

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION GENERAL HEARINGS

LICENSE COMMISSION BOARD MEMBERS:

Richard V. Scali, Chairman
Robert C. Haas, Police Commissioner
Daniel Turner, Deputy Chief

STAFF:

Elizabeth Y. Lint, Executive Officer

- held at -

Michael J. Lombardi Municipal Building
831 Massachusetts Avenue
Basement Conference Room
Cambridge, Massachusetts 02139
Tuesday, February 23, 2010
6:05 p.m.

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INDEX OF AGENDA PROCEEDINGS

<u>Agenda Matters</u>	<u>Page</u>
Application: JMRSS Restaurant	4
Application: Parkside Place Company	10
Investigative: Jaswinder, Inc.	14
Disciplinary: Third District Court Bldg	60
Disciplinary: Master Auto Sales, Inc.	72
Disciplinary: Basha Café	74
Application: Basha Café	84
Application: Idenix Pharmaceuticals	88
Application: Maria Laranjeira	121
Application: Coleman Murray, Inc.	126
Application: Floating Rock Restaurant	138
Application: T.W. Food, LLC	156
Application: Richard Philip Brunet	190
Application: JFS Group, LLC	195
Application: Dalu Arruda	227
Application: Mt Auburn Memorial Post	238
Disciplinary: Common Victualer licensees who failed to renew 2010 licenses	243
Ratifications: Medallion 148, 174, 257G, 249A, 201, 36, 176, 176	246

P R O C E E D I N G S

MS. LINT: License Commission General Hearing, Tuesday evening, February 23, 2010. It's 6:08 p.m. We're in the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Basement Conference Room. Before you the Commissioners: Chairman Richard Scali, Deputy Chief Dan Turner, and Commissioner Robert Haas.

If anyone is here for Bull BBQ, Improv Boston, or Leisure Station, those have been continued until March 9.

MR. SCALI: Anyone here on Bull BBQ, Improv Boston, Leisure Station? Okay. All continued until March 9.

MS. LINT: And if anyone is here for Burger King that has been continued to March 23.

MR. SCALI: All right, March 23. That will help a little bit, Mrs. Lint.

MS. LINT: On Page 2.

MR. SCALI: Let's take our CLAB members first, if we can.

MS. LINT: Application: JMRSS Restaurant, Inc. d/b/a Tavern in the Square - Porter, Shawn Ahern, Manager, holder of an All Alcoholic Beverages as a Restaurant License and Entertainment license at 1815 Mass. Avenue has applied for a change of premises description and a change of manager from Shawn Ahern to Jesse Cody.

MR. SCALI: Good evening. Tell us who you are please.

MR. AHERN: Shawn Ahern, the managing partner of JMRSS.

MR. CODY: Jesse Cody, general manager of Tavern in the Square in Porter Square.

MR. SCALI: So we are here to change managers to Mr. Cody; right?

MR. AHERN: Yes.

MR. SCALI: And to eliminate the patio you never opened; right?

MR. AHERN: Yes.

MR. SCALI: Tell us what your experience is, Mr. Cody.

MR. CODY: I have about 10 years

experience in the restaurant business. I'm born and raised in Cambridge so I started here. I worked at East Coast Grill for a little bit with Jake Jacobs, moved out to Jamaica Plain and became his kitchen manager out there for two years. Then I started working at Brother Jimmy's BBQ, which was in the old House of Blues in Harvard Square. I was a kitchen manager with them for a year. They closed down.

I ended up going to New York City to work for the company in Manhattan for three years. I started as a kitchen manager and moved up to a AGM, then a general manager two years in New York working in a lounge/small restaurant called Ink Lounge as the GM, and presently now working with this company.

MR. SCALI: How long have you been at Porter Square?

MR. CODY: I started in Salem, the newest one that they have out there. I helped open that at the end of April. I was with them for almost six months and then got moved over to Porter

Square.

MR. SCALI: Have you been through our 21-Proof training at all?

MR. CODY: I have not.

MR. SCALI: We do require all our new managers to go to 21-Proof.

Just explain to me now the issue with the patio. There was a patio that was going to be on the left driveway side; right?

MR. AHERN: Of our right door so it would be off the right if you're looking onto Mass. Ave. I guess if you're in front of us, it would be down that driveway, which is Bracket Way.

MR. SCALI: To the left of the front door; right?

