

Saugus Board of Selectmen
July 7, 2010

AGENDA
Saugus Board of Selectmen
July 7, 2010, 7:00 PM
Town Hall Auditorium, 298 Central Street

1.) Call to order.

2.) Topics of discussion: Kasabuski Sub-Lease

 Kasabuski Rink issues / Saugus Youth Hockey

(posted 6/30/10)

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The Saugus Board of Selectmen met on July 7, 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 Town Manager Andrew Bisignani and Special Counsel Ira Zaleznik were also present.

Kasabuski Rink – Sublease:

The Manager explained he asked for the meeting to clarify some issues and said the insurance, as the Board instructed him, was terminated and the tenant did provide a certificate of insurance and said he also needs clarification regarding violations and asked Special Counsel to be present.

Mr. Serino said the contract condition of insurance coverage had expired in the lease. The Manager said yes, we agreed to provide insurance for a period of time and that time is up. Mr. Serino said the Board didn't order him to take the insurance away. The Manager said that is correct.

Mr. Crabtree asked if the Town's insurance agent has looked at the insurance provided. The Manager said Counsel has reviewed. Mr. Crabtree asked if the agent could look at if it is adequate coverage. The Manager said limits are provided in accordance with the lease. Mr. Crabtree said this is a high risk business and it would be prudent for our agent to look at it to be sure. The Manager said he has had our insurance advisor look at it yearly.

Mr. Kelleher said they have talked about Town run rink and the decision was made to sublease and there was much discussion on youth groups at that time, and the high school has a place to play, but one issue remains and asked if there was any way to resolve that and explained youth hockey has raised issues and asked for update. The Manager said he doesn't know of any arrangements for youth hockey and said it appears for the time being that the high school is set.

Mr. Crabtree explained that youth hockey received a new contract 2 weeks ago that includes a change in policy where they must come up with 2 months ice time in advance. The Manager said he was not aware.

Mr. Crabtree said he requested information and has not received regarding letter to be drafted 3 weeks ago and he requested a copy of the rate schedule for past 2 years and for this year and copy of all agreements with other youth groups and he requested a copy of response to letter regarding breach. The Manager said he responded to him that he referred the request to our attorney. Special Counsel said he did receive response regarding the rates but only for this year and said he did not receive a written rebuttal. Mr. Crabtree said Attorney Gould was going to request and never got a copy of that. Special Counsel said request was sent on June 28th and will copy the letter for the Board but he doesn't think it was quite clear you were seeking historical rates and read section of letter and said he will get the information. Mr. Crabtree said he wanted the other information because policy has changed. Special Counsel said he will get information requested and said this is the first he has heard of a demand of advance payment and explained there are some constraints set by DCR and the Town doesn't have a free hand to set rules and policies. Mr. Crabtree said they are leasing an MDC building and are they are to be run for the benefit of the community and we are getting into an area where it is not a benefit to the community. Special Counsel said he understands the concerns of the Board. Mr. Crabtree said notice of breach was sent and they didn't respond. Special

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Counsel said he does not have a specific response, but did submit documents at the meeting but the difficulty is, in order to enforce the rights under the lease one would need a summery process or eviction process and a judge would be faced with claim if there is sufficient seriousness to warrant a foreclosure of property interest. Mr. Crabtree asked if he is suggesting if they continue the same practices the Town has no recourse. Special Counsel explained it would be like progressive discipline and said all deviations from the agreement should be documented and a request for cure sent. Mr. Crabtree agreed and said the Board feels its not moving forward and if things aren't working well here we should be able to set policy that is fair and equitable. Special Counsel said he is not suggesting to wait another year and explained there is a line and must establish to a judge the line has been crossed and to do that is to document a pattern. Mr. Crabtree said notice of breach was sent with no written response and is not aware of any financials received and no cooperation and said the Board are signatories of the lease and want to handle this and move forward and said the building is for the community and it is being used for other things other than DCR purposes.

