

Ms. Kathryn Cook, Chair
Southborough Select Board
Southborough Town House
17 Common Street
Southborough, MA 01772

Re: Town liability, 241-245 Turnpike Road, Southborough

Dear Chair Cook:

As you know, I have written to this Board on several occasions expressing my concern about the vacant buildings at the above address which formerly housed the Andrea Restaurant (“the Premises”). The Premises constitutes an attractive nuisance and is dangerous, thus exposing the Town of Southborough—and its taxpayers—to serious liability.

As you are aware, more than two months ago, a State Inspector from the Commonwealth’s Office of Public Safety noted that there are two vacant buildings on the Premises which are not secured. The Inspector recommended that both buildings be secured, and that the Town install a temporary fence across the driveway to deter access. In response, Southborough’s Fire Chief noted that although “some plywood has come off the building at the top areas,” but despite that and the Inspector’s recommendations, in his opinion, the buildings are “secured.” Additionally, the Town has failed to install the state recommended fencing, even though the Chief candidly admitted that the owner of the Premises has presented no timeline for demolishing the building. Thus, the buildings are and will remain unsecured and unfenced, an invitation for potential tragedy, until the owner gets around to doing something. This is an alarming and, at a minimum, negligent dereliction of duty by Town employees.

Under state law, claims for injury or death caused by the negligent or wrongful acts or omissions of any public employee committed while acting within the scope of employment are subject to G.L. Chapter 258. G.L. c. 258, §1. As a public employer, the Town is liable for the negligence of its employees. G.L. c. 258, §2. The Town will not enjoy immunity since it is clear that the failure to follow the State Inspector’s recommendations does not constitute due care in the exercise of public duties. G.L. c. 258, §10(a). Likewise, the discretionary function exception would not be available since the failure to take the state recommended precautions is not a policy making/planning decision. Serrell v. Franklin County, 47 Mass. App. Ct. 400 (1999). Town residents –as well as the Town’s insurer--should be made aware of this lack of care for public safety. As I said, I have explicitly raised this concern with the Town and have so far been rebuffed.

Please let me know what you intend to do to rectify this situation.

Very truly yours,

Jack Barron
Sadie Hutt Lane