

SELECT BOARD MEETING

Monday, January 11, 2016 – 6:30 p.m.

Town Room, Town Hall

Minutes

ATTENDANCE

Select Board

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

Absent: None

Staff: Interim Town Manager David Ziomek; Police Chief Scott Livingstone; and Officer Nicholas Chandler

Other: Residents Vince O'Connor and Mary Wentworth; Blogger Larry Kelley; Brian Riley, Esquire (Town Counsel); Kristi A. Bodin Esquire; Amy Wu, Panda Garden Manager; Thomas Walsh; and Mark Power

Meeting called to order by Ms. Brewer at 6:32 p.m.

PUBLIC COMMENT

Residents Mary Wentworth and Vincent O'Connor spoke about a challenge they made to the Board of Registrars about the validity of signatures on the petition of a candidate for School Committee for the 2015 annual town election. The board declined to consider the petition because it was not filed within 48 hours after petitions had to be submitted to the Clerk. Ms. Wentworth spoke about what she understands to be a decision from the State Ethics Commission concerning the denial of a hearing before the Board of Registrars. Ms. Wentworth requested any copies of communication between the Ethics Commission and the Town. Mr. O'Connor stated that the challenge was submitted within 48 hours, 30 minutes before the deadline. Mr. O'Connor said he should have recognized that in any event, the 48 hours did not begin at the time as originally interpreted by the clerk and Town Counsel. He also noted that the error was not reported to him until three months following the incident. He requested an apology from the Town Counsel.

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

The hearing was opened at 6:41 p.m. The Hearing Notice was read: "On January 11, 2016, at 6:40 p.m., the Amherst Select Board will hold a hearing pursuant to G.L. c.138, §23 to discuss your alcoholic beverages license #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 report submitted to the Select Board by the Amherst Police Department, a copy of which is 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."

Attorney Brian Riley, Kopelman and Paige PC, representing the Town asked if anyone was present representing the licensee and if they would like to make a statement. Attorney Kristi Bodin represented the licensee and introduced Amy Wu, Acting Manager of Panda East. Ms. Bodin reported that Mr. Chow the current owner/manager would be stepping down and plans to transfer the license to a new corporation under new management. Ms. Wu as Acting Manager has taken immediate steps to address the violation. Attorney Bodin acknowledged the truth and accuracy of the testimony of the Officer about to be provided, recognizing the gravity of the situation of underage patrons being served.

Amy Wu was sworn in by Attorney Riley, stating that the testimony she was about to give in this matter is the truth, the whole truth and nothing but the truth. Ms. Wu reported that following the incident the entire wait staff attended a mandatory four a half hour serve-safe training. Ms. Bodin added that the morning following the incident Ms. Wu contacted her and was very upset. She asked for her assistance. Mandatory training was

held November 22nd, the Sunday following the incident. Ms. Wu indicated she had been serving in the capacity of manager since September of 2015 and has 25 years of experience in restaurant management.

Mr. Steinberg asked about information included in the complaint, pictures of what appeared to be web based messages from social media. Ms. Bodin responded indicating the information was hearsay and therefore inadmissible. Chief Scott Livingstone presented and reported the pictures were from a social media site Yik Yak that is popular with the student population and were included to show that the situation had been going on for some time, probably since the beginning of the semester. Attorney Riley agreed with Attorney Bodin, that the information should not be considered in the Board's decision. The Chief responded that he had no further indication that the behavior was in fact a pattern.

Police Officer Nicolas Chandler was sworn in and provided his testimony of the event. Following up on a complaint filed with the police that the establishment was serving minors, he and another officer were dispatched to the scene to conduct a compliance check. Upon arrival, Officer Chandler reported there was a line of individuals waiting to get in, many of whom appeared to be underage. Officer Chandler entered the establishment and informed Ms. Wu of the complaint, requesting her permission to perform a compliance check. Ms. Wu consented, noting they would not find any violations. Officer Chandler testified they were able to identify numerous patrons who had been served scorpion bowls and who acknowledged that they had not been asked for identification prior to service of alcohol. The officer confirmed that seventeen minors either failed to present identification upon request or verbally admitted to being a minor. The patrons were asked how they acquired the alcohol and the response was uniform that they were not asked for identification. Ms. Wu was asked to remove the alcohol from the parties identified as minors. Officer Chandler reported that in the course of events, other parties vacated the premises, presumably as a result of police presence and the compliance check in process, leaving scorpion bowls on tables. The Officer reported there were numerous scorpion bowls lined up at the bar, waiting to be served.