Mr. Horlick said to look at the lease signed and terms were negotiated then and shouldn't change terms to keep coming back and feels the lease should be honored and said the place is dedicated to Saugus and in short time the banners and logo and locker room became issues and we lease the building from DCR and when they start changing things and said they knew certain user groups had preference and now we're fighting to return it back to what it was.

Steve Worthley, 43 Fairchild Avenue, Saugus Youth Hockey, said he came with a comment and a plea and said on May 25 he pleaded with the Board for communication and said the Board has done everything they can and appreciate it, but what he does not appreciate is a lot of press since and concern that a lot of people are talking for youth hockey with no follow up and said no one asked youth hockey and said they have no contract signed and said every year they have been knocked down 2 pegs and what they get in return is a contract (and read) requiring advance payment and an earlier start time in the season and a change in ice time and said he represents 180 skaters with over 300 parents that vote and is confused as to what is going on and said Saugus High School locker room was not taken care of, they are not using it and if the legal argument is made it must use common sense and no more playing out in the newspapers because they have not been taken care of. Mr. Crabtree explained they are looking for 2 months up front and the program doesn't work that way. Mr. Worthley asked what can be done to salvage this.

Mr. Horlick asked Special Counsel about the issue of the gate receipts vs. ice time was just for the high school or other groups as well. Special Counsel said DCR expressed as a policy and they have applied written guidelines as general practice and believes it's only the high school and not other groups. Mr. Horlick said he doesn't have to be in writing if it was in practice for a number of years. Special Counsel said he will call DCR in the morning to see if they prohibit deposits to reserve ice time. Mr. Worthley said for 3 years prior they never did and said it has been 15-30 days after services rendered. Mr. Crabtree said it would be prudent for us to have copies of all agreements with all user groups to see if this is a selective requirement and if the intent is to drive out Saugus teams and said this will jeopardize the whole program. Mr. Horlick said he can't do it if it's not a policy across the board and if coming selective policy and doesn't see why it would need to be required and explained to Mr. Worthley that only 2 Selectmen are

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allowed to meet outside an open meeting and Mr. Crabtree and Mr. Wong and the Town Manager provide updates. By e-mails and by calls and asked he explain what part of the contract is not palatable to him. Mr. Worthley said the advance payment and explained they are the #1 tenant regarding hours and pay \$70,000 a year in ice time and now they're requesting about \$15,000 up front and they don't budget that way and don't have it in the budget.

Mr. Serino asked counsel if it was possible for a court injunction or if anything legal they can do. Special Counsel said if DCR says this is not an approved practice.

Mr. Serino moved the Board vote to instruct Counsel and authorize Special Counsel to file for injunction if need be. Chair seconds. Mr. Kelleher asked for clarification. Mr. Serino explained to prevent termination of the lease. Chair seconds. Vote: 5-0.

Mr. Horlick asked about locker rooms. Mr. Worthley said that's not an issue of youth hockey. Mr. Horlick asked if any other issues and asked about the parking lot. Mr. Worthley said it was improved. Mr. Horlick asked if up front cost was asked last minute. Mr. Worthley said there was no past practice. Mr. Crabtree said even with notice parents can't pay in March for September program and the other issue is taking dates away for special events. Mr. Horlick asked if he was satisfied with ice times and hours. Mr. Worthley said no and explained past practice they had 6pm and Mr. Maniff's program recruits and said an earlier hour means less volunteers and less people do not serve the children well and said no advanced notice for cancelled time and he has already taken 3 days away for special events. Mr. Crabtree said there are provisions for taking hours and will look into if it is a violation of DCR rules.

Mr. Kelleher said everyone did a great job addressing issues and it now has come down to a couple of basic issues, the hours and the rates, and said he knows its not his job, but asked the Manager if he could meet and try to work these things out since he has been successful in the past. The Manager said he will if it's the Board wish but thinks best served through the attorneys. Mr. Crabtree agreed and said we have tried to resolve and it hasn't come to fruition and now attorneys are involved. Mr. Kelleher said if that's the case he will ask Special Counsel if he feels comfortable the Board leave him deciding the position to take for what's best action to take to protect Saugus Youth Hockey. Special Counsel said he would need guidance from DCR and needs to talk with them. Mr. Kelleher said hopefully to resolve the issues without court because a legal decision we would be stuck with. Special Counsel said many do, but the end result is achieved and said it's not practical for non-profit group to prepay and is surprised at this. Mr. Kelleher said we have the same best interest and it's a complicated issue.

