

Minutes

ATTENDANCE

Select Board

Present: Alisa Brewer, Connie Kruger, Doug Slaughter, Andy Steinberg, Jim Wald

Absent: None

Staff: Pete Hechenbleikner, Temporary Town Manager; Scott Livingstone, Chief of Police; Sergeant Brian Daly, Patrol Officer; Sean Hannon, IT Director

Other: Brian Riley, Esquire (Town Counsel); Kristi A. Bodin Esquire; Cable Committee Members Sharon Vardatira, and Joan Golowich. Amherst Media Director Jim Lescault and Larry Kelley, blogger.

Meeting called to order by Ms. Brewer at 6:06 p.m. It was noted this was a special meeting this evening and no public comment would be held.

**LIQUOR LICENSE VIOLATION(S) Isaac Chow d/b/a Panda Garden East**

Ms. Brewer opened the public hearing at 6:07 p.m. and read aloud the hearing notice: “On April 21, 2016, at 6:00 p.m., the Amherst Select Board will hold a hearing pursuant to G.L. c.138, §23 to discuss your alcoholic beverages license, Isaac Chow d/b/a Panda Garden East #002400024 at 103 North Pleasant Street, Amherst. The hearing will be held in the Town Room, Amherst Town Hall, 4 Boltwood Avenue. The hearing will concern the reports submitted to the Select Board by the Amherst Police Department, copies of which are enclosed. You may attend this hearing and be represented by counsel at your own expense if you wish. These allegations, if proven, may constitute a violation of Massachusetts General Laws Chapter 138, §34, furnishing an alcoholic beverage to a person or persons under 21 years of age. These allegations, if proven, would constitute grounds for disciplinary action, including a written warning, suspension, or revocation of your license. If you have any questions, please contact this office.”

Brian Riley of Kopelman and Paige, LLC, Town Counsel, was introduced and provided an overview of the process. Attorney Riley swore in all individuals who indicated an intent to testify this evening, asking them to swear that all testimony they were to give before the Select board in this matter is the truth, the whole truth and nothing but the truth.

Name: Chief of Police Scott Livingstone and Sergeant Brian Daly of Amherst Police Department

Testimony: Report of incident entered April 4, 2016 was provided by Sgt. Daly, concerning an incident of March 27, 2016. A 17 year old female was removed from a PVTa bus, taken by ambulance to Cooley Dickinson Hospital after service of alcohol by Panda East. Sgt. Daly indicated he spoke with the mother and her seventeen year old daughter on March 29, 2016, who reported she came to Amherst to meet friends and they went to Panda East for drinks, ordering 2 rounds of scorpion bowls without request for ID, returning to UMass and then ended up on the bus and was subsequently transported. Chief Livingstone indicated he spoke with mother also after picking up seventeen year old from the hospital.

Attorney Kristi Bodin representing Panda East presented with Manager of Record Amy Wu.

Attorney Riley indicated the hearing notice had been sent to Isaac Chow who is listed as the manager of record and asked if he had in fact received the notice. Ms. Bodin indicated she did not know if he received the notice, and that they have been trying to transition the license, as he is not actively involved in the license. Ms. Wu has been actively managing the restaurant since the fall of 2015. While this is not part of the hearing, since Mr. Chow is the manager of record, that issue needs to be rectified.

Ms. Bodin indicated the Police report says it was busy, but her client indicates it was not. There were two waitresses and two waiters on. We do not know who the seventeen is or what she looks like or the friends, whether they were male or female. She indicated that while an administrative hearing is not a court proceeding, this is really hearsay, there is nothing substantive to support a violation, and she is requesting that this part of the charge be dismissed or requests the opportunity to cross examine the seventeen year old. Ms. Bodin further indicated that Ms. Wu has all the sales receipts from that evening, which do not show two rounds of scorpion bowls being served to four people. Since January they have changed the alcohol content of Scorpion bowls to one shot of liquor, so therefore two shots would not be sufficient to sustain alcohol poisoning. Insufficient evidence exists to prove she was served at Panda East. There is no corroboration from any other witnesses. The Police report shows evidence of Panda East checking IDs and turning down service to individuals that do not have appropriate iID. She presented evidence of guests bringing in their own alcohol to the restaurant has been confiscated by the owner on multiple occasions. There are a lot of questions as to whether this report should be taken as evidence. Ms. Bodin noted the individual reported going back to the dorms, but we don't know what they did at the dorms - was more alcohol consumed at that time.

Attorney Riley confirmed as an adjudicatory hearing the Board makes a decision based on testimony received and whether the Board believes a violation has occurred. It is not unusual to not have the 17 year old individual here for cross examination.

