

Saugus Board of Selectmen
August 30, 2011

***** MEETING MINUTES*****

REVISED: 8/25/11

Saugus Board of Selectmen
August 30, 2011, 7:00pm
Town Hall Auditorium
298 Central Street

- 1.) Call to order.
- 2.) Trash / recycling By-Law.
- 3.) Founder's Day Road Race at Breakheart: request for banner.
- 4.) Avedisian, 60 Salem Turnpike: Findings & Order.
- 5.) Avedisian, 60 Salem Turnpike re: request for time extension to produce documents.

Saugus Board of Selectmen
August 30, 2011

The Saugus Board of Selectmen met on August 30, 2011 at 7:00pm in the Town Hall Auditorium, 298 Central Street. Present were: Selectmen Scott Crabtree, Stephen Horlick, Michael Serino and the Chairman Donald Wong. Absent: Michael Kelleher. The Town Manager Andrew Bisignani was also present.

The Chairman announced the Board will be taking business out of order, #4, #5, #3, and then #2 and said when they get to the trash & recycling by-law, everyone will have 5 minutes to speak and must stick to the point and not get personal and said we need to work together so if it gets personal he will gavel them and may ask them to leave.

Mr. Wong excused himself from the table and Vice Chair Crabtree took the Chair.

Mr. Horlick moved to take #4 & #5 out of order. Vice Chair seconds. Vote: 3-0.

4.) Avedisian, 60 Salem Turnpike: Findings & Order.

The Vice Chair read the findings and order as follows: *PROCEDURAL BACKGROUND*

This matter came on for hearing before the Board of Selectmen (the "Board") as a result of a notice of hearing issued on November 12, 2010 directed to Pamela Avedisian ("Avedisian"), 60 Salem Turnpike, Saugus, MA 01906. The notice of hearing directed Avedisian to show cause on November 30, 2010, pursuant to G.L.c. 138, Section 12 and G.L.c. 140, Section 183A, why its licenses issued pursuant to G.L.c. 138, Section 12 and G.L.c. 140, Section 183A should not be revoked, suspended, modified, cancelled or why additional conditions upon the exercise of the licenses ought not to be imposed. Specifically, Avedisian was directed to show cause that she was not in violation of G.L.c. 138, Section 77 and Section 12A, and Section 1.07 and Section 1.12 of the Town of Saugus Liquor Rules and Regulations for failing to conduct a business and/or use its licenses issued in connection with the business at the location designated.

At the hearing on November 30, Avedisian did not appear, but a person, identified as Dustin DeNunzio, purported to appear on Avedisian's behalf. The Board voted to continue the show cause hearing until December 7, 2010, to permit Avedisian to appear at the hearing. The continued hearing was held on December 7, as scheduled, and Avedisian appeared, along with counsel. After the hearing, and after deliberation by the Board, the Board issued a written decision, served in hand on Avedisian, and signed for by her, on February 2, 2011, in which the Board expressly stated that "this proceeding involves potential cancellation of the alcoholic beverages license under G.L.c. 138, Section 77." The Board decision also warned Avedisian that she was on notice, that "as of the date of adoption of this decision, pursuant to the policy of the current ABCC, she will have six (6) months within which to exercise the license of file an appropriate application to transfer the license to someone who will exercise it for the benefit of the public." The Board decision also notified Avedisian that the Board would continue to monitor her progress, and would hold subsequent hearings to receive progress reports. Such subsequent hearings were held on March 1, 2011, June 7, 2011, and August 16, 2011. Avedisian did not appear at the August 16 hearing, due to a health issue. Representatives of Avedisian did appear and provided information to the Board.

Based upon the evidence received at the hearing, the Board finds the following facts:

FINDINGS OF FACT

- 1. In March of 2009, the Board approved a transfer of a liquor license to Avedisian for exercise at 60 Salem Turnpike in Saugus.*
- 2. The Board renewed the license at the end of 2009 for calendar year 2010, and at the end of 2010 for calendar year 2011.*
- 3. Notwithstanding Board action, Avedisian has yet to exercise the license and/or conduct business operations at the location at 60 Salem Turnpike in Saugus.*
- 4. From the proceedings before the Board, it appears that there was a fire loss at the premises, and that little progress towards reconstructing the fire damaged premises has been made.*
- 5. Additional permits from DEP appear to be required for Avedisian to secure permission to commence construction at the licensed premises and although Avedisian may have made some progress in securing the required permits from DEP, no permits have yet been issued that would be necessary for*

Saugus Board of Selectmen
August 30, 2011

the commencement of construction at the premises. It is ultimately the responsibility of Avedisian to secure the appropriate approvals from DEP, and it is her responsibility to secure these approvals in a timely manner.