MR. AHERN: To the right of the front door. The left is our private -- that's private from Lesley. As you're going out the front door, on the right is Bracket Way and that's where we had submitted the extension there.

MR. SCALI: Am I confused?

MR. AHERN: Steven DeSousa is the one

that applied.

MR. HAAS: It was that driveway that was there.

MR. SCALI: Which is to the --

MR. AHERN: That's to the right of the front door, the driveway. I know that for sure.

MR. SCALI: If you're on Mass. Avenue looking at the --

MR. AHERN: If you're looking at the side it is the left, yes. I'm going out, you're going in.

MR. SCALI: I just want to make sure we had the right idea. So you're eliminating that altogether and you're keeping that little patio on Mass. Ave. which is on private property?

MR. AHERN: Correct.

MR. SCALI: And that's the only change?

MR. AHERN: Yes.

MR. SCALI: Any questions at all?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Anybody from the public want to be heard on Tavern in the Square?

Discussion? Motion to approve.

MR. HAAS: Motion to approve.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MS. LINT: 21-Proof.

MR. SCALI: Subject to 21-Proof training for Mr. Cody.

MR. SCALI: Thank you very much. You're all set.

Just for clarification, anybody who is a member of CLAB, which is our Cambridge Licensee Advisory Board, they get to be pushed to the top of the agenda. Just so you're not thinking we're skipping over anybody who doesn't deserve it, or does deserve to be at the top, that's a benefit of being in that membership.

MR. SCALI: Motion to accept the minutes of our last meeting from January 28. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Other CLAB members?

MS. LINT: We were going to take something else that was carried over.

MR. SCALI: Okay.

MS. LINT: The last item on Page 5, the application of Parkside Place Company, LLP, d/b/a Parkside Place, William M. Kargman, General Partner, holder of a Garage and Gasoline license at 700 Huron Avenue for 10,000 gallons of No. 2 fuel oil and a 248 car special garage with 4,960 gallons of gasoline in tanks of cars only has applied to amend its license to 240 cars, 2,400 gallons of Class 1A, 1B, 1C gasoline in tanks of cars only, five one-gallon containers of Class 1A, 1B, 1B gasoline and 10,000 gallons of Class 2, No. 2 oil, 1,350 gallons of Class 2 Diesel, and 210 gallons for a generator.

They were told they did not have to appear as they had been here the last time and they were reducing the amounts.

MR. SCALI: You re-advertised it for the generator?

MS. LINT: Yes.

MR. SCALI: Anybody here on Parkside Place Company at 700 Huron Avenue? Pleasure of the Commissioners?

MR. HAAS: You have somebody in the back who raised their hand.

MR. SCALI: Somebody from 700 Huron Avenue?

MR. HAAS: He raised his hand when you asked that question so. . .

MR. SCALI: Anybody want to be heard on that matter? All right. Motion to approve.

MR. HAAS: Motion.

MR. TURNER: Second it.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Thank you, Mrs. Lint.

MR. SCALI: Let's go to our other CLAB member, Cafe of India at the top of Page 2.

UNIDENTIFIED SPEAKER: How do you know who's a member?

MR. SCALI: They come to all the meetings and they know who they are.

UNIDENTIFIED SPEAKER: How do we know who's a member?

MR. SCALI: We can tell you if you want.

UNIDENTIFIED SPEAKER: I don't know what the order is.

MR. SCALI: The order is as we call it.

UNIDENTIFIED SPEAKER: So this order that is listed on the itinerary is not to be trusted? I just want to leave and get something but I can't if I'm not sure when the case I want will be heard.

MR. SCALI: What case are you looking for?

UNIDENTIFIED SPEAKER: Fire and Ice.

MR. SCALI: That will not be coming up for a while, I can guarantee you that. That's later in the evening.

MS. LINT: Investigative matter: Jaswinder, Inc. d/b/a Cafe of India, Rashpal Singh, Manager, holder of an All Alcoholic Beverages as a Restaurant license and Entertainment license at 52A-52B Brattle Street due to a report by the Cambridge Fire Department regarding a fire at said location.

MR. SCALI: Good evening.

MR. GOLDBERG: Good evening. I'm Attorney William Goldberg, 620 Massachusetts Avenue, Cambridge, representing Jaswinder, Inc. This is Jagdish Singh, an officer of the corporation.

