

AGENDA
BOARD OF SELECTMEN
October 30, 2007
7:00 p.m.
Town Building

Public Input

Chairman's Comments

Town Administrator's Report

Meeting Minutes

Visitors

- 7:10 p.m. Beef N' Ale entertainment license – Candy Casey
- 7:30 p.m. Tyler Agricultural Preservation Restriction – Conservation

7:40 p.m. Public Hearing: Street Acceptance of Fairway Drive

7:50 p.m. Public Hearing: Street Acceptance of Indian Ridge

Action/Discussion

- Re-vote Trefry Lane Order of Taking
- Snow property warrant article
- Approve Special Town Meeting warrant

MSBA Update

Selectmen's Master Planning

Creation of Land Use Strategy Task Force

Liaison Reports, if any

School Building Update

Adjournment

Posted 10/26/07

Correspondence (available on request)

Town:

Assessors' letter on appointee to Community Preservation Committee, rec'd 10/16

Approved copy of Assabet River Rail Trail inter-municipal agreement extension, rec'd 10/17

Building Permits Report for September, rec'd 10/23

Conservation notice of 11/5 meeting on potential changes to Ben Smith Dam/Assabet River, rec'd 10/25

General:

Municipal Coalition for Affordable Housing notice of 10/26 seminar, rec'd 10/20

Governor's Office announcement of 11/2 "Listening Tour" meeting in Lowell, rec'd 10/22

MAGIC mailing of 8/12/07 Op/Ed on Community Preservation Act, rec'd 10/24

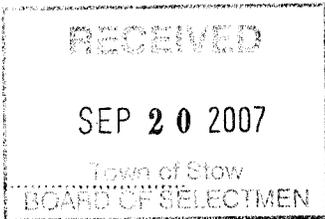
Middlesex retirement newsletter, rec'd 10/26

Tree Warden of the Year call for nominations, rec'd 10/27

The Licensing Board for the

Stow, MA

Name of City or Town



APPLICATION FOR AN ENTERTAINMENT LICENSE (SEVEN DAYS)

The undersigned respectfully applies for an entertainment license as follows:

LOCATION OF PREMISES 108 Great Rd Stow MA CLASS OF LIC. _____

DESCRIPTION OF PREMISES 3 story ~~basement~~ building, basement & 3rd floor storage
1st floor kitchen & dining. 2nd floor bar & dining

RADIO _____ TELEVISION _____ JUKEBOX _____ AMPLIFIERS _____ PHONO _____

CABLE TV _____ WIDESCREEN TV _____ CASSETTE OPER. TV _____ MOVIES _____

INSTRUMENTAL MUSIC yes No. of Instruments no more than 3
Type of Instruments listening music, guitar, keyboard What floors 2nd

VOCAL MUSIC yes No. of persons (1)

DANCING BY PATRONS NO Type of dancing _____
What floors? _____ Size of dance floor _____

EXHIBITION OR TRADE SHOW NO describe _____

PLAY NO describe _____

MOVING PICTURE SHOW NO describe _____

FLOOR SHOW NO describe _____

ATHLETIC EVENT NO describe _____

As part of the above entertainment, will any entertainer, employee or person on the licensed premises be permitted to be unclothed or in such attire as to expose to view any portion of the areola of the female breast or any portion of the pubic hair, cleft of the buttocks, or genitals?

NO YES _____ Explain in what manner such person will be presented _____

Did you hold an entertainment license from the Board pursuant to section 183A of Chapter 140? NO If yes, was it for the exact same entertainment being requested in this petition? _____

Date 9/20/07

Firm or Trade Name Ye Olde Beef N Ale
Business Name NMN INC
Manager Signature Catherine Thonberg

section shall be punished by a fine of not more than five hundred dollars.

History—
1924, 497, § 1.

Bldg = \$46. - 1/2 hr. cost

CASE NOTES

For advisory opinion on this section, see In re Opinion of Justices (1924) 247 Mass 589, 143 NE 808.

§ 183. Darkened Hall Prohibited During Public Dance; Penalty.

No person shall darken in whole or in part the hall, room, piazza, roof garden or other place in which a public dance required to be licensed under section one hundred and eighty-one is held, or any stairway, anteroom or passageway connected therewith, during the progress of a dance therein or until all persons except the proprietor and his employees have withdrawn from the premises. The degree of light required in such places shall be fixed by regulations prescribed by the commissioner of public safety, copies of which and of this section shall be conspicuously posted in every such place. Violations of this section shall be punished by a fine of not less than one hundred nor more than one thousand dollars.

History—
1919, 160, §§ 1-4.

§ 183A. Licenses Required by Innholders, etc., Conducting Certain Amusements; Applications for Licenses; Powers and Duties of Licensing Authorities.

No innholder, common victualler, keeper of a tavern, or person owning, managing, or controlling any club, restaurant or other establishment required to be licensed under section twelve of chapter one hundred and thirty-eight or under section two, twenty-one A or twenty-one E of chapter one hundred and forty, and no person owning, managing, or controlling any concert, dance, exhibition, cabaret or public show of any description to be conducted on any premises required to be licensed under the sections described above, shall, as a part of its usual business, offer to view, set up, set on foot, maintain or carry on a concert, dance exhibition, cabaret or public show of any description, unless and until a license therefor has been issued by the licensing authorities.

The application for such license shall be in writing and shall state the type of concert, dance, exhibition, cabaret or public show sought to be licensed and shall state whether such public show will include: (a) dancing by patrons, (b) dancing by entertainers or performers, (c) recorded or live music, (d) the use of an amplification system, (e) a theatrical exhibition, play, or moving picture show, (f) a floor show of any description, (g) a light show of any description, or (h) any other dynamic audio or visual show, whether live or recorded.