The Chair said the Board needs to get the contracts on all programs and compare all non-profits. Mr. Worthley implored the Board to go by past practice and said they are concerned they can bounce them out. Mr. Crabtree said part of the problem is the sub-lessee has an interest in a program and interest in a nonprofit and if hours open up it would go through the pecking order and said it's important to get all the contracts and rate schedule and said the Board is suppose to approve. Mr. Worthley said himself and Mr. Brazis and Mr. Kelleher worked on this last year and were told they couldn't have prime hours because he needed them for his program.

Mr. Crabtree said they are suppose to give monthly financials. Mr. Worthley said the line has been crossed. Mr. Kelleher said he wants a clear direction on where they are

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going. Mr. Worthley asked they limit the number of news articles coming out of the Manager's office and asked as a courtesy to stop the press releases. The Chair said that it's hard when they call not to respond.

Scott Brazis, 6 Cave Rock Road, said when he came in May he asked questions and was told there was no sweetheart deal and asked if the figure of the water bill paid by the taxpayers. The Manager said around \$8,311. Mr. Brazis asked about cost of trash. The Manager said roughly \$100 a month and explained it's not billed separately and we only pay for disposal. Mr. Brazis mentioned the RFP. The Manager said it was done in a public forum with the Board. Mr. Brazis said he was not qualified the first time and doesn't understand what makes him qualified the second time and said between trash and water the Town's taxpayers pay \$10,000 a year and youth hockey can't hours after given all the perks we have had hours taken away, not negotiated and is looking to the Board for guidance and doesn't know why they let him run rampant up there and said user groups are taking bad deals and meetings a month ago and was bounced out and the Board talks about breaches when negotiations are going on and people representing us in meetings and is looking to the Board to uphold the lease and asked them for help and asked about the issue of not paying the initial \$150,000 payment due October 2008 and according to the Town Accountant only \$121,000 was paid and asked where the rest is. Mr. Serino said the Board did receive a memo on that. The Town Manager explained high school didn't have ice time in the budget and off set was made and made same arrangement in '09-'10 season and said to his other point there has been a lot of concern for the taxpayers and asked what about the \$1M deficit. Mr. Horlick asked the money not received was used for high school ice time. The Manager said yes but they have budgeted for it this fiscal year. Mr. Brazis said he feels attacked and asked if we are getting monthly financial reports. Mr. Crabtree explained his request for information. Mr. Brazis said regarding the \$150,000 that they took over in October and asked why would you off set when the high school doesn't use ice until November. The Manager said the 1st payment was due 13 months later. Mr. Brazis clarified the \$150,000 not the \$40,000 payment and said the Town can set rules and DCR said the Town can set policy and would like to get something in writing.

The Chair explained he was asked before by the Superintendent and Principal and did talk with the lawyers to get hours they could deal with and to get free ice time for the gate and have been working on it and said he is sorry if there has not been more communication. Mr. Brazis said he is asking for his help. Mr. Crabtree said there's an issue with youth hockey agreement and the bigger issue is noncompliance and breaches and will be addressing those issues.

Mr. Horlick said in October he heard there were some issues at the rink and the Board has not received information and when he brought it up, the issues were looked into. Mr. Brazis said they are trying to get best deal they can get and asked they not lose focus of the bigger issue, that they have to let them know the Town's policy and DCR rules. Mr. Crabtree said this is a continual problem and the Board is set to resolve it but it won't happen tomorrow and everyone should understand it won't be resolved soon enough but the Board is committed to it and said the intent of the lease is for the benefit of the community.

The Chair said the Board is behind the kids and in February the Board was told of violations and they were cited for violations. Mr. Brazis asked if the Board has a ruling

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from Counsel on the off set of payment and if he may have a copy of it and asked the Board to keep an eye on any future off sets. Mr. Serino read the memo from the Manager.

