

Saugus Board of Selectmen

June 10, 2009

The Saugus Board of Selectmen met on June 10, 2009 at 7:30 PM in the Town Hall Auditorium, 298 Central Street. Present were: Stephen Horlick, Michael Kelleher, Peter Rossetti Jr. and the Vice Chairman Stephen Castinetti. Donald Wong was not present. Special Counsel Ira Zaleznik was also present.

Continued hearings: JLMT Enterprises, Inc.

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 went over the ground rules and said for a means to expediting the Chief will complete witness testimony and Special Counsel and Atty. Russell will have 15 minutes each and noted officers present for testimony were present and each counsel will have 15 minutes for each witness. Atty. Frank Russell was present and noted his objection for the record.

Chief Dominic DiMella was present and Atty. said he appreciates his report and the additional reports he requested and asked to respect of calls coming in if listed unverified or disbursed do you send 5 officers and who makes that decision or policy. The Chief said if a call comes in as a disturbance or fight in a nightclub due to the number of people they all would go to assist and the commanding officer would make the decision. Atty. asked does that apply to other establishments. The Chief said yes. Atty. asked if policy or just course of practice. Chief said not a written policy just officers backing each other up. Atty. asked about times listed the officers arrive and are cleared and noted officers clear at different times and asked if that is determined at the scene if 5 stay or not. The Chief said yes on a case by case basis. Atty. said out of 10 incidents, and understands concern responses tie up officers asked about shift changes. The Chief said at 1AM and at 9AM. Atty. asked if he could identify any call unable to respond to while officers tied up. Chief said he doesn't have information and would have to look at those dates. Atty. asked if 2 calls how would he allocated resources. The Chief said if serious call, call mutual aid or split officers and control supervisor. Atty. asked if he had a circumstance unable to cover. The Chief said it's a concern he has but is not aware of a conflict and said he is concerned with any establishment that tie up his whole division. Atty. asked other establishments that have tied up his whole division. The Chief said JIN, Kowloon and has happened a couple other locations. Atty. asked regarding staffing if the town has always funded at this level. Chief said for last few years. Atty. asked if at the mall division was ever tied up. Chief said he doesn't recollect. Atty. asked if some were pre-empted on scene if the officers were free to respond to other location. Chief said yes

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if able to leave. Atty. pointed out March 8 dispatched entire division at 1:05AM for verbal disagreement. The Chief said the call was a fight in progress. Atty. said last night it was determined not a fight and everyone stayed 40 minutes and asked if they were needed there or was there nothing else happening. The Chief said in the next paragraph it states and read. Atty. asked in the alcohol or entertainment regulations there is a section that speaks to failure to protect and in viewing 10 alleged incidents was there anywhere a failure to protect or were all handled. The Chief said May 100th shots fired is a serious threat and altercations in parking lot that could injure patrons a serious threat. Atty. asked him to identify where they failed. The Chief said they do call police and it seems they try to stick to security plan.

The Chair said no further questions. Atty. said he had more questions. Chair said he had plenty of time last evening.

Special Counsel called Lt. Putnam. Lt. David Putnam was present and said he is employed by the Saugus Police Dept. and his rank is lieutenant. Special Counsel asked if he had occasion to go to Tabu in connection with a disturbance. Lt. said yes several times. Counsel asked most recent. Lt. said not sure since 2/16/09. Counsel asked he describe what he witnessed. Lt. said there were multiple fights in parking lot, he responded as well as other officers, when he arrived he didn't observe any fights and people started running, he stayed on scene to clear the lot himself and 4 other cruisers, he couldn't recall if his flashing lights were on, at 1:47 AM officer involved in incident in parking lot and described in report filed a person using abusive language and an individual was arrested and Officer Vecchio and himself arrested an individual and said he didn't know if the person was inside, he was in the parking lot and both were extremely intoxicated.

Atty. objected. Chair overruled. Atty. said he objected to both questions. Chair said he didn't hear him and overruled both.

Lt. Putnam said he didn't transport arrestee, he was unsteady, staggering, once in cell he was held and was bailed out. Atty. asked if he knew if he was inside and the call was for outside and said in the narrative report he did not describe as extremely intoxicated. Lt. described specifically. Atty. said he didn't conduct test to determine. Lt. said just observation. Atty. asked if intoxicated why not PC. Lt. said it necessitated arrest for disorderly. Atty. asked if practice. Lt. Said yes for both disorderly conduct. Atty. said there was a bottle in the back seat. Lt. said there was no indication he was drinking in the car.