The application shall also state whether as part of the concert, dance exhibition, cabaret or public show any person will be permitted to appear on the premises in any manner or attire as to expose to public view any portion of the pubic area, anus, or genitals, or any simulation thereof, or whether any female person will be permitted to appear on the premises in any manner or attire as to expose to public view any portion of the breast below the top of the areola, or any simulation thereof.

Upon request of the licensing authorities, the applicant shall furnish further additional information concerning the type of concert, dance exhibition, cabaret, or public show sought to be licensed, the conditions of the premises, and the actions to be taken in order to prevent danger to the public safety, health or order. Once a license has been granted to an applicant, the licensee shall continue to provide such information to the licensing authorities upon their request with regard to any particular concert, dance, exhibition, cabaret, or public show or with regard to the conduct of the premises in general.

Within forty-five days following receipt of an application for a license under this section, the licensing authorities may (a) grant a license or, (b) shall provide the opportunity for a hearing on the application by written notice to the applicant given seven days prior to the hearing date.

Within thirty days next following the final date of such opportunity for a hearing the licensing authorities shall, (a) grant the license or, (b) deliver to the applicant a written notice denying the license and stating in writing the reasons for such denial. No application having been denied as aforesaid and no similar application thereto may be filed within one year of said denial except in the discretion of the licensing authorities.

The licensing authorities shall grant a license under this section unless they find that the license, taken alone or in combination with other licensed activities on the premises, would adversely affect the public health, safety or order, in that the concert, dance, exhibition, cabaret, or public show cannot be conducted in a manner so as to: (a)

protect employees, patrons, and members of the public inside or outside the premises from disruptive conduct, from criminal activity, or from health, safety or fire hazards; (b) prevent an unreasonable increase in the level of noise in the area caused by the licensed activity or caused by patrons entering or leaving the premises; or (c) prevent an unreasonable increase in the level of pedestrian or vehicular traffic in the area of the premises or an unreasonable increase in the number of vehicles to be parked in the area of the premises.

The licensing authorities may modify, suspend or revoke a license granted pursuant to the provisions of this section after providing an opportunity for a hearing preceded by a written notice to the licensee ten days prior to the hearing date. The licensing authorities may not modify, suspend or revoke such license unless they find that the license, taken alone or in combination with other licensed activities on the premises, has adversely affected the public health, safety or order as stated in the preceding paragraph. In any case in which the licensing authorities modify, suspend or revoke a license, they shall notify the licensee in writing of such action and said written notice shall be accompanied by a statement of reasons.

In order to preserve and protect the public health, safety, and order as aforesaid, the licensing authorities may place conditions upon the license and promulgate rules and regulations for such licenses. The licensing authorities may modify, suspend or revoke a license pursuant to this section for any violation of their rules and regulations or for any violation of law and may petition the superior court department of the trial court to enjoin any violation of this section.

The licensing authorities of any city or town may adopt a rule requiring licensees under this section to prohibit minors from attending any concert, dance, exhibition, cabaret or public show of any description in which or at which any person appears in a manner or attire as to expose to public view any portion of the pubic area, anus, or genitals, or any simulation thereof, or in which or at which any female person appears in a manner or attire as to expose to public view any portion of the breast below the top of the areola, or any simulation thereof.

A license issued under this section, unless sooner revoked, shall expire on December thirty-first of each year. The fee for any such license or for any renewal thereof shall not exceed one hundred dollars.

The provisions of this section shall be applicable seven days per week; provided, however, that no license under this section shall be granted to permit such activities, except an athletic game or sport, or

motion picture exhibited at a drive-in theatre during the period from the last Sunday in April to the last Sunday in October, on Sundays or before one o'clock in the afternoon on Sundays, without the written approval of the commissioner of public safety, made in accordance with the provisions of this section, upon written application to the said commissioner accompanied by a fee of not more than five dollars, or in the case of an annual license by a fee of not more than one hundred dollars.

History—

GL 1921, 140, § 183A; 1926, 299, § 1; 1935, 102, § 1; 1936, 71, § 1; 1981, 351, § 85; 1981, 694, § 1.

Editorial Note—

The first 1981 amendment revised the fourth sentence, adding optional procedures whereby a licensing authority may determine the fee and a limitation of fifty dollars on the fee.

The second 1981 amendment rewrote the section, providing detailed procedures for applications for licenses, setting forth the powers of licensing authorities, and providing that the licensing authorities of any city or town may adopt a rule requiring licensees to prohibit minors from attending certain concerts, dances and exhibitions.

CASE NOTES

1. In general
2. Construction
3. Constitutional questions
4. Fees
5. Jurisdiction
6. Proceedings

1. In general

City ordinance regulating nude dancing in go-go bars is not inconsistent with state statutes authorizing local licensing boards to regulate liquor licensees. *Revere v Auccella* (1975) 369 Mass 138, 338 NE2d 816, app dismd (1976) 429 US 877, 50 L Ed 2d 159, 97 S Ct 225.

Licensing authority in Boston under GL c 140 § 183A is mayor. *G.J.T., Inc. v Boston Licensing Bd.* (1986) 397 Mass 285, 491 NE2d 594.

One who offers entertainment or amusement use of machine requiring license under GL ch 140 § 177A must obtain license under entertainment licensing statute as well. *G.J.T., Inc. v Boston Licensing Bd.* (1986) 397 Mass 285, 491 NE2d 594.

For purposes of ALM GL c 140 § 183A,

"licensing authority" is mayor. *G.J.T., Inc. v Boston Licensing Bd.* (1986) 397 Mass 285, 491 NE2d 594.

Town bylaw regulating activities on premises licensed for theatrical exhibitions was not applicable to premises licensed as common victualer or eating or drinking establishment. *Morgan v Stoughton* (1984) 18 Mass App 977, 470 NE2d 139.