In response to a question from the Board on why a change in manager or ownership had not yet occurred, Attorney Bodin reported she was trying to resolve a complicated governance issue between Isaac Chow's d/b/a and a dissolved corporation. Mr. Chow is selling the business to a corporation, removing himself from both management and ownership. Attorney Bodin reported Mr. Chow is overseas taking care of his father who is quite ill. Attorney Riley confirmed the charges are against the license holder not the management.

Ms. Brewer asked the Chief of Police to testify and make any recommendation he may have. The Chief of Police was sworn in to provide testimony. Chief Livingstone stated that based on the Officer's report, acknowledgement of license holder, and the serious allegations, he recommends suspension of license for one to two days, also noting that this is the first offense and the licensee has acted responsibly following the violation.

Attorney Bodin requested that the recommended suspension be held in abeyance for six months to a year and if there are no further violations, that the suspension be dismissed; or that any suspension be served at a time when business is slow so as to not impact the business economically. The hearing was closed at 7:20 p.m.

Mr. Steinberg noted given that both the acting manager and their attorney acknowledged the violations, it was sufficient to move forward with a finding of violation.

Voted unanimously, that the Select Board find that 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], 17 counts, and of 204 CMR 2.05(2), permitting an illegality on the licensed premises at 103 North Pleasant Street.

Attorney Riley advised that as a licensing board, the Select Board has broad authority given the significant violations, taking into account the measures that the Manager has put in place since the violations. Members

deliberated, speaking about concerns, the seriousness in the sheer number of violations, the actions of the manager and effect any action may have on wait staff. Ms. Brewer noted it was her feeling that any suspension approved not be slated for a slow time for business, but rather at a time when it would be most impacted given the egregious nature of the charges. Attorney Riley spoke about the time frame for an appeal, providing his recommendation that the timeframe for any suspension be beyond the five day appeal period.

VOTED unanimously that the Board approve a suspension of the license of Isaac Chow d/b/a Panda Garden of 7 days, with 2 days to be served and the remaining 5 days to be suspended for a period of two years pending any further violations, with the suspension to be served from January 25 to January 26, 2016.

Public Hearing: Liquor License Transfer/Sale of Stock Conara Inc. d/b/a The Harp

The public hearing was opened at 7:51 p.m. Ms. Brewer noted the application packet was available online along with an updated floor plan presented this evening. Ms. Bodin, representing Conara Inc. on the application before the Board, provided an outline. Mr. Steinberg recognized that Mr. Walsh has been involved in other restaurants in Amherst and is aware of the Board's concerns about underage drinking and the seriousness with which this Board operates. Mr. Walsh spoke about key elements in his plan, hoping to be more of a neighborhood eatery with the addition of food, improvement to space, planned training including TIP certification and crowd management, and use of a state-of-the-art ID system. Mr. Steinberg invited Mr. Walsh to join the retail partners subcommittee of the Campus and Community Coalition, working together to curb high risk drinking. Resident Vincent O'Connor spoke about the positive impact current owner Mr. Power made to connect with and benefit the North Amherst community. The hearing was closed at 8:01 p.m.

VOTED unanimously, to grant the application for Transfer/Sale of Stock, New Officers/Directors and Stockholders, Change of Manager and Pledge of License/Stock of Conara, Inc., d/b/a The Harp, Annual All Alcohol Restaurant On-Premise Liquor License #002400088, as described on the premises of 163 Sunderland Road, said license to be held by the Town pending approval of a special permit to new ownership; Thomas Walsh, President/Director/Manager.