Special Counsel called Officer Wilson. Officer Thomas Wilson, Patrolman Saugus Police Dept. was present and said he was working, not his normal shift, he was involved at Tabu on May 8, 2009.

Atty. objected.

Officer Wilson said that evening he was assigned to car 12 with Officer Connors and was called to a disturbance at Tabu, a man kicking car windows and when arrived spoke with bouncer who told him the man was escorted out of the club and started kicking cars, must have been 5-10 minutes before he arrived and the bouncer told him they escorted him out for being intoxicated and observed and went to the car in attempt to talk to him, but he was highly intoxicated and not cooperative and placed him under arrest and he did observe damaged vehicle and said he appeared to be extremely intoxicated and had difficulty making phone call and said besides that incident he was at

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Tabu for "shots fired" incident and doesn't have a written report but was on scene assisting and he was with Officer Vansteensburg.

Atty. Russell asked on May 8 if Tabu was cooperative and if he agrees it was appropriate to remove him from the club. Officer Wilson said he agrees he should have been removed prior to that point. Atty. asked if he drank anywhere else. Officer said he didn't know there was no evidence. Atty. asked disposition of charge. Officer said no hearing yet. Atty. asked if security was in lot. Officer said when he arrived the bouncer met him. Atty. asked if he was taken into protective custody. Officer said no, he was arrested. Atty. said for vandalizing car. Officer said yes. Atty. said in the parking lot. Officer said correct. Atty. said other than this individual he didn't observe. Officer said the suspects friend also appeared intoxicated not mentioned in report. Atty. asked no charges made on friend why not PC. Officer said not a danger was not operating a motor vehicle. Atty. asked if staff was cooperative. Officer said yes.

Special Counsel called Officer Collins. Officer Patrick Collins Patrolman Saugus Police Dept. was present. Counsel asked if called to Tabu. Officer Collins said yes in the past. Counsel asked how many times called there since 2/16/09. Officer said not too often and said he covers police detail work there once or twice a month 12:30-closing generally 2-2:15. Counsel asked about March 29. Officer said he was working a detail with Officer Vansteensburg and at approximately 1:30 AM noticed a disturbance on the side of Tabu, physically removing from club not asked for assistance and described the side and said a patron was being escorted out and started walking over to assist, and said the patron did not calm down and continued to be angry and another was escorted out and the male attacked the woman and he immediately interceded and attempted to restrain from assaulting and he was very aggressive and resisted attempts and said it took 5 officers and he didn't respond to verbal commands and he was subdued and placed under arrest and placed in cruiser and the woman was his wife and she became uncooperative and this drew a crowd and said he didn't know if intoxicated, the female was not understanding they were trying to help her was placed under arrest and they gave her numerous chances to calm down and said the doorman said problem started inside.

Atty. Russell said this was apparently a domestic dispute between husband and wife and asked how many officers are usually sent to domestic calls. Officer Collins said 4-5 officers, but this was different because of the large crowd. Atty. said he mentioned the wife was irrational and asked if character of domestic. Officer said yes. Atty. said security acted properly by removing. Officer said yes.

Special Counsel called Officer Forni. Officer Frederick Forni, Detective Saugus Police Dept. was present. Special Counsel said his report surfaced last night and said all have copy and asked him to explain. Det. Forni said the investigation wasn't completed and new evidence came to light and was added to the report. Counsel asked when. Detective said on or after May 15 and explained on May 10 search and found additional evidence. Special Counsel asked about the call. Detective said he was on call detective that evening and was informed of possible shooting and responded to assist investigation and to investigate crime and when arrived at police station the passenger in the vehicle was at the station and was detailed in report and he went to the scene, to Tabu and didn't find at that time and did search the highway for weapon, was not located at that time from Tabu to place of vehicle stop and doesn't believe a weapon has been recovered. Counsel asked if he interviewed owner Joseph Lewis and ask to provide video. Detective said yes

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and said he interviewed one employee witness and viewed surveillance and said Mr. Alefantis, security staff, the suspect was pointed a gun at him.