City licensing office had authority to determine whether licensee violated city zoning code which it had incorporated into its own regulations. *Highland Tap of Boston, Inc. v Commissioner of Consumer Affairs & Licensing* (1992) 33 Mass App 559, 602 NE2d 1095, review den (1992) 414 Mass 1101, 606 NE2d 915.

Doctrine of estoppel is generally not applied to government's exercise of its public duties and was not applicable to city licensing division's enforcement of its regulation requiring tavern to petition for approval to present nude entertainment. *Highland Tap of Boston, Inc. v Commissioner of Consumer Affairs & Licensing* (1992) 33 Mass App 559, 602 NE2d 1095,

review den (1992) 414 Mass 1101, 606 NE2d 915.

City licensing authority may revoke license for violation of law or of one of its regulations Highland Tap of Boston, Inc. v Commissioner of Consumer Affairs & Licensing (1992) 33 Mass App 559, 602 NE2d 1095, review den (1992) 414 Mass 1101, 606 NE2d 915.

City licensing officer's notice to tavern for hearing concerning revocation of license was misleading as to possible grounds of revocation. Highland Tap of Boston, Inc. v Commissioner of Consumer Affairs & Licensing (1992) 33 Mass App 559, 602 NE2d 1095, review den (1992) 414 Mass 1101, 606 NE2d 915.

2. Construction

The purpose of the instant section is to regulate anyone who provides entertainment in connection with the business of furnishing food, drink or other refreshment, and since it mentions no hours as to providing entertainment, it is not limited to being only a "night club" statute, and it is not confined to "live" entertainment. Mosey Cafe, Inc. v Licensing Board of Boston (1958) 338 Mass 199, 154 NE2d 585.

Even though a new mode of entertainment, such as television, might have been unknown when the instant section was drafted, the very broad language of the instant section "public show of any description" must be taken to comprehend new modes of entertainment. Mosey Cafe, Inc. v Licensing Board of Boston (1958) 338 Mass 199, 154 NE2d 585.

Because of the very broad language of the instant section "public show of any description", the section includes juke boxes within its regulation, and juke boxes are not excluded from the scope of the instant section because of the omission therein of the specific, but narrower, phrase found in § 181, "amusement . . . furnished upon a deposit of money in a coin controlled apparatus". Mosey Cafe, Inc. v Licensing Board of Boston (1958) 338 Mass 199, 154 NE2d 585.

The words "in connection with which" in the middle of the first sentence of the instant section refer back not to the

words "usual business," but to the words "concert, dance, exhibition, cabaret or public show of any description". Mosey Cafe, Inc. v Licensing Board of Boston (1958) 338 Mass 199, 154 NE2d 585.

A restaurant which furnishes public entertainment through the use of television, radio and juke box is required to be licensed under the instant section. Mosey Cafe, Inc. v Licensing Board of Boston (1958) 338 Mass 199, 154 NE2d 585.

Purpose of ALM GL c 140 § 183A is preservation of public order at public entertainments. Konstantopoulos v Whately (1981) 384 Mass 123, 424 NE2d 210.

3. Constitutional questions

The purpose of the instant section is to preserve public order at public entertainments, and it is not unconstitutional as being a censorship statute inasmuch as it imposes no prior restraint or attempts to impinge upon the constitutional guarantees of free speech and freedom of the press, nor does it authorize licensing boards to exercise censorship power over programs, and the section is not rendered unconstitutional by the fact that the section establishes no specific standards for the granting or denial of licenses but leaves it to the licensing board to determine each application upon its own set of facts. Mosey Cafe, Inc. v Licensing Board of Boston (1958) 338 Mass 199, 154 NE2d 585.

Failure to file formal application before city license commission for license to present dancing performances at club at which liquor is served precluded declaration that commission's rules were constitutionally vague and overbroad. Eve Corp. v License Com. for Worcester (1977) 372 Mass 869, 363 NE2d 692.

Application of city ordinance forbidding application of nude or nearly nude persons in licensed premises abridged right of free speech as applied to dancer who performed on dance floor wearing only a "G-string" and who did not mingle with other employees or patrons. Commonwealth v Secs (1978), 374 Mass 532, 373 NE2d 1151.

Holder of entertainment license has constitutionally protected interest of

which he cannot be deprived without procedural due process. Konstantopoulos v Whately (1981) 384 Mass 123, 424 NE2d 210.

Oral notice 1½ hours prior to revocation hearing did not comport with rudimentary standard of due process. Konstantopoulos v Whately (1981) 384 Mass 123, 424 NE2d 210.

Massachusetts law which requires license for establishment to offer concert, dance, exhibition, cabaret, or public show of any description at which food or drink is sold is unconstitutional as prior restraint since it gives public officials power to deny use of forum in advance of actual expression; and is constitutionally infirm because overbroad as it restrains protected as well as unprotected expression, and delegates complete discretion to licensing authority and contains no standards whatsoever. Venui v Riordan (1981, DC Mass) 521 F Supp 1027.

ALM GL c 140 § 183A and ALM GL c 140 § 183C are unconstitutionally overbroad and unconstitutionally vague. Venui v Riordan (1981, DC Mass) 521 F Supp 1027.

4. Fees

Where the legislature by St. 1949, Ch. 922, empowered the city of Boston to fix by ordinance certain fees including those regulated by the instant section, and provided that fees fixed by ordinance should be deemed to apply notwithstanding any general or special law theretofore passed, an entertainment license fee could validly be imposed upon a person who was also licensed under ALM GL c 140 § 2, despite the language of the instant section that no fee shall be chargeable for any such license to a person who was also licensed under said section 2. Mosey Cafe, Inc. v Licensing Board of Boston (1958) 338 Mass 199, 154 NE2d 585.