6. *Aside from the proceedings involving DEP, Avedisian presented no definitive plans as to how to proceed to rebuild the licensed premises. Representatives of the Licensee could not represent to the Board a specific timetable for the completion of the rebuilding of the premises.*

7. *Minimal progress towards the exercise of the license at the licensed premises has been made since December of 2010, and the Board received no assurances concerning the use of Avedisian's license, and when the license might be capable of being exercised in the immediate future. As of this date, the license has not been exercised for over two and one half years. Failure to exercise the license has caused the Town damage due to lost tax revenue, including meals tax revenue.*

8. *Avedisian did produce at the hearing a purported purchase and sale agreement for the sale of the license, dated August 15, 2011, by and between Avedisian as seller, and DP Purveyors, Inc., 340 Central Street, Saugus as buyer. The Purchase and Sale Agreement contained numerous false representations concerning the status of the license and failed to disclose to the proposed Buyer the pendency of these proceedings involving the license.*

9. *From the Board's knowledge of local conditions, the Board is aware that the proposed Buyer runs what is commonly known as a "Sub Shop" and not a full service restaurant with seating for customers to consume food and drink on the premises. It is unclear, based upon the local knowledge of the Board, that the proposed Buyer could exercise the license, even if a transfer were approved by the Board and the ABCC.*

10. *Even though a purported purchase and sale agreement was presented to the Board, no application for transfer of the license was filed with the Board.*

LEGAL FRAMEWORK

The Board takes note of the following laws and decisions in connection with this matter:

1. *G.L.c. 138, Section 77 provides that a licensing authority may cancel a license for non-use.*
2. *In 1992, the Appeals Court decided the case of Board of Selectmen of Saugus v. Alcoholic Beverages Control Commission, 32 Mass.App.Ct. 914 (1992). In this case, the Appeals Court upheld the determination of the ABCC that a Board decision to not renew a license was, in fact, a cancellation of the license for non-use. The Appeals Court further upheld the ABCC in determining that the Board did not provide the licensee with sufficient notice that its license was subject to cancellation under Section 77 for non-use.*

3. *Since the Appeals Court decision referenced above was released, the ABCC has developed further policies and procedures regarding a cancellation of a license under G.L.c. 138, Section 77. Most recently, in Turnpike @ Winona, LLC v. Licensing Board of the City of Peabody, decided May 14, 2010, the ABCC enunciated further standards for the cancellation of a license under Section 77. According to the ABCC in Turnpike @ Winona, "It is this Commission's practice to allow the licensee six (6) months from the date of the notice of the risk cancellation to cure the non-use by either operating its premises **or filing the appropriate application to transfer the license.** . . . [T]he time within which the Licensee must act does not begin to run until the Licensee is first put on notice that there is a potential enforcement of Massachusetts General laws chapter 138, §77." (Emphasis added).*

CONCLUSION AND ORDER

Based upon the foregoing, the Board concludes and orders as follows:

1. *The Board provided Avedisian with clear and unequivocal notice on or before February 2, 2011 that these proceedings involved the potential cancellation of Avedisian's alcoholic beverages license under G.L.c. 138, Section 77.*

2. *Notwithstanding the Board's clear and unequivocal notice, Avedisian has failed to either operate her premises, or file an application to transfer her license to a third party, as set forth in the Turnpike @ Winona, LLC decision of the ABCC.*

Saugus Board of Selectmen
August 30, 2011

3. *Avedisian has failed to present any substantial evidence that the license will likely be exercised in the Town at any time during calendar year 2011 without the intervention of the Board.*

4. *Action by the Board is necessary in order to have the license operated for the benefit of the public.*

Based upon the foregoing, the Board VOTES to cancel the license of Pamela Avedisian to sell alcoholic beverages pursuant to the authority contained in G.L.c. 138, Section 77, and the rules and regulations of the Board. The cancellation shall be effective as of the date of adoption of this decision, and the appeal period to the ABCC shall commence from the date of adoption. All associated licenses for the premises issued by the Board shall likewise be revoked for violation of the Laws of the Commonwealth, to wit, G.L.c. 138, Section 77, and rules and regulations promulgated thereunder. If the implementation of this decision is delayed by appeal to the ABCC, order of a Court of competent jurisdiction, or any other reason, then this decision shall not foreclose further action by the Board on related enforcement proceedings involving this Licensee.