Sgt. Daly and Chief Livingstone responded to questions about sequence of events and if there was any sense if the parent/seventeen year old are open to further questioning for verification. Chief Livingstone indicated notice was provided by the parent to others including the University and University Police as well as the Alcoholic Beverage Control Commission.

Attorney Riley indicated this concludes evidentiary report on first violation.

It was noted that witnesses remain sworn in. Sergeant Daly described his report of the incident of Friday, April 8, 2016, using four twenty year old students to purchase alcohol at Panda East. They were seated, and the server requested ID and denied service. After 9 p.m. he and a detective entered the restaurant and conducted additional checks. He requested identification on first table with a party of two. One person provided an expired MA license and the other a Rhode Island license, which was found not to be the individual named on the license, and upon further questioning she provided her MA license providing evidence as a 20 year old. The officer seized the fake ID. All other tables/patrons checked were found to be in compliance. Recommendation from ABCC is not to accept an out of state licenses as proof of identification. The individual in possession of fake identification was charged as well.

Attorney Bodin came forward, questioning the fake ID, noting the photograph received was redacted and therefore she was unable to confirm. Attorney Bodin brought forth confiscated fake id to show how difficult it is to detect. Attorney Bodin admitted they missed this fake identification and that the license holder has invested in an ID scanner machine and wants to change the perception of the establishment to a restaurant.

Manager Wu confirmed Monday of this week the identification scanner was installed. After the January incident she began investigation into purchase. Manager was asked how the scanner was employed and confirmed that it was used for every single purchase of alcohol. Manager confirmed they asked all patrons for identification. Attorney Bodin indicated a policy of examination of identification from all patrons was instituted after the Serve Safe training held in January at the restaurant.

Ms. Bodin clarified that Ms. Wu was the functional, acting manager not the manager of record as she had indicated.

Evidentiary portion of the hearing on two incidents was closed by unanimous vote of the Select Board.

Attorney Riley explained how the Board needed to proceed, first with discussion, followed by a motion to find whether or not a violation exists on each incident and then if there is a violation, determine a penalty. It was further explained that there was no set burden of proof in this setting, using the different scenarios in each incident. Imposing a penalty is a serious matter, so the Select board would need to be convinced that a minor was served on that occasion.

Members noted that it would be unusual for the seventeen year old to indicate they had been served at a restaurant, if they had not. The amount of alcohol or ability of a minor to have drank later in the evening is ancillary to the issue at hand - was a minor served at the establishment.

On a motion by Mr. Slaughter, seconded by Ms. Kruger the Select Board voted unanimously to find that on March 26, 2016 Isaac Chow d/b/a Panda Garden East violated Massachusetts General Laws Chapter 138, §34 [sale or delivery of alcohol to a person under 21 years of age] 1 count and of 204 CMR 2.05(2), permitting an illegality on the licensed premises at 103 North Pleasant Street,.

The Select Board noted this evening provides an opportunity for greater clarity to licensees and the police officers as to what the expectation is moving forward.

On a motion by Mr. Steinberg, seconded by Mr. Slaughter, the Board voted unanimously that the Select Board finds that on 04/08/16 Isaac Chow d/b/a Panda Garden East violated Massachusetts General Laws Chapter 138, §34 [sale or delivery of alcohol to a person under 21 years of age] 1 count and of 204 CMR 2.05(2), permitting an illegality on the licensed premises at 103 North Pleasant Street.

Attorney Riley confirmed that the five days of suspension which was held in abeyance from the violation found in January of this year will automatically be applied and that the two violations found this evening, could be considered together, but it would be best to vote separately. Ms. Brewer confirmed that the Select Board is able to consider everything from a warning, to suspension.

Attorney Riley recommended they hold any order of suspension in abeyance until the ABCC acts on any appeal. Ms. Kruger suggested May 4-8 be delineated for the five days held in abeyance.

On a motion by Ms. Kruger, seconded by Mr. Slaughter, the Board voted unanimously to impose the suspension of the license of Isaac Chow d/b/a Panda Garden East of five days which was held in abeyance pursuant to the Select Board decision in a letter dated January 12, 2016, said suspension to be served from May 4 2016 through May 8, 2016.

The Select Board discussed various penalties, including various specific amount of days up to revocation of the license. The Select Board considered the number of violations within ninety days and the steps the license holder had taken to address the issue, including training and identification scanner.

Mr. Hechenbleikner noted his experience was that with three violations within a two year period a license would be revoked, noting he had never seen so many violations within a 90 day period, including the seventeen violations heard in January of 2016. Mr. Hechenbleikner noted an initial violation might receive a 3-5 day revocation, a second violation of 15-20 day revocation and a third violation being revocation.