1981 version (St. 1981, Ch. 694) of GL c 140 § 183A expanded coverage by not differentiating between entertainment offered for a fee and that offered without charge but did not grant additional power to licensing authorities or reassign licensing power. G.J.T., Inc. v Boston Licensing Bd. (1986) 397 Mass 285, 491 NE2d 594.

Mayor of Boston has authority to set fees for theatrical exhibitions and entertainments. G.J.T., Inc. v Boston Licensing Bd. (1986) 397 Mass 285, 491 NE2d 594.

ALM GL c 140 § 183A requires license for any concert, dance, exhibition, cabaret, or public show to be held on premises specified in that section, whether or not admission fee is charged, and licensing authority in Boston is mayor. G.J.T., Inc. v Boston Licensing Bd. (1986) 397 Mass 285, 491 NE2d 594.

Owners of tavern who prevailed in an action seeking to have ALM GL c 140 § 183A, 183C declared unconstitutional are entitled to award of attorney fees under 42 USCS § 1983 against city, notwithstanding contention that state should be held liable. Venui v Riordan (1983, CA1 Mass) 702 F2d 6.

5. Jurisdiction

Probate Court lacked subject matter jurisdiction over action for injunctive and declaratory relief against town licensing authorities who had revoked entertainment license. Konstantopoulos v Whately (1981) 384 Mass 123, 424 NE2d 210.

Action to review administrative agency's suspension or revocation of license is not matter cognizable under general principles of equity jurisdiction; it traditionally was action at law by writ of certiorari. Konstantopoulos v Whately (1981) 384 Mass 123, 424 NE2d 210.

6. Proceedings

Action to review agency's revocation of license was in nature of certiorari and should have been brought in Superior Court. Konstantopoulos v Whately (1981) 384 Mass 123, 424 NE2d 210.

Proper standard of review in cases where local licensing authority revokes entertainment license is "substantial evidence" test. Konstantopoulos v Whately (1981) 384 Mass 123, 424 NE2d 210.

Hearing requires adequate notice of charge forming basis of revocation, opportunity to call witnesses and to cross-examine opposing witnesses, and to appear with counsel. Konstantopoulos v Whately (1981) 384 Mass 123, 424 NE2d 210.

Requirement of hearing implies that license is to be notified and to have opportunity to be heard. *Konstantopoulos v Whately* (1981) 384 Mass 123, 424 NE2d 210.

Single Justice of Appeals Court properly enjoined Boston licensing commissioner from revoking or suspending establishment's entertainment license to

present nude dancing until hearing could be held and trial on merits of application of terms and conditions set forth in ALM GL c 140 § 138A could be held. *Highland Tap of Boston, Inc. v Boston* (1988) 26

Mass App 239, 526 NE2d 253, app dismd (1992) 33 Mass App 559, 602 NE2d 1095, review den (1992) 414 Mass 1101, 606 NE2d 915.

§ 183B. [Repealed, 1936, 71, § 2.]

§ 183C. Penalty for Violation of § 183A; Report of Conviction.

Any person described in section one hundred and eighty-three A who engages in a business required to be licensed by said section unless authorized so to do by a license in full force and effect, and any holder of such a license who violates any condition thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment for not more than one year, or by both. The clerk of the court in which a corporation engaged in such business is convicted under this section shall forthwith report such conviction to the state secretary, who shall thereupon revoke the charter of such corporation.

History—
1926, 299, § 1.

CASE NOTES

Owners of tavern who prevailed in an action seeking to have ALM GL c 140 §§ 183A, 183C declared unconstitutional are entitled to award of attorney fees under 42 USCS § 1983 against city, notwithstanding contention that state should be held liable. *Venuti v Riordan* (1983, CA1 Mass) 702 F2d 6.

ALM GL c 140 § 183A and ALM GL c 140 § 183C are unconstitutionally overbroad and unconstitutionally vague. *Venuti v Riordan* (1981, DC Mass) 521 F Supp 1027.

§ 183D. Minimum Charges and "Cover Charges" to be Posted; Exception for Children; Penalty.

No innholder, common victualer or person owning, managing or controlling a cafe, restaurant, or other eating or drinking establishment shall require any person to pay a minimum charge or cover charge unless a sign is conspicuously posted at every entrance to any dining room or rooms where such charge is required, in letters no less than one inch in height, stating that a minimum charge or cover

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charge shall be charged and also stating the amount of charge; provided, however, that no such innholder, common victualer or person owning, managing or controlling a cafe, restaurant or other eating or drinking establishment shall require a person under thirteen years of age to pay a minimum charge or cover charge. Whoever violates this section shall be punished by a fine of not more than fifty dollars.

History—
1951, 216; 1985, 427.

Editorial Note—

The 1985 amendment rewrote the section, adding a proviso to the first sentence prohibiting an innholder or other eating or drinking establishment from requiring a person under the age of thirteen years to pay a minimum charge or cover charge.

CASE NOTES

Regulation of Alcoholic Beverages Control Commission (204 CMR 2.16) requiring licensees to give customer printed receipt for cover charge was valid, in that it advanced purpose of GL c 140 § 183D (requiring posting of sign regard-

ing cover charge) by introducing procedure likely to encourage uniform adherence to statute. *O'L & S, Inc. v Alcoholic Beverages Control Com.* (1989) 26 Mass App 1023, 533 NE2d 233.

§ 184. Penalty for Exhibition When Liqueur Is Sold.

Whoever offers to view, sets up, sets on foot, maintains or carries on a theatrical exhibition, public show, concert or dance hall exhibition, of any description, at which alcoholic beverages, as defined in section one of chapter one hundred and thirty-eight, are sold or exposed for sale with the consent of those who get up, set on foot or otherwise promote such exhibition or show, shall be punished by a fine of not more than five hundred dollars or by imprisonment for not more than two years, unless such exhibition or show has been duly licensed as provided by section one hundred and eighty-one. This section shall not authorize the licensing of the sale of such beverages contrary to law.