OPEN MEETING LAW COMPLAINT

Ms Brewer reported on a complaint received dated December 30, 2015 regarding the December 21st meeting, which stated that the Chair failed to state her affiliation with UMass Amherst prior to voting on something beneficial to the University, requesting the Board revote without Ms. Brewer present. Ms. Brewer read aloud a draft of a letter prepared in response to the complaint noting that if the Board approved of the response, the Clerk would sign it on behalf of the Board.

Mr. Kelley came forward and spoke about his reasoning for filing the complaint, acknowledging that while a disclosure was on file with the Town Clerk's office, he was concerned with the fact that no public statement acknowledging the conflict was made that evening, December 21. Mr. Kelley went on to state his belief that the topic deserved more public airing. Attorney Riley indicated that when a complaint is filed, it is incumbent that the Board acknowledge it and respond. However, that the nature of what the complainant has said, does not represent an open meeting law violation and that's all the Board needs to address.

VOTED unanimously to approve the Select Board's response, as prepared by Town Counsel, to the Open Meeting Law complaint of Mr. Larry Kelley and to authorize the Select Board Clerk to sign the response on behalf of the Select Board and file the response pursuant to M.G.L. c.30A, §23(b).

FY 17 Water and Sewer Rate Announcement

Mr. Ziomek brought forth a recommendation for water and sewer rate for FY 17, scheduled to be voted on at the January 25, 2016 meeting. Mr. Ziomek referenced a memo in the Select Board packet, noting assistance of Guilford Mooring, Superintendent of Public Works and Finance Director Sandy Pooler. The proposed rates represents a 2.8% increase in the water rate and no increase in the sewer rate for the coming year, which equates to approximately a \$12 increase in the average water bill. A question was asked about the

methodology, basing the sewer usage on actual water consumption. Mr. Mooring explained that it is the method recommended by the Department of Environmental Protection and meant to encourage conservation of water, noting the Town can and that there are other communities who do it differently. The Town of Amherst used to use a step grade, charging a lesser fee for lower usage. In regard to a question on the debt for a planned sewer extension project, Mr. Mooring confirmed that the cost will be voted by Town Meeting but is anticipated to be covered within the current rate. UMass will be notified of the new rate following the vote at the January 25, 2016 meeting.

MSBA Wildwood Elementary School Renovation Update

Superintendent Maria Geryk introduced Assistant Superintendent Mike Morris as the Chair of the Building Committee. Mr. Morris introduced Tom Murphy Owner Project Manager and the Designer Jim LaPosta of JCI Architecture. Mr. Morris provided a brief update on the project noting the handout will be available on the project website. Mr. LaPosta provided an overview of the process, the options that exist and actions that have been completed to date. The School Committee will review and vote on the grade configuration and the School Building Committee on the schematic design. Conditions of existing buildings, the various sites explored and baseline costs necessary to bring buildings up to code were described. Three options approved by MSBA included a 360 student K-6 design that would address Wildwood school only, a 670 student K-6 configuration to serve students now at Wildwood and Fort River Schools, and a 750 student 2-6 grade configuration. Updates for the Amherst Elementary Building project are available on Facebook. Possible avenues for financing were outlined including the possibility for a debt exclusion override anticipated in the fall of 2016. Members requested that deadlines for either a ballot question or warrant article be considered in the deliberation process.

Capital Project Overview

Doug Slaughter provided an overview of capital building projects including the school project highlighted this evening, a library renovation, a new fire station and Public Works facility. Mr. Slaughter noted that financing options provided no path to move forward with all four projects without consideration of a debt override, whether it is for one of the projects or to fund more than one project. His goal this evening is to provide information on the four building projects. These four projects will continue to be discussed within the agendas of the Joint Capital Planning Committee, the Finance Committee, and the various building committees, as well as future Select Board agendas.

Charter Question Certification

Ms. Brewer explained the process to date and the action before the Select Board this evening, noting that Town Counsel will be invited to a future meeting to discuss the appropriate role of the Select Board in terms of the appropriate use of resources in informing the public.

VOTED unanimously, that the Select Board order that the following question be placed on the ballot for the March 29, 2016 Annual Town Election: “Shall a commission be elected to frame a charter for Amherst?”