Atty. Russell asked about map. Detective said yes, Mr. Alefantis drew and showed and said he found a single shell casing consistent with ammunition recovered from suspect and said charges were brought and were indicted this morning. Atty. said in 4 page report and in report of Mr. Alefantis to Sgt. LoPresti there was no evidence of gun inside the nightclub and no indication anything to do with alcohol or entertainment and its fair to say Tabu was cooperative and asked if there was anything they could do to prevent it. Detective said he can't say it was handled appropriately. Atty. said casing was found not adjacent to Tabu. Detective said behind tattoo place. Map and pictures marked as "Exhibit 3".

Special Counsel called Officer Vecchio. Officer Matthew Vecchio employed by Saugus Police Dept. was present. Special Counsel asked if he had occasion to go to Tabu on 2/16/09. Officer Vecchio said he was called to the nightclub on numerous reports of fights and when he arrived he noticed a large amount of patrons in the lot and security was trying to get them to vehicles and out of the lot. Counsel asked if there was anything he wanted to add to Lt. Putnam's testimony. Officer said he had dealings with, interaction with several requests to get in their cars and exit the lot, it was loud, and tried to avoid problems from occurring. Counsel asked when he arrived if he saw any fighting. Officer said no, he made several requests to leave, some followed request, one started verbal tirade towards him described in his report. Counsel asked if he was placed under arrest. Officer said no, he was in a vehicle heading toward the highway where other officers located and continued disorderly conduct and Lt. Putnam stopped the vehicle. Counsel asked if he was intoxicated. Officer said he was intoxicated. Counsel asked if that was in his report. Officer said no. Counsel asked the reason it was not. Officer said it had no bearing on arrest he was being arrested for disorderly. Counsel asked about March 16 State Police involved and showed Officer copy of report. Officer explained he doesn't recall why he was in the lot but remembers being in close proximity to the Trooper and observed commotion and Trooper dealing with an individual. Counsel said the log indicates upon arrival no fights, 1 victim of assault. Officer said he doesn't recall. Counsel asked if he remembers the patron the Trooper was dealing with. Officer said he stole a bottle from the club. Counsel asked about incident on March 29 and asked if he wanted to add anything to Officer Collin's testimony. Officer said no and explained he was there when to assist Officer Collins to take into custody. Counsel asked if any other incidents at Tabu. Officer said yes. Counsel asked dates. Officer said he didn't know.

Atty. Russell asked on 2/16/09 narrative numerous rep[orts of fights and asked if only 1 call. Officer Vecchio said he believes it meant 1 call of numerous fights. Atty. asked with the individual using profanity towards him he let it go and asked at what point did he make decision to approach vehicle. Officer said he let it go and in front lot was commotion and went there. Atty. asked if he observed him inside. Officer said no.

Special Counsel said the attorney asked if he knew if the individual was inside and asked if any reason to know he was not inside. Officer Vecchio said he doesn't know he was in the parking lot.

Chair asked if attorney objected. Atty. Russell said yes. Chair said he cannot hear him. Mr. Kelleher thanked those that testified and said in fairness to officers and asked for recess.

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The Chair called recess at 9:15 PM.

The Chair called the meeting back to order at 9:25 PM.

Special Counsel called Officer Vansteensburg. Officer Paul Vansteensburg, Patrolman employed by Saugus Police Department was present. Special Counsel said he will try not to go over the same material presented and asked if the officer had been to Tabu. Officer said yes. Special Counsel asked if some reports the Board is hearing tonight if he was present. Officer said yes. Special Counsel asked if he wanted to add anything to previous testimony. Officer said he was present for the A&B domestic on March 29 and he was present when the State Trooper incident and the incident with shot fired. Counsel asked if he recalled or observed the altercation with State Police Officer. Officer said when he arrived there was no altercation, but did witness arrest and said he did not see the report. Counsel showed it to him. Atty. Russell objected. Chair asked he keep questions to his own knowledge. Counsel asked what he recalls. Officer said when he arrived the matter ceased and there were a few in the lot and disbursed them and was speaking with the Trooper when it escalated again and while he was there he believes it was an employee that pointed to an individual that stole a bottle of liquor and the individual was taken into custody. Counsel asked about May 10 involvement. Officer said he was stationed in the parking lot, on detail and there was a large crowd, the lot was full of vehicles and explained the shift usually gravitates toward the area to help detail clear the lot and said he didn't hear shots fired, but did assist in the motor vehicle stop on Rte. 1 over the Lynnfield line.