History—
1858, 152; GS 1860, 88, § 76; PS 1882, 102, § 117; RL 1902, 102, § 174; 1934, 328, § 18.

§ 185. [Repealed, 1963, 195.]

§ 185A. Resale of Tickets Regulated; Licenses.

No person shall engage in the business of reselling any ticket or

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amusement is to take place, to the extent that such conditions or premises would affect the public safety, health or order. Upon written request of the mayor or selectmen, the applicant shall in addition furnish reasonable information concerning the conditions of the premises and actions to be taken in order to prevent danger to the public safety, health, or order. Within thirty days following receipt of such application, the mayor or selectmen shall grant a license or shall order a hearing preceded by at least ten days written notice to the applicant. Within forty-five days next following the close of such hearing, the mayor or selectmen shall grant such license or shall deny such license upon a finding that issuance of such a license would lead to the creation of a nuisance or would endanger the public health, safety or order by:

- (a) unreasonably increasing pedestrian traffic in the area in which the premises are located or
- (b) increasing the incidence of disruptive conduct in the area in which the premises are located or
- (c) unreasonably increasing the level of noise in the area in which the premises are located.

Notice of such a denial shall be delivered to the applicant in writing and shall be accompanied by a statement of the reasons therefor. No application shall be denied if the anticipated harm is not significant or if the likelihood of its occurrence is remote. The mayor or selectmen may impose conditions upon a license but said conditions may only relate to compliance with applicable laws or ordinances, or to public safety, health or order, or to steps required to be taken to guard against creation of a nuisance or to insure adequate safety and security for patrons or the affected public.

No applicant having been denied a license as aforesaid shall submit the same or a similar application within one year of said denial without including in said new application facts showing that the circumstances upon which the original denial was based have substantially changed.

The mayor or selectman may revoke or suspend a license granted pursuant to the provisions of this section upon finding, after a hearing preceded by ten days written notice to the licensee, that conditions exist which would have justified denial of the original application for such license provided, that the mayor or selectman may petition the superior court department of the trial court to enjoin any violation of this section.

No license shall issue, however, for a traveling carnival, circus or other such traveling amusement which does not have its principal place of business within the commonwealth unless the licensee certifies that he has provided by insurance for the payment of compensation and the furnishing of other benefits under chapter one hundred and fifty-two to all persons to be employed by said licensee and that such insurance shall continue in full force

and effect during the term of the license; and the licensee further certifies that he has obtained a policy of public liability insurance in the amount of at least twenty-five thousand dollars to pay any claims or judgments rendered against the licensee in favor of patrons or others to recover damages resulting from the negligence of the licensee. The amount of insurance of the policy hereinbefore required or in effect shall not limit or impair any right of recovery to which any plaintiff may be entitled in excess of such amount.

History—
1805, 98, §§ 1, 3; 1825, 152, §§ 1, 3; RS 1836, 58, § 1; 1849, 231, § 1; GS 1860, 88, § 74; PS 1882, 102, § 115; 1894, 353; 1895, 434, § 3; RL 1902, 102, § 172; 1905, 341, § 1; 1907, 274, § 1; 1908, 385, § 2; 1921, 140, § 181; 1971, 996; 1979, 358, § 3; 1981, 351, § 84; 1998, 248, § 2, approved Aug 7, 1998, effective Nov 5, 1998.

Editorial Note—
The 1998 amendment, in the first paragraph, inserted the second and third sentences.

§ 183A. Licenses Required by Inholders, etc., Conducting Certain Amusements; Applications for Licenses; Powers and Duties of Licensing Authorities.

No inholder, common victualler, keeper of a tavern, or person owning, managing, or controlling any club, restaurant or other establishment required to be licensed under section twelve of chapter one hundred and thirty-eight or under section two, twenty-one A or twenty-one E of chapter one hundred and forty, and no person owning, managing, or controlling any concert, dance, exhibition, cabaret or public show of any description to be conducted on any premises required to be licensed under the sections described above, shall, as a part of its usual business, offer to view, set up, set on foot, maintain or carry on a concert, dance exhibition, cabaret or public show of any description, unless and until a license therefor has been issued by the licensing authorities.

The application for such license shall be in writing and shall state the type of concert, dance, exhibition, cabaret or public show sought to be licensed and shall state whether such public show will include: (a) dancing by patrons, (b) dancing by entertainers or performers, (c) recorded or live music, (d) the use of an amplification system, (e) a theatrical exhibition, play, or moving picture show, (f) a floor show of any description, (g) a light show of any description, or (h) any other dynamic audio or visual show, whether live or recorded.

The application shall also state whether as part of the concert, dance exhibition, cabaret or public show any person will be permitted to appear on the premises in any manner or attire as to expose to public view any portion of the public area, anus, or genitals, or any simulation thereof, or whether any female person will be permitted to appear on the premises in any manner or

attire as to expose to public view any portion of the breast below the top of the areola, or any simulation thereof.

Upon request of the licensing authorities, the applicant shall furnish further additional information concerning the type of concert, dance exhibition, cabaret, or public show sought to be licensed, the conditions of the premises, and the actions to be taken in order to prevent danger to the public safety, health or order. Once a license has been granted to an applicant, the licensee shall continue to provide such information to the licensing authorities upon their request with regard to any particular concert, dance, exhibition, cabaret, or public show or with regard to the conduct of the premises in general.

Within forty-five days following receipt of an application for a license under this section, the licensing authorities may (a) grant a license or, (b) shall provide the opportunity for a hearing on the application by written notice to the applicant given seven days prior to the hearing date.

Within thirty days next following the final date of such opportunity for a hearing the licensing authorities shall, (a) grant the license or, (b) deliver to the applicant a written notice denying the license and stating in writing the reasons for such denial. No application having been denied as aforesaid and no similar application thereto may be filed within one year of said denial except in the discretion of the licensing authorities.