MMA Resolutions for Annual Meeting

VOTED unanimously that the Select Board, at the Saturday, January 23, 2016 MMA Annual Business Meeting take a position in favor of the proposed resolution, Supporting a Strong and Enduring Local-State-Federal Partnership to Protect the Environment.

VOTED unanimously, that the Select Board at the Saturday, January 23, 2016 MMA Annual Business Meeting take a position in favor of the proposed resolution, Ensuring a Strong and Enduring Fiscal Partnership Between Cities and Towns and State Government in Fiscal 2017 and Beyond

Temporary Town Manager Goals

Ms. Kruger reviewed the document entitled “Temporary Town Manager (TTM) Priorities February 1-July 1, 2016: Second Look”, highlighting changes from the original document. Members offered comments including

suggestions to include the building assessment report and fee schedules for LSSE programming to the list of projects.

Update for Town Manager Search

Ms. Brewer reported on the Select Board meeting on January 6, 2015 with Mr. Lynch. Ms. Brewer indicated Amherst Media will not be able to cover the public information sessions with Mr. Lynch.

Town Manager Report

Mr. Ziomek asked Mr. Mooring and Ms. Rusiecki to come forward to summarize the administrative consent order (ACO) from the Department of Environmental Protection regarding Amherst water supply. Mr. Ziomek stressed that we have an excellent working relationship with DEP and at no time was the Town's water supply ever compromised. Mr. Mooring confirmed that they have been working with DEP for months to come to agreement on the ACO penalty of \$7,500 as well as equipment upgrades requested. Mr. Mooring confirmed that the upgrades are in the capital budget and that none of the associated costs affect the budget presented.

Economic Development Director Geoff Kravitz has been very productive in his first week, attended listening sessions with the BID, Chamber, Boards, and staff, and is beginning to develop his entry plan.

Mr. Ziomek provided an update on UTAC subcommittee meetings held on housing, culture and arts, and economic development as well as the plan for a steering committee meeting in late February or early March. Geoff Kravitz will be assuming a strong staff role in these meetings.

A report on a meeting with Ron Bohonowicz and LSSE Director Linda Chalfant, which included a tour of the construction site that LSSE will occupy at ARMS was offered. Mr. Ziomek noted that much of the work is modular work spaces, but indicated that he was very pleased with the process to date. The actual move is planned for early to mid March.

An update on the Shelter including weather and related authorization for increased occupancy of 22 to 34 guests on five occasions based on extreme cold temperatures.

Meetings with the Chief of Police and representatives from the UMass Cannabis Coalition regarding the ExtravaGanja event have occurred. Mr. Ziomek expects to have a recommendation for the Board at the meeting on January 25.

A 20-year PILOT agreement with Hampshire College was signed, which includes a 2.5% escalation clause for that portion of the Solar project in Amherst. The project will go through the usual permitting process. The Town is also expecting a similar project from Amherst College.

The bases for the crosswalk signals are in the ground for the Pine Street project and weather permitting the signals will be installed in the coming weeks.

Revised plans for the Triangle Street intersection are on the project section of the Public Works Department website and are scheduled to be reviewed by the Public Works Committee on Thursday, the 14th of this month.

Staff met to review continued correspondence from concerned citizens on the landfill solar projects and we are committed to responding. Staff will be assigned to replace Mr. Pooler's work with Sun Edison on these projects moving forward.

Proposals to the CDBG Advisory proposals total \$825,000, including capital and social services needs. Mr. Ziomek anticipates their recommendation and his to be completed for the Select Board meeting on the January 25.

Mr. Ziomek reported that he attended the BID Board meeting last week as the Town's representative.

Mr. Pooler's last day is Thursday of this week. Mr. Ziomek is pleased to announce the appointment of Treasurer Collector Claire McGinnis and Comptroller Sonia Aldrich as Interim Co-Finance Director until such time as a new Town Manager is hired and acclimated to the post. Ms. Aldrich will oversee the IT Department and the work of the Finance Committee and Ms. McGinnis will oversee the capital process.

Member Reports

Mr. Steinberg noted he provided a written update on the Budget Coordinating Group for the Board this evening. He also reported on his attendance at meetings of the four towns regarding the Regional Schools assessment method for the upcoming fiscal year and about concerns of committees for which he is liaison, including the DAAC and PTBPC, regarding the proposed roundabout at Triangle Street.