A successive period for each violation was discussed, including suggestion of fifteen days on the first violation and an additional fifteen days on the second violation, and then thirty days as the beginning threshold given the egregious number of violations and a suggestion of fifteen and thirty days. Further suggestion was to delay revocation until September 1, 2016, so that the revocation occurs at the beginning of the school year if the revocation was to be less than the forty-five days suggested. Ms. Brewer questioned the goal, was it to be in compliance or to be punitive. Members noted the suspension provides an opportunity to build capacity to alter the business model during the suspension period.

On a motion by Mr. Slaughter, seconded by Ms. Kruger, the Board voted unanimously to approve a suspension of the license of Isaac Chow d/b/a Panda Garden East of 15 days for the first of these violations, to be served from May 9, 2016 to May 23, 2016.

On a motion by Slaughter, seconded by Mr. Wald the Board voted unanimously to approve a suspension of the license of Isaac Chow d/b/a Panda Garden East of 35 days for the second of these violations, with the suspension to be served from May 24, 2016 to June 27, 2016.

Ms. Brewer requested further discussion on the need to formally change the manager of record. Mr. Riley suggested a directive be included in the written decision that the appropriate paperwork to effect a change of manager be filed by a certain date or be subject to a further hearing. Ms. Bodin noted they are awaiting a certificate of good standing from Mr. Chow and have been working to effect the change since November. Ms. Bodin reported that the history is that Panda Enterprises Inc. is the owner of the restaurant and employer of record for a number of years, however at some point Isaac Chow changed the liquor license to his name doing business as. Mr. Hechenbleikner suggested that the change be filed by the end of business on June 27, 2016 with a hearing for the change of manager to be scheduled at the next available meeting. It was suggested and confirmed by Counsel that signage can be required as a condition of the suspensions, to be provided by the Town Manager, and to be posted in an agreed upon location with the suspension information.

On a motion by Ms. Kruger, seconded by Mr. Slaughter, that it further be a condition of suspension that the Select board requires there be an additional requirement for the posting of a sign, no smaller than 11 x 17 inches, with a warning and placement to be determined by the Town Manager to be displayed during the term of the suspension.

On a motion by Ms. Kruger, seconded by Mr. Slaughter the Select board voted unanimously to require filing for a change of manager to be filed no later than June 27, 2016 or be subject to further hearing by the Select Board.

The Select Board took a brief recess, returning at 8:47 p.m., Mr. Riley having exited the meeting.

Mr. Hechenbleikner brought forward a proposal for a Cable TV Franchise renewal from Comcast in response to a Request for Proposal. He reported the Cable Advisory Committee has been working with special counsel for several months. They have drafted a request for proposals (RFP) based on feedback from the ascertainment process, two public hearings held to gather information on the needs/wants of the community. Mr. Hechenbleikner noted that two members of the advisory committee, special counsel and the Town Manager are to serve as a negotiation team to negotiate a new contract by the end date of the current contract term. Mr. Hechenbleikner noted a willingness to serve through the end of this negotiations as needed at the desire of the Select Board and a new town manager.

Ms. Demetria Shabazz came forward and introduced herself and the members present. She spoke about the work completed to date, noting the difference between the Request for Proposal and the response from Comcast. Ms. Shabazz offered initial observations on the particulars of the process to date as well as the two responses received, an initial and final. A meeting is scheduled for formal review of the response to the RFP. The Town's is requesting for capital the amount of \$2.2 million to address failed infrastructure and new equipment necessary. This is a pass through cost at \$2.52 per subscriber each month for the ten years. Comcast response included \$450,000 - the same amount provided at the last contract renewal, disagreeing with what the Town has requested. Comcast asserted that a survey they conducted found that if Public Education and Government (PEG) access went away, subscribers wouldn't even notice, which differs drastically from the ascertainment findings. The Town has requested PEG access be high definition. Comcast asserted that if items requested were to be put in place, the users could expect a rate hike to cover the costs. Seventy percent of

users are aware of PEG access channels. Negotiations will address the differences between the request and response, attempting to find common ground.