Atty. Russell asked regarding March 16 why was he there. Officer said he wasn't there. Atty. asked March 29 domestic violence incident and asked in his opinion did Tabu staff act appropriately by removing from the club. Officer said yes. Atty. asked if it was unusual behavior. Officer said typically it tends to be emotional. Atty. said nothing involving alcohol or entertainment. Officer said he can't testify to that. Atty. asked if it would have been indicated in report. Officer said the charges were A&B domestic Atty. said he mentioned he went to the lot because customarily you go to assist detail and asked if they go to other locations. Officer said yes if they have a detail. Atty. asked if they go to Jin or Kowloon. Officer said sure. Atty. asked on May 10 incident what could they have done to prevent it. Officer said not to his knowledge.

Mr. Kelleher said last night he mentioned the cost of the hearing and when he started this his goal in mind to come to mutual agreement and wondered if worthwhile for the Board to meet with Counsel and Atty. to discuss it.

Mr. Kelleher moved the Board go into executive session to discuss a mutual agreement with Board Members, Special Counsel, Atty. Russell Police Chief and their clerk. Special Counsel said there are 2 police officers left. The Chair said they can hear those and hear their witnesses on another night. Mr. Kelleher said he will go the direction the Board wishes. Chair seconds. Mr. Horlick speaking on the motion said it is irregular to meet with opposing counsel in executive session. Mr. Rossetti said he concurs with Special Counsel that they should finish with officer testimony first and opposing attorney has witnesses and doesn't anticipating finishing tonight. Mr. Kelleher said they have go into executive session with opposing counsel plenty of times. Mr. Kelleher withdrew his motion with no objection.

Special Counsel called Officer Sacco. Officer Gary Saco, Patrolman employed by Saugus Police Dept. was present. Special Counsel asked he describe incident of May 3.

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Officer Sacco said he and Officer Vecchio were off their at a little after 1:30AM and found most patrons left but some still there and observed a gentleman leaning on a vehicle and he asked him if he needed assistance and the man said he drank too much inside the club and he attempted to get a family member or friend to pick him up and took him into protective custody and at the station he was unable to identify himself, did find ID on him, took to booking, was unable to complete, put him in a cell for 5 hours, he fell asleep. Counsel asked if he spoke to anyone. Officer said no not to employees. Counsel said the report indicates he vomited in the cruiser. Officer said yes. Counsel asked if he wanted to add any testimony regarding March 29 domestic. Officer said he doesn't recall. Counsel asked if he participated in the shots fired incident and if he wanted to add anything. Officer said a call came in for shots fired with suspect vehicle description and he was with Officer Lopresti and initiated stop in Lynnfield. Counsel asked if he assisted in investigation. Officer said yes. Counsel asked if he was involved in any other incidents at Tabu. Officer said none he made report of.

Atty. Russell asked about PC incident on May 3 he testified the man couldn't speak clearly and asked if he couldn't understand him. Officer Sacco said he was intoxicated mumbling. Atty. asked if he was able to understand him in the morning when he woke up and asked if he said very clearly that he drank too much why couldn't he understand anything else he said. Officer said he asked his name, where he lived, if he was with friends, and how was he getting home and didn't understand him he was mumbling. Atty. asked if he preformed a sobriety test. Officer said he didn't need to he could barely stand and said he was offered a breathalyzer and couldn't answer the booking officer's questions and was taken to a cell and said if he committed a crime there would be more detail. Atty. asked why not breathalyzer test. Officer said the form indicates he was too intoxicated and described smell and staggering. Atty. asked no field sobriety test, no test at the station, we don't know alcohol percentage if any and asked how he knows. Officer said they can't test, a determination was made by the booking officer and the man couldn't stand up. Atty. said that he didn't observe him inside, or drinking, and no criminal charge.

Mr. Horlick asked in his professional opinion if a person is pulled over and refused breathalyzer, and field sobriety officer can arrest and charge even if he refuses. Officer Sacco said yes. Atty. said that is not what happened hear. Officer no.