Mr. Horlick moved the Board vote to adopt the findings and order as read. Vice Chair seconds.
Vote: 3-0.

5.) Avedisian, 60 Salem Turnpike re: request for time extension to produce documents.

Vice Chair read the request submitted by Atty. Stephen Miller representing Avedisian and said he thinks the Board should take this up at the next meeting, September 6th.

Mr. Horlick moved to refer the correspondence to the September 6th agenda. Vice Chair seconds.
Vote: 3-0.

Mr. Wong returned to the table and resumed the Chair.

3.) Founder's Day Road Race at Breakheart: request for banner.

James Smith, 24 Bay View Road, Vice Chair of Friends of Breakheart was present and requested banner on Main St. at Vine St. for Founder's Day Road Race. Mr. Horlick thanked him and Breakheart and said it's been going on for many years and people enjoy it and thanked everyone involved. Mr. Smith said many groups are involved.

Mr. Serino moved to approve the request with standard conditions. Chair seconds. Vote: 4-0.

2.) Trash / recycling By-Law.

The Chair said he will repeat his announcement made earlier for those who came in after and said anyone that wishes to speak will have a 5 minute limit and must stick to the point and said he will not tolerate anyone getting personal and if they do, he will gavel and may ask them to leave and asked them to please address comments to the Chair and asked if anyone wanted to speak.

Bill Kramich, 12 Emory Street, thanked the Board of Health for getting rid of the hazardous waste on Essex Street and said they don't have much help and maybe DPW should be in charge of trash.

Maureen Dever, TMMP3, 3 Atherton Street, said she served on the Board of Health and was Chairman and said its clear they have wide statutory authority in creating rules & regulations for health & environment but does not have an option to set a fee and thinks the proposal addresses by allowing them input on fees and said the issue here is the Board of Health wants to increase recycling everyone agrees, and said the contract was under the Board of Health but now under recycling and the Town Charter stipulates only the Town Manager can enter into a contract, but if we all work together we can make this workable for all and urged the Board to bring the proposal to Town Meeting.

Joe Vinard, Chairman of the Board of Health, 2 View Street, respectfully requested the Board postpone action until after the Board of Health meeting September 12 and said the Board Members are citizens of the Town and said he agrees with a lot the prior speaker said, but feels this issue should be given to a committee to discuss process and said if there's an opportunity to discuss this a better solution can be presented and said he has no objection to Town Meeting setting any fees and again requested the Board postpone until after the Board of Health meeting that are posted public meetings and are also televised.

Peter Manoogian, TMMP10, 50 Ballard Street, said he is in support of the Article and supports forwarding it to Town Meeting and to call a Town Meeting and said Article 19 (Annual Town Meeting)

Saugus Board of Selectmen
August 30, 2011

proposed by the Town Manager was for a trash fee and he withdrew the request once the snow & ice deficit was addressed and at the same time Town Meeting became aware of the \$2 sticker fee so Town Meeting asked the Selectmen to look at the issue and propose a by-law so there could be an option and said people are willing to follow the program if they understand and people realize we have an incinerator and landfill, but no one is opposed to waste reduction and would like the \$2 sticker and noted that is not included in the proposed by-law and said tonnage is going down and we are headed in the right direction but more progress can be made so let's do it together and urged the Board to send this to Town Meeting.

Al DiNardo, TMMP4, 199 Essex Street, said he is on top of most issues but was struck by surprise when he heard about this in his water bill and didn't realize the impact until the 1st week in August of what this really meant and received calls of concern and he called Town Hall and was told it's the law and said there's a core group of people involved in the community and said he happened to have a party that week and had 6 bags of trash and it was difficult to get an answer and thinks there needs to be a breather on the taxpayer and said they look at this as nickel & diming and thanked the Board for taking the time to look into this and said trash is the one service each & every citizen in Town uses.

Wayne Brooks, TMMP1, 846 Broadway, said the contract with JRM is a legal document and it reads maximum of 5 barrels and the Board of Health reduced to 3 and doesn't feel there was a clear and imminent health hazard and feels the Board of Health should be told to cut it out until the elected officials discuss it.

Debra Panetta, TMMP5, 1 Bellevue St., said she is also co-president of Saugus River Watershed Council and past president and member of S.A.V.E. and said she likes the proposal and thanked them for #6 and said it's all about collaboration, cooperation and communication and with having both an incinerator and ash landfill is very unusual and trash is a very sensitive issue and said less than 4% of trash that goes there is from Saugus and asked we are doing our part but what are other communities doing.