The licensing authorities shall grant a license under this section unless they find that the license, taken alone or in combination with other licensed activities on the premises, would adversely affect the public health, safety or order, in that the concert, dance, exhibition, cabaret, or public show cannot be conducted in a manner so as to: (a) protect employees, patrons, and members of the public inside or outside the premises from disruptive conduct, from criminal activity, or from health, safety or fire hazards; (b) prevent an unreasonable increase in the level of noise in the area caused by the licensed activity or caused by patrons entering or leaving the premises; or (c) prevent an unreasonable increase in the level of pedestrian or vehicular traffic in the area of the premises or an unreasonable increase in the number of vehicles to be parked in the area of the premises.

The licensing authorities may modify, suspend or revoke a license granted pursuant to the provisions of this section after providing an opportunity for a hearing preceded by a written notice to the licensee ten days prior to the hearing date. The licensing authorities may not modify, suspend or revoke such license unless they find that the license, taken alone or in combination with other licensed activities on the premises, has adversely affected the public health, safety or order as stated in the preceding paragraph. In any case in which the licensing authorities modify, suspend or revoke a license, they shall notify the licensee in writing of such action and said written notice shall be accompanied by a statement of reasons.

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For later statutes and case citations, see Quarterly Update Pamphlets.

In order to preserve and protect the public health, safety, and order as aforesaid, the licensing authorities may place conditions upon the license and promulgate rules and regulations for such licenses. The licensing authorities may modify, suspend or revoke a license pursuant to this section for any violation of their rules and regulations or for any violation of law and may petition the superior court department of the trial court to enjoin any violation of this section.

The licensing authorities of any city or town may adopt a rule requiring licensees under this section to prohibit minors from attending any concert, dance, exhibition, cabaret or public show of any description in which or at which any person appears in a manner or attire as to expose to public view any portion of the public area, anus, or genitals, or any simulation thereof, or in which or at which any female person appears in a manner or attire as to expose to public view any portion of the breast below the top of the areola, or any simulation thereof.

A license issued under this section, unless sooner revoked, shall expire on December thirty-first of each year. The fee for any such license or for any renewal thereof shall not exceed one hundred dollars.

The provisions of this section shall be applicable seven days per week; provided, however, that no license under this section shall be granted to permit such activities, except an athletic game or sport, on Sundays or before 1 o'clock in the afternoon, without the written approval of the commissioner of public safety, made in accordance with the provisions of this section, upon written application to said commissioner accompanied by a fee of not more than \$5, or in the case of an annual license by a fee of not more than \$100.

History—

GL 1921, 140, § 183A; 1926, 299, § 1; 1935, 102, § 1; 1936, 71, § 1; 1981, 351, § 85; 1981, 694, § 1; 1998, 248, § 3, approved Aug 7, 1998, effective Nov 5, 1998.

Editorial Note—

The 1998 amendment substituted the twelfth paragraph for one which read: "The provisions of this section shall be applicable seven days per week; provided, however, that no license under this section shall be granted to permit such activities, except an athletic game or sport, or motion picture exhibited at a drive-in theatre during the period from the last Sunday in April to the last Sunday in October, on Sundays or before one o'clock in the afternoon on Sundays, without the written approval of the commissioner of public safety, made in accordance with the provisions of this section, upon written application to the said commissioner accompanied by a fee of not more than five dollars, or in the case of an annual license by a fee of not more than one hundred dollars."

CASE NOTES

- | | |
|-----------------------------|---|
| 1. In general | 1. In general |
| 3. Constitutional questions | Decision of mayor's office of consumer affairs and licensing for city of Boston to sus- |
| 6. Proceedings | |

For the latest statutes and case citations, call 1-800-446-3410
or e-mail ALM@LexisNexis.com.

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pend restaurant/bar's entertainment license for one day affirmed, where establishment's staff physically assaulted two patrons. The Black Rose, Inc. v City of Boston (2001) 433 Mass 501, 744 NE2d 640.

Mayor's office of consumer affairs and licensing for city of Boston had authority under ALM GL c 140 § 183A to suspend entertainment license of restaurant/bar that allowed its staff to assault patrons without cause, because such conduct was contrary to public safety, health, and order and also constituted violation of law. The Black Rose, Inc. v City of Boston (2001) 433 Mass 501, 744 NE2d 640.

3. Constitutional questions

Despite language in Fall River, Mass., Rev. Ordinances § 46-12 (1999) that purported to proclaim a purpose of protecting society from the effects of certain adult uses, an explanation that might have satisfied First Amendment concerns about a complete ban on public nude dancing, Mass. Const. Decl. Rights art. 16 clearly provided that such activity was protected expression, and, moreover, the statute was also impermissibly overbroad in that it

would have prohibited many activities in addition to nude dancing in a nightclub; therefore, denial of a nightclub license could not be based on the ordinance prohibiting nude dancing. Mendoza v Licensing Bd. (2005) 444 Mass 188, 827 NE2d 180, 2005 Mass LEXIS 211.

6. Proceedings

Since ALM GL c 140 § 183A contains no provision for judicial review of decision of licensing board and since licensing board of city of Boston was not state agency within meaning of Administrative Procedure Act, judicial review was available only by civil action for relief in nature of certiorari. The Black Rose, Inc. v City of Boston (2001) 433 Mass 501, 744 NE2d 640.

In review of decision of mayor's office of consumer affairs and licensing for city of Boston suspending entertainment license of restaurant/bar for one day, judge properly applied "substantial evidence" test as standard of review. The Black Rose, Inc. v City of Boston (2001) 433 Mass 501, 744 NE2d 640.

§ 185A. Resale of Tickets Regulated; Licenses.