Special Counsel called Officer Richards. Officer Michael Richards Patrolman employed by Saugus Police Dept. was present. Special Counsel asked about incident on April 12. Officer Richards said the entire division was called to Tabu with report of fight in progress and when arrived it was a chaotic scene he observed victims of assault and battery and observed 2 males that looked like they were assaulted and a female very upset, disheveled small cut on face and noticed front doors smashed and spoke with several bouncers that said there was an altercation inside and a party was removed and he and a friend returned and it got physical he kicked the doors and said 2 males claimed they were maced by security staff and asked staff and they had no information and spoke with manager Carl Amato and he introduced me to owners and asked for surveillance to help in investigation and he viewed them in the security office on the premises behind the kitchen and said the video showed patron escorted out with male and female a brief altercation he leaves then comes back and said he spoke with Tabu security Thomas Donahue regarding the incident on the video it showed he was carrying an object in his

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hand and holds up as to spray and asked him about that and believes he said he not know anything about it and asked him again and he had pepper spray and had FID for it and he asked him if he was authorized and he said no one knew about it and explained the female refused to cooperate and he spoke to her several times and didn't cooperate and the one male was charged with assault and destruction still pending in Lynn District Court and said he was called on another incident, malicious destruction of property, but felt that was covered.

Atty. Russell asked about April 12 the suspect was removed by staff and asked if that was appropriate. Officer Richards said yes. Atty. said in fact according to the log 3 calls came from Tabu employees. Officer said he wasn't sure. Atty. asked if it was fair to say the man was outside the premises and tried to get back in. Officer said yes. Atty. said the staff requested assistance. Officer said yes. Atty. said he did not observe anything. Officer said some facts weren't accurate and in fact the woman didn't cooperate and didn't go forward with charges. Atty. said in fact Tabu was the victim.

Special Counsel called Officer LoPresti. Sgt. Anthony LoPresti employed by Saugus Police Department was present. Special Counsel asked if he would like to add testimony regarding the shooting incident at Tabu. Sgt. LoPresti said he wasn't there initially. Counsel asked if he was involved May 10. Sgt. Said he was working a paid detail and was in process of clearing the lot and he heard loud bang and a second one and then someone said someone fired shot and described blue mini van. Counsel asked if he understood the bang was a shot until an employee said. Sgt. Said he heard the broadcast and explained he arrived at around 12:30AM and it was about 1:40 – 1:45AM he heard the shot and after he heard he headed to the rear to check for victim and then headed north to assist and assisted in vehicle stop and arrived shortly after the stop and frisked and looked / searched vehicle and then returned to the club and tried to find someone to identify the suspect and found Mr. Alefantis who made identification of the person that pointed a weapon at him and only assisted in the search of the vehicle ammunition was found the caliber not sure. Counsel asked if he was at other incidents at Tabu. Sgt. Said no.

Atty. Russell said the neighbors talked about multiple shots not hand gun but shot gun. Sgt. LoPresti said he had no opinion on that. Atty. asked if it was fair to say security helped move the case forward. Sgt. Said that is correct.

Special Counsel said he has no more witnesses.

Mr. Kelleher moved the Board vote to go into executive session to discuss legal proceedings and to return to open session those to be present: Board members Stephen Castinetti, Stephen Horlick, Michael Kelleher and Peter Rossetti, their Clerk Wendy Reed, Police Chief Domenic DiMella, Special Counsel Ira Zaleznik. Chair seconds. Roll call vote: Mr. Horlick, yes; Mr. Kelleher, yes; Mr. Rossetti, yes; Mr. Castinetti, yes. Vote: 4-0.

The Board went into executive session at 10:29 PM.

The Board reconvened in open session at 10:53 PM.

The Chair said they will set up a subsequent meeting on 6/6/09 to follow their regular meeting.

Mr. Kelleher moved to continue the hearing to June 16, 2009 at 8:15 PM. Chair seconds. Vote: 4-0.

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The Chair asked the number of witnesses and how long they expected they needed and said they may need another day and will be same 15 minutes restriction. Atty. Russell said he wished same latitude they had on witness there was no limitation on first day and it's unfair to limit his witnesses. Special Counsel asked who the 10 people are. Atty. said Mr. Lewis will be first and would not like to be limited to 10. Counsel asked for outline of testimony. Atty. said he has no obligation to provide. Special Counsel said the subpoena issued today has no relevance to this show cause hearing and said he wonders why he needs more than 6 or 7 employees, owner, manager, security staff and said he would like to see an orderly expeditiously hearing. Atty. said he had no limitation on examination of the chief and he is being limited to 15 minutes. The Chair said he had no limit on the chief and he had the lion's share of time and is treating both sides the same and will stick with 15 minutes per witness. Atty. disagreed and said it's not fair.

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

Meeting adjourned at 11:00 PM.

Respectfully submitted,

Wendy Reed, Clerk