Bob Long, TMMP9, 26 Bennett Avenue, said this is an issue that should have never happened and said the contract doesn't expire for 2 years and it calls for them to collect up to 5 barrels and asked if the contract was renegotiated. The Manager said no need to. Mr. Long asked about savings. The Manager said it's a wash. Mr. Long said he would like to see this resolved at Town Meeting. Mr. Horlick said the cost is fixed at \$600,000 no matter what. Mr. Long said let's put this thing away. Mr. Horlick said if it was enacted a year ago everyone would be up to speed.

Lorna Cerbone, Solid Waste / Recycling Coordinator, said she is also a Saugus resident and said that it used to be under DPW 20 years ago and around 1995 the State implemented a waste ban and said she wanted to clarify regarding the contract that it's for collection only and where we would save money is in tonnage and now it's 600 to 1,300 tons per load and even though we're paying a lower rate than 10 years ago, it still costs and explained they used the same exact process this time as when they reduced from 10 to 5 barrels and apologized for any confusion about the bulk item and said Saugus is not unique, more than half MA communities have a pay-as-you-throw program and we are trying to manage the best we can but want to see it resolved and said this has been in the works for about a year to implement.

Mr. Long said he doesn't want any misunderstandings and said they want increased recycling and there's no more cooperative Board and people involved but the fact remains this issue should not have remained out unresolved as long as it has.

Mr. Serino asked Mr. Vinard his position on oversight by an elected body. Mr. Vinard said it's given by statute and he takes the responsibility seriously and said anything they do effects them also and is not opposed to Town Meeting approving a fee and said Town Counsel's opinion and their associations counsel's opinion vary and why suggested a meeting and said the Board of Health is here to work with you and their meetings are posted open meetings and are televised and said the way this is written it's shoving it down their throats. Mr. Serino asked as clarification that the Board of Health's position is they are not opposed to the fee but barrels are under your authority. Mr. Vinard said yes and said they have regulations coming and they tell us what can and cannot be in bags and barrels and we need to be cooperative. Mr. Crabtree asked the Board of Health's position of the by-law a couple of years ago. Mr.

Saugus Board of Selectmen
August 30, 2011

Vinard said they were not in favor of it at that time. Mr. Horlick said state law focuses on public health etc. and we are trying to limit the amount of ash and asked if they go to surrounding communities to reduce to limit the amount of trash they bring here. Mr. Vinard said they have no authority in other communities but State enacts the same restrictions and recently imposed a licensed professional unannounced inspections at the incinerator to report to DEP and the Board of Health. Mr. Horlick said people are very sensitive there are cuts in state aid and look to provide same services we have to be sensitive to the \$2-\$4 charge, not with increases everywhere all at once. Mr. Vinard said that's a whole different subject and said the \$2 sticker was an option but the reduction was going to happen anyway and said he has served on the Board for 20 years and is aware of reductions and said the department is down from 4 to 1 employee. Mr. Horlick said they need to educate. Mr. Vinard said shame on any elected official that says they were not aware and said the Board of Health issues reports to the Selectmen and announcements.

Ms. Dever said there are 2 important reasons to bring this to Town Meeting and said Town Counsel's opinion and the fact that \$625,000 was appropriated for rubbish removal and \$635,000 for disposal and we are facing a deficit and would look for cost savings.

Mr. Crabtree said there are 2 different things, materials which is clearly regulated by DEP and Board of Health under their authority and the other is method & manner which is what the by-law has to do with.

Frank Giacalone, Director of Public Health said opinions from counsels conflict and said Article 19 confused because of the additional \$2 sticker but never intended an additional fee and has no problem with Town Meeting determining trash fee and said that was never written in their regulations.

Mr. Manoogian said they are not taking authority away and feels everything is addressed in this by-law.

Mr. DiNardo said it's been a long process from 2007 and we got a Town budget with a trash fee on it and this is one of many battles and said yes we are sensitive and we are many volunteers that hope for change and they are going around the legislative body of the Town.

Bob Cox, TMMP4, 5 Bayfield Road, said he wanted to recognize the efforts and said Town Meeting referred this to the Selectmen and they drafted this proposal and said he has not been able to read it yet so won't comment on it but supports his fellow Town Meeting Members and discussed some options on assessing fees on other communities.