CASE NOTES

Civil rights claimant, who was arrested for ticket scripping under police's erroneous interpretation of ALM GL c 140 § 185A, would be granted preliminary injunction barring arrest of any person attempting to resell tickets to

professional baseball game in vicinity of park at or below face value, absent probable cause at time of arrest to believe person was engaged in reselling tickets without license. Lahner v City of Boston (2000, DC Mass) 95 F Supp 2d 17.

PICNIC GROVES

§ 190. Penalty for Unauthorized Peddling, Gaming, Horse Racing, or Exhibiting Show or Play Near Picnic Grove.

Annotations—

Governmental restrictions on use of public parks as violating freedom of speech or press under Federal Constitution's First Amendment — Supreme Court cases. 151 L Ed 2d 1123.

GENERAL PROVISIONS

§ 202. Form of Certain Licenses.

Annotations—

Validity of statutes, ordinances, and regulations governing pawn shops. 16 ALR6th 219.

§ 205A. Operation of Ferris Wheel, Carousel, Inclined Railway or Similar Amusement Device.

As used in this section, the words "amusement device" shall mean a mechanical ride or device constructed and designed to carry 1 or more persons for entertainment or amusement purposes and which is powered by means of internal combustion or electrical energy; provided, however, that the commissioner of public safety, hereinafter called the commissioner shall have the discretion to further define an amusement device operated under this section. No person shall, individually or through an agent, operate or cause to be operated a ferris wheel, carousel, inclined railway or similar amusement device unless such person has obtained a license from the commissioner. The commissioner, upon receipt of proof that a person has obtained liability insurance as required by this section and upon certification by the liability insurance carrier that an amusement device has met the safety standards of mechanical strength, rigidity and control established by the commissioner, shall issue a license for the operation of the amusement device. A certificate of examination by a person who possesses a certificate of competency to inspect amusement devices, issued under section 62 of chapter 146, and a certificate of liability insurance shall be furnished to the commissioner 10 days prior to the opening of the amusement device. The fee for a license under this section shall be determined annually by said commissioner of administration under section 3B of chapter 7 for the filing thereof. The license shall expire 1 year from the date of issuance, unless revoked for cause, and shall be valid throughout the commonwealth. A traveling carnival shall notify the commissioner at least 1 month in advance as to the location and dates that the carnival will be in the commonwealth.

If an injury requiring medical treatment has occurred on such an amusement device, reasonably due to a defect or malfunction in the amusement device, or if the amusement device constitutes a hazard to life, limb or property, as determined by the commissioner or his designee or by an agent of the insurance carrier, the amusement device shall be closed immediately and, within 48 hours, the owner or operator shall notify the commissioner or his designee in writing upon a form approved by the commissioner and the insurance carrier. The amusement device shall remain closed until all necessary repairs have been completed to the satisfaction of the commissioner or his designee and the insurance carrier. All such injuries shall be investigated by inspectors in the division of inspection. The licensee shall pay to the commissioner a fee, as determined under chapter 7, for each hour or fraction thereof spent by each inspector while engaged in an investigation.

If the insurance contract expires or is cancelled, notice shall be furnished by the insurance carrier to the commissioner at least 10 days prior to



Town of Stow
BOARD OF SELECTMEN

Stow Town Building
380 Great Road
Stow, Massachusetts 01775
(978) 897-4515 selectmen@stow-ma.gov Fax (978) 897-4631

Notice of Public Hearing

Notice is hereby given that the Board of Selectmen intend to lay out a certain way and will conduct a hearing on October 30, 2007 at 7:40 pm at the Town Building, 380 Great Road, to consider acceptance as a public way of the entire length of **Fairway Drive**, constructed under the requirements of the Subdivision Control Law and in accordance with a plan on file with the Town Clerk, and shown on subdivision plans of said road recorded with the Middlesex South Registry of Deeds as Plan 216 of 2003.

Stephen M. Dungan
Chairman, Board of Selectmen

Posted October 19, 2007



Town of Stow
BOARD OF SELECTMEN

Stow Town Building
380 Great Road
Stow, Massachusetts 01775
(978) 897-4515 selectmen@stow-ma.gov Fax (978) 897-4631

Notice of Public Hearing

Notice is hereby given that the Board of Selectmen intend to lay out a certain way and will conduct a hearing on October 30, 2007 at 7:50 pm at the Town Building, 380 Great Road, to consider acceptance as a public way of the entire length of **Indian Ridge Road**, constructed under the requirements of the Subdivision Control Law and in accordance with a plan on file with the Town Clerk, and shown on subdivision plans of said road recorded with the Middlesex South Registry of Deeds at Book 25283, Page 444.

Stephen M. Dungan.
Chairman, Board of Selectmen

Posted October 19, 2007

10/15/07

	Affordable Housing	Agriculture	Recreation
<u>Population Served:</u> What population segments will the proposed use benefit?	low to moderate income earners, including some seniors; town employees and teachers	farmers	various age groups: primarily youth
<u>Acres Needed:</u> What is the minimum acreage required and can Snow accommodate it?			
<u>Urgency:</u> Is the proposed use a critical need now?	yes	no	yes
<u>Additional Work and Cost:</u> How much additional work and cost will be required beyond the cost to buy Snow?	could be minimal depending upon deal with developer	None	50-100K to create; annual maintenance (source of estimate?)
<u>Potential to Share:</u> Can the proposed use be combined with a second or third use on Snow?	yes	yes	yes
<u>Availability of Funds:</u> Are other funds available for purchase and/or site development besides property taxes?	yes	yes	yes
<u>Satisfy Master Plan Need:</u> Does the proposed use satisfy a need identified by the Master Plan?	yes	yes	yes

10/15/07 BGS

Cost Estimates

Base Case: Sod Turf	
Design, Permitting & PM	\$117,340
Site Preparation and Systems	\$531,048
Field Construction	\$494,110
Site Improvements	\$40,000
Fencing & Seating	\$88,242
Contingency (10%)	<u>\$127,074</u>
Total Project Budget (Pre-design estimates)	\$1,397,814

2 rectangular fields w/ barbed wire, parking lot,

based on grade area.

