mention of entertainment. Atty. said if no mention of entertainment asked why he recommends show cause on entertainment. Mr. Kelleher said the Board called for show cause not the Chief and noted neighbors present that may want to speak. Vice Chair said after the Chief. Mr. Kelleher

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recognized several calls are subjective calls and the Board is into this more than 2 hours and after 20 hours of commentary it's the same and said in the past this has run extremely expensive.

Mr. Kelleher moved the Board go into executive session with Special Counsel, Police Chief and Clerk to discuss legal proceedings and to return to open session. Vice Chair seconds. Mr. Horlick speaking on the motion asked if neighbors could speak. Mr. Kelleher amended his motion to go into executive session following public comment.

Roll call vote:

Mr. Horlick, yes; Mr. Kelleher, yes; Mr. Rossetti, yes; Mr. Castinetti, yes. Vote: 4-0.

Ann Marie Napolitano, 32 Pinehurst Avenue, expressed concern with a gunshot in her neighborhood and said she heard it, one loud and one low and called police.

Rose Kotkowski, 9 Bow Street Extension, said she heard gunshot and then heard another and said it's not fair to put up with this and traffic.

Mark Kotkowski, 9 Bow Street Extension, said he was sleeping and was woken up and is concerned with gunshots. Mr. Horlick asked about hearing noise. Mr. Kotkowski said he can't say that he has.

Walter Kotkowski, 9 Bow Street Extension, said he moved back home and past year and a half this is a new experience for him and said his mother's house was hit by a car and can hear vibration and did hear gunshot and a second shot.

Janet Noll, 9 Pinehurst Avenue, explained the noise / vibration not as bad as used to be and said it was suppose to be set and it has gone up a bit and said her other concern is for her neighborhood when people getting out of Tabu in the past there were a couple on incidences. Mr. Kelleher said the sound was set years ago and the idea was neighbors were to call police and they would verify volume. Ms. Noll asked Tabu to comply. Atty. Russell said several years ago they did a study and they still abide by and is in effect.

The Board entered into executive session at 9:56 PM.

The Board reconvened in open session at 10:30 PM.

Vice Chairman Castinetti explained for the remainder of the public hearing each counsel will have 15 minutes for each witness and will finish with the Chief tomorrow evening at 7:30PM.

Atty. Russell continued and asked the Chief clarify alleged incident on May 10 mentioned a shell casing was recovered that the report was not in his materials. The Chief explained Detective Forni's report. Atty. said he doesn't have and now sounds like he was not provided with all information and said it should be dismissed from the hearing because he should have a minimum of 14 days notice. Special Counsel said he and the Board don't have copy of the report either and is no problem for the chief to introduce it now and there's no requirement to provide police reports and not a basis to disregard. Atty. said in his opinion the information given absent of a firearm and shell casing and up until tonight, but now we hear different. Vice Chair noted objection. The Chief explained through a follow up investigation casing was discovered and that report wasn't in the packet because it wasn't available at the time the packet was printed. Vice Chair said his understanding was he picked up copy of the packet yesterday from our office. Atty. said he had a copy from his client and asked for a second copy because a document was missing and it was also missing from the 2<sup>nd</sup> copy. Vice Chair said he will not dismiss it, but accept as "Exhibit 2" and said they will stop this evening and continue tomorrow.

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Mr. Kelleher moved to continue the hearing to tomorrow (6/9/09) at 7:30 PM.  
Vice Chair seconds. Vote: 4-0.

Mr. Kelleher moved to adjourn. Chair seconds. Vote: 4-0.  
Meeting adjourned at 10:41 PM.

Respectfully submitted,  
Wendy Reed, Clerk