Ms. Panetta said a Town Meeting Member asked if there would be any savings and was unclear on the answer and commented that she bought a big toter because of animals. The Manager said there's a savings in tonnage and hopefully an increase in recycling. Mr. Crabtree asked if he had a projection. Ms. Cerbone said when they did a survey 65% recycled and 90% used less than 3 barrels and said 75% are with the program. Mr. Crabtree asked if the survey was based on 35 gallon barrels. Ms. Cerbone explained the process over two weeks estimations. Mr. Crabtree asked if she thought there would be a savings going to 35 gallon barrels. Ms. Cerbone said there was no complaints about going to 3 barrels and the biggest complaint was barrel size and explained the stickers left on oversized barrels were purchased with a DEP grant. Mr. DiNardo asked if they will be going automated. Ms. Cerbone said other communities have and is the wave of the future.

Sean Maltaise, TMMP6, 18 Adams Avenue, asked what we are doing spending more time on trash and said we look foolish and said just a few months ago a collage of people got together to solve a problem and said let's agree on something again and get together and fix it.

Janet Leuci, TMMP4, 35 Wilbur Avenue, said anyone can submit an Article for Town Meeting and said Towns have checks and balances and if they voted anything not consistent with the law the AG would send it back disapproved.

The Chairman thanked everyone that came, residents, Town Meeting Members, Board of Health and Health Department and said the Board of Health is appointed by the Town Manager and the Selectmen confirm the appointments and in his opinion they are highly qualified members and read list and said they do a great job and said some Towns have to pay or buy bags and thanked the Board of

Saugus Board of Selectmen
August 30, 2011

Health for keeping us from having a trash fee and said he doesn't like to micromanage and noted they are volunteers and they are meeting September 12 and would like to give them an opportunity to have a meeting.

Mr. Serino said nobody questions the Board of Health Members and said this has been lingering since 2008 and if it was done at that time we wouldn't be discussing it today and knows they want to meet but they don't support an elected body having oversight and doesn't think there's any coming together on this because we are spread apart and it's in the best interest of the residents to call a special town meeting.

Mr. Serino moved the Board vote to call a Special Town Meeting on September 26, 2011. Chair seconds. The Chair said September will be a hard month for him and asked if possible October 3rd. Mr. Long prefers earlier.

Mr. Serino moved to amend his motion to call it on October 3, 2011. Chair seconds. Mr. Crabtree said he supports moving this to Town Meeting and said concern created conversation and everyone is affected by this. Vote: 4-0.

Mr. Serino moved to insert the Article into the Special Town Meeting Warrant. Chair seconds.

Mr. Crabtree moved to amend the Article. Chair seconds. Vote: 4-0.

Mr. Serino's motion Vote: 4-0.

Mr. Horlick moved to close the Warrant. Chair seconds. Vote: 4-0.

Mr. Horlick asked the Manager to send a memo to departments congratulating them on the hurricane clean up from the Board and said the yard is open all week. The Manager said yes 12-4pm until Friday for storm related debris.

The Chair gave update on Charter changes and said the Governor signed them Friday.

Citizen's Forum

Bob Long thanked Mr. Wong for following through with the changes. The Chair thanked Town Counsel for his help. Mr. Crabtree thanked the Board of Health, Recycling Coordinator and Director for having a conversation here that was referred to the Board by Town Meeting and said it's important to have discussion and supports the Article going to Town Meeting and supports the Board of Health and said some changes were made that were not being made by the Board of Health.

Peter Manoogian confirmed the meeting on Tuesday regarding Hamilton Street at 7pm and asked the purpose. Mr. Horlick said he asked for the meeting once complete and asked their clerk to notify Town Meeting Members. Mr. Manoogian asked if final cost will be presented. The Manager said yes.

Bill Kramich said he brought an issue up last December about parking in front of 43 Jackson Street blocking the sidewalk and nothing has been done about it and asked they do something.

Jean Bartolo, TMMP6, said cars park on the sidewalk on the opposite side also on the sidewalk and are there all day and asked if something could be done about that too.

Peter Vadala, 43 Pearson Street, said he was before the Board a couple of weeks ago requesting support in amending the zoning by-law for adult entertainment to include places like the one with the owl logo and he spoke with Town Counsel as they suggested and he explained any amendment wouldn't affect existing businesses and would like to talk to the Board to help him get it drafted.

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

Meeting adjourned at 9:18pm.

Respectfully submitted,

Wendy Reed, Clerk