Ms. Shabazz brought forth two issues of which she believed the Select Board needs to be made aware, as they may impact negotiations. A letter dated February 4, 2016 from Comcast regarding the institutional network (I-Net) for data transmission, pursuant to the renewal license. Comcast is claiming there is a discrepancy between how the Town is using the I-Net, which is not the responsibility of the cable renewal committee. There is also a letter from Ms. Shabazz, as the Chair of the Cable Advisory to Comcast alleging issues of non-compliance on maintenance issues that Comcast has not attended to in the past, wanting to have the documentation of notice. Comcast wrote back indicating their intent to look into the matters, creating a circular reference to the I-Net situation. Comcast built, owns, and is responsible for maintenance of the I-Net. It was built with a half million dollars paid by the rate payers/customers over six years. Of the six fibers in the I-Net, two are used by cable, with the Town using the remaining four. The Town is at odds with Comcast's belief that two of the remaining four fibers should remain available. The current contract indicates the Town may use the I-Net as it existed as of October 16, 2006. The Town can find no agreement regarding the use of the I-Net. The use will be codified within a renewal agreement. There is also an attempt by Comcast to redefine what is considered annual operating revenue, which is used to calculate the funds provided for PEG Access.

Appreciation was extended to Ms. Shabazz for accepting the Chairmanship upon the resignation of the former Chair and for the work of the committee as well. Ms. Brewer noted for the record that her husband is a board member of Amherst Media, as are two members of the CAC, noting the Board is not a paid position

Jim Lescault, Executive Director of Amherst Media thanked the members of the CAC. He noted his review of the survey performed by Comcast provided strong evidence of support for the PEG programming they provide for the Town, noting their intent to provide programming to educate the public on the process. Mr. Lescault expressed the importance of the work done by Amherst Media in the process of determining capital costs. Mr. Hechenbleikner confirmed the role of the Select Board as signing the franchise agreement brought forward by the Town Manager and negotiating team. Ms. Brewer spoke about the question on the need for a hearing after the proposal is received, noting we are not required to hold a hearing at this point, which was the point of discussing the process this evening.

Mr. Hechenbleikner made an inquiry as to interest in anyone serving as a representative for the regional planning organization known as the MPO. Doug Slaughter indicated an interest in serving, noting it seemed to be a good match with his representation at Pioneer Valley Transit Authority. The Mayor of Northampton is currently the MPO representative, but is considering stepping back during his tenure as the Chair of Pioneer Valley Transit Authority.

The Town Manager provided a brief update on damage that occurred at the Mill River Recreation Area, providing a copy of the rental agreement for use of the pavilion for a family reunion of 20 to 30 people as well as pictures of significant trash and damage to the park. The park was cleaned by Town staff at double time on the holiday, rubbish was removed and the intent is to bill the permit holder. There is also discussion on the ability to move forward with central permitting for all public spaces, conservation, recreation and town commons. Request that open container, noise bylaw, and any other related rules should be included in the application process.

The Town Manager reported that the company selected by the Town for construction of solar arrays on the two Town landfills has filed for bankruptcy protection; However, Sun Edison has indicated their intent to move forward with due diligence on the agreements for the development of the 2 sites. The Town is speaking with both Power Options, an energy commodity as well as a special attorney from Kopelman and Paige, LLC.

The Town Manager referenced his response to a five year old boy concerned with the outcome of a tree.

Ms. Brewer reviewed the list of draft questions which had been prepared for the Town Manager interviews to begin on Monday. She suggested that the Select Board prioritize the questions, so that if time runs short, you will be assured the important items will have been addressed. The candidates' work products will be delivered tomorrow. The questions will be put forth in a round robin fashion among Select board members, beginning with the Chair, Ms. Kruger, Mr. Slaughter, Mr. Steinberg and Mr. Wald. Candidates will be welcomed by the Select Board at 9 a.m.; a complete schedule was included in this evening's packet. The 3 p.m. event is an open forum for the public, at which the Select Board could attend as observers. The Select Board interviews will follow at 6 p.m.

It was agreed there was not a need for a brief executive session to discuss parameters for negotiation of a contract with a chosen candidate; that can occur once the Board has chosen a candidate. Mr. Hechenbleikner will not be present May 5, 2016, the evening the Select Board meets to choose a candidate.

The Select Board discussed agendas for brief meetings preceding Town Meeting on May 2 and May 4, 2016; including an opportunity for inquiry on candidate interviews.

ADJOURN - The meeting adjourned at 10:49 p.m.

Submitted by Peter Hechenbleikner, Temporary Town Manager

2016-04-21 Draft Motions

- 2a-1 Notice of Hearing Issac Chow dba Panda Garden East 4.21.16
  - 2a-2 Incident Report 1 - 03.26.16
  - 2a-3 Incident Report 2 - 4.8.16
  - 2a-4 Notice of Decision Isaac Chow dba Panda Garden East 1.12.16
  - 2b-1 Cover Email to Comcast Response to RFP
  - 2b-2 Comcast Response to RFP Cover Letter
  - 2b-3 Comcast Response to RFP - Final
  - 2b-4 DTC Request for Update of Status of Cable Licensing
  - 2b-5 Response to DTC Confirmation of Cable Process
- Draft Agenda 04-21-16