Tom Stretton, 133 Main Street, thanked the Board of Selectmen and the School Committee that worked on the Saugus High issue and said he hasn't spoken to any newspapers and believe some articles are incorrect and said he appreciates what was done, but it's not a great deal and there's still a lot of work that needs to be done and said he doesn't understand why he's still running the rink and said it breaks his heart to give up the locker room and is frustrated over the banners and many other things going on and if something isn't done about him now, we will be here talking about it next year and said he was on the Board of Governors and said that deficit was not created by Kasabuski Rink and asked why doesn't someone find out why the deficit occurred and said regarding the RFP he is never speaking about it again.

George Moriello, 6 Cliftondale Ave, TMMP 6 and on original Board of Governors and served for 11 years and knows the Board of Governors were competent people and there is no way they would allow \$1M deficit and said he would like to know how it happened because he has heard so many different stories and said he is very interested.

Bill Kramich, 12 Emory Street, said any money coming in to the Town should be put in the general fund. The Manager explained the off set was done because the high school didn't have ice time in their budget, but the balance was deposited in the general fund and said in the future ice time is budgeted and off sets wouldn't be needed and the full amount will be deposited in the general fund.

Mr. Horlick asked if the \$40,000 was deposited in the general fund an Article could have been submitted to appropriate the money for other use. The Manager said the deficit did not occur in one year it was accumulative over a number of years and was determined by an outside auditor and explained our expenses exceeded our revenue.

Mr. Crabtree said they have their own insurance and from a business standpoint we shouldn't cover them particularly with fire code violations and is not in favor to cover them under our policy. The Chair said he has his own insurance. The Manager said he provided a certificate of insurance. Mr. Serino said the Board received a memo regarding renegotiating insurance and he sent an e-mail that said absolutely not.

Mr. Crabtree asked regarding utilities if the Board wanted to address that now or later and said the Board would need an affirmative vote to continue it. Mr. Horlick said he thought for the 1st year, but not in favor of perks.

Mr. Horlick moved the Board vote that they are not in favor of continuing trash, water and sewer, and insurance coverage for the Kasabuski Rink. Mr. Crabtree noted the water/sewer and trash expire June 2011. Mr. Horlick amended his motion to include: after June 30, 2011. Chair seconds. Vote: 5-0.

Mr. Serino said they have to look at the big picture and said there is a lease with terms and he believes they have breached the lease as outlined in counsel's letter and cited sections, and said the guy made changes and we should think of eviction and either the Town take it back or DCR.

Mr. Serino moved to instruct their attorney citing May 26, 2010 letter, to start the eviction process to remove Maniff from Kasabuski Rink. Chair seconds. Mr. Horlick agreed and said they started off in good faith but there are too many issues. Mr. Crabtree

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said he supports moving forward in the process because without evidence of curing they must and said this does not mean he will be evicted, but will move forward. Vote: 5-0.

Mr. Crabtree moved the Board vote to go into executive session to discuss eviction strategy, in the 1st floor conference room and to return to open session. Those to be present: Selectmen Crabtree, Horlick, Kelleher, Serino and Wong, Special Counsel Ira Zaleznik, Town Manager Andrew Bisignani and their clerk Wendy Reed. Chair seconds. Roll call vote: Mr. Crabtree, yes; Mr. Horlick, yes; Mr. Kelleher, yes; Mr. Serino, yes; Mr. Wong, yes. Vote: 5-0.

The Board entered into executive session at 9:14pm.

The Board returned to open session at 9:55pm.

Mr. Serino said Mr. Crabtree is an attorney and has been part of meetings with various groups, and suggested that Selectman Crabtree, be the point man on Kasabuski issues.

Mr. Serino moved the Board vote Selectman Crabtree be the point man on Kasabuski issues. Chair seconds. Vote: 5-0.

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

Meeting adjourned at 9:58pm.

Respectfully submitted,

Wendy Reed, Clerk