Ms. Kruger reported on a forum she attended, noting she had met Ann Tweedy, Marketing Director for the BID.

Chair's Report

Ms. Brewer indicated receipt of a letter from Amherst Media Director Lescault requesting an audit of Comcast. Ms. Brewer noted for the record that her husband is a non-paid member of the Board of Directors.

She reported about future events including the Annual Winterfest Festival at Cherry Hill and plans for Black History Month.

Committee Charge

The Board took no action on the charge for a Downtown Parking Working Group.

Committee Appointment

VOTED unanimously to appoint Maurianne Adams to the Lincoln-Sunset Local Historic District Study Committee (LSLHDSC) through June 30, 2017.

Parking Reservation

VOTED unanimously to approve the reservation of three parking spaces on the east side of North Pleasant Street in front of the Monkey Bar and Stackers Pub from 8 a.m. to 6 p.m., on Thursday, January 14, 2016, for a rate of \$10 per meter per day, for a total of \$30.00, providing notice to the Business Improvement District and the Area Chamber of Commerce.

Consent Calendar

VOTED unanimously to approve the seven items listed on the Consent Calendar for the January 11, 2016 agenda, as presented with the addition of the names of managers of record on the special licenses included.

ADJOURN - The meeting adjourned at 10:40 p.m.

Submitted by M. David Ziomek, Interim Town Manager

2016-01-11 Agenda Final

2016-01-11 Draft Motion

Conflict of Interest A Brewer

OML Complaint Form - Larry Kelly

204 CMR 2.00 Regulations of the ABCC

Police Report Compliance on Liquid ID Checks at Panda East

Request from Chief for Hearing on Panda Garden East alleged violations

Return Receipt for Issac Chow Notice of Hearing 1-11-16
Application for Transfer - Sale of Stock, New Officers - Directors Conara, Inc dba The Harp
Building Commissioner Recommendation on Application for Transfer of Stock Conara Inc. dba The Harp
Harp Floor Plan
Water and Sewer Rates Recommendations to Select Board - FY 17
Wildwood Presentation FINAL 2016
Certification Report Charter Commission
MMA Annual Business Meeting 01-23-2016 Resolutions - Environment
MMA Annual Business Meeting 01-23-2016 Resolutions - Fiscal
MMA Annual Business Meeting 01-23-2016 Resolutions Overview
Temporary Town Manager Priorities February 1 2016 Rev 1 6 16
Amherst Media Offer to Allocate Reserves for Audit of Comcast
Amherst Media on Need for Audit of Comcast
CABLE CHARGE Revision FINAL 03 23 15
Handout - Near Term Large Capital Projects
Handout - Transfer of Stock Conara Inc. dba The Harp
Response to Open Meeting Law Complaint
Select Board Consent Calendar 01-11-2016
ServSafe Alcohol Certificates Panda Garden East
Downtown Parking Working Group Parking Task Force Charge Draft 12-03-15 avb
Lincoln Sunset Local Historical District Study Committee Charge
Request for Parking Ideal Movers 1-14-2016
Request for Parking Ideal Movers Mapped
Taxi Business Application - Mercedes Cab Co. dba Go Green
New Taxi Driver Application - Malone M Mercedes Cab Co
New Taxi Driver Dardano - M - Aarons Paradise Transportation
New Taxi Driver Eric Boynton Octoby Mercedes Cab
Special All Alcohol - TOC Inc. W.E.B. DuBois Library UMass 2-26-16
Special Wine and Malt - LSSE Cherry Hill Golf Course 2-13-16
Special Wine and Malt - TOC Inc. Integrated Sciences Atrium UMass 1-15-16
Special Wine and Malt - TOC Inc. Museum of Contemporary Art UMass 1.27.16
2016 Common Vic Renewal - Advanced Fresh Concepts Franchise, Corp dba AFC Sushi Big Y
2016 Common Vic Renewal - Starbucks
2016 Renewal Common Vic - Bakus African Restaurant