1.8M reduced by removing seeding w/ sod & rows.

See Commission presentation to CPC

CPC 11OCT07

Susan McLaughlin

From: Deb Seith [dseith@comcast.net]
Sent: Thursday, September 20, 2007 2:32 PM
To: Susan McLaughlin
Subject: CPC Budget Reserves

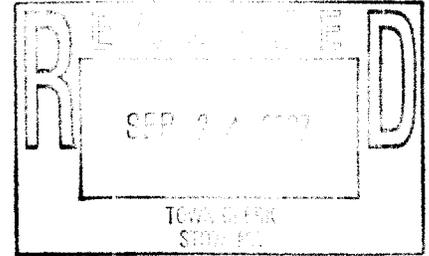
Hi Susan,
Below is the budget information that I believe the BOS is looking for.
Please let me know if they require any further information.
Thanks!
Deb

Current Balances:

Reserved for Open Space/Recreation: \$75,000
Reserved for Historic Preservation: \$377,265
Reserved for Affordable Housing: \$150,000
Unreserved Funds: \$1,455,121

Anticipated Funds to be Transferred from Spring Hill Project:
To be returned to Reserved for Open Space/Recreation: \$79,100
To be returned to Reserved for Affordable Housing: \$65,000
To be returned to Unreserved Funds: \$955,900

September 24, 2007



Stow Board of Selectmen
Town Of Stow
Stow Town Building
380 Great Road, Stow, MA 01775

Selectmen:

The Concerned Citizens of Stow request that you accept the attached petitions with 168 signatures of local citizens. We believe it is important for the town to recognize the implications of the limited amount of tax revenue producing lands remaining in our town. We need to plan for future municipal needs as well as assess potential for currently owned lands. We support the Selectmen's discussions about forming a Land Use Committee. We believe that a Land Use Committee focused on our limited available lands can help uncover opportunities and provide guidance for current as well as future municipal needs. The petition requests that following question be included on the warrant for the upcoming December 3 town meeting.

Article -xx-

To see if the town will vote to have the Selectmen form a Land Use Planning Committee whose purpose is to prepare a Land Use Plan for Stow. The committee will assemble a list of current and future municipal land needs. The committee will also inventory and assess all land presently owned by the town, and propose where any currently owned lands may be feasibly used for Stow's municipal needs. The committee shall report its findings and be accepted by a town meeting vote prior to any further land purchases.

Furthermore, we respectfully request that you consider placing this question on the upcoming December 13 election ballot. After our many discussions with local residents while gathering signatures we believe that there is merit in allowing the entire town voice their opinion on this question to insure broad acceptance of the proposal.

Sincerely,

The Concerned Citizens of Stow

Susan McLaughlin

From: Susan McLaughlin [susanmc1@earthlink.net]
Sent: Tuesday, October 16, 2007 9:32 PM
To: Selectmen@stow-ma.gov
Subject: FW: Land Use Task Force



Revised Land
e Task Force Ch

-----Original Message-----

From: Robart, Jason [mailto:Jason.Robart@mercer.com]
Sent: Tuesday, October 16, 2007 4:14 PM
To: Ellen Sturgis; Kathleen Farrell; s.dungan@comcast.net; Tom Ruggiero
Cc: TownAdministrator; Susan McLaughlin
Subject: Land Use Task Force

Attached are my current thoughts on the composition and purpose of the Land Use Task Force as I discussed last night. I'd like to finalize this at our next meeting and get the committee positions posted shortly thereafter. Thanks.

<<Revised Land Use Task Force Charter.doc>>

Jason S. Robart
Principal
Mercer
200 Clarendon Street
Boston, MA, 02116-5089
USA

phone: +1 617 450 6547
cell: +1 978 973 6941
fax: +1 617 450 6020
assistant: Evonne Kunicki
assistant phone: +1 617 450 6390

mailto:jason.robart@mercer.com
www.mercer.com

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FE01

The Stow Land Use Task Force

Current Environment

The Town of Stow and its residents have spent a considerable amount of time and energy over the years looking into the town's land use needs. From the revised Master Plan to the report from the Municipal Land Use Committee to the recent Recreation for Stow "Master Plan," there are a number of efforts that have researched specific aspects of Stow's current and future land needs. Unfortunately, to date, we have not been able effectively consolidate and prioritize our land use needs nor have we been effective in articulating a comprehensive strategy for satisfying those needs. As many of the previously identified needs become more pressing, the need for a comprehensive and coordinated strategy addressing Stow's current and future land needs becomes clearer.

The Stow Land Use Task Force

- A seven (7) member task force created and appointed by the Board of Selectmen

Charter/Goal

- To develop and present to ATM for official adoption a comprehensive land use strategy that effectively and efficiently meets Stow's current and future land needs.

Guiding Principles

- The task force will leverage and consolidate the work that has previously been done by numerous Town boards and committees relative to this issue
- The task force will employ an open and participatory process

Task Force Membership

- The task force will be comprised of individuals with demonstrated background and expertise in the following areas: housing, land conservation, recreation, municipal finance, municipal zoning and town governance

Major Activities

While the task force ultimately will determine the best approach to achieving its goals, its outputs will include at minimum:

1. A thorough cataloging and prioritization of current and future land needs
2. A comprehensive list of all potentially suitable publicly and privately held parcels of land in Town
3. A complete review of all of the land acquisition and financing options (e.g., parcels in Ch. 61, parcels with conservation restrictions, privately held parcels available on the open market, traditional debt exclusions, CPA funds, etc.)