MR. SCALI: Is there a fire department presentation on this?

MR. TURNER: Yes, Mr. Chair. Mr. Chair, I have a report on December 30, 2009, Fire Incident No. 9006765, copies of which have been presented to the Commissioners.

A fire occurred at 52 Brattle Street at the Cafe of India Restaurant. In brief, the fire originated in the kitchen stove exhaust

ductwork. The fire department units were able to extinguish the fire and prevent it from spreading to the rest of the building.

The Fire Chief is concerned because this is a fourth fire similar in nature in I believe as many years, and the Chief is concerned about it and has requested a hearing from the Cafe of India to discuss what can be done about it.

MR. SCALI: The fire department is also here.

MR. TURNER: Correct, Captain Brogan from the Fire Prevention Office is here. He's been working with the Cafe of India in the restoration or renovation of the restaurant prior to the re-opening. He has been working with the cafe so I believe Captain Brogan has additional information he can provide.

MR. SCALI: Do you want to come forward Captain?

CAPT. BROGAN: Basically in a nutshell, they've had four fires. The big problem with most Indian restaurants is they use a solid

fuel in the tandoor ovens. So the Cafe of India did switch that out. They are using a natural gas that's been approved. It's installed and ready to go. So that should eliminate a lot of the problems.

Also, their ductwork, probably being a larger problem was that at every 90 degree angle you need a cleanout, which that wasn't provided at the time so that went for years. Really you could never get at it to clean it out. They have added ductwork openings or whatever, doors where you can go in. They're called "cleanouts." They have added cleanouts so the entire ductwork can be cleaned now.

Lexington Alarm is in the process because the Harvard students occupy the second and third floor, they put in a new fire alarm panel, adding pull stations that every restaurant -- there's four storefronts in that building and they're adding an additional smoke into the Cafe of India Restaurant.

The cleaning, we have Cafe of India,

I asked for the last two or three years. I'd like to see their cleaning reports, which they said they'll get back to me but it's hard because the company they were using is no longer there. But they have signed a contract with ASAP Ductwork Cleaning, and according to NFPA 96, you have to be a certified licensed holder of such to clean out ductwork now. And ASAP is a certified license holder so they will be able to perform.

It's recommended that they check them, like the store can check it once a month but Cafe of India, they signed a contract with them that they will be cleaned at least three times a year now, quarterly.

MR. SCALI: Is that going to be required or they voluntarily did that?

CAPT. BROGAN: Well, it was sort of required. But we've had a discussion about this in our office. There's a new law that just came out this year, January 1. It may have been -- the way it was first read was we believed they have to be cleaned -- it depends. Heavy volume, four times a

year, then it goes down to three, two, or once a year. So we were on a borderline. They used to be a heavy volume but now that the tandoor ovens are gas-fired, not solid, they fell between four and two, so we kind of compromised with three.

But re-reading that particular law, the way the law states, I really can't force their hand to clean it. They have to be inspected by ASAP, a professional licensed company. They have to be inspected three times a year. If ASAP determines that they need to be cleaned, they'll clean them. If the restaurant refuses that cleaning, they are legally bound to call the State Fire Marshal and the City of Cambridge. ASAP will report to us, they'll send a letter to the Cambridge Fire Department, and a letter to the State Fire Marshall saying we're recommending cleaning and the restaurant either -- if they do it, we won't get the letter. If they don't clean it, then we come with the ticket book.

MR. TURNER: We can shut them down.

CAPT. BROGAN: We can shut them down

and come with the ticket book and give them a violation for it.

We try and keep the restaurants open. We like to work with them but there's a line you've got to draw. Life safety and trying to make a buck.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: Captain Brogan, you've submitted a report to the Chief on January 8. I'd just like you to read that report. Basically it's a report where you're working with other inspectors from other City departments, specifically Inspectional Services, the plumbing inspector, the health inspector.

CAPT. BROGAN: The letter I wrote to Chief Reardon, the interoffice correspondence, I just wrote: "Chief Reardon from Captain Brogan, Subject, 52A Brattle Street, Cafe of India.

On January 7, 2010, I conducted a follow-up inspection at said address," which would be 52A Brattle Street, "spoke with the owner,

Mr. Jahan (phonetic) Singh regarding the fire at 12/30/09. Changes to take place due to another fire starting in the ductwork," and this came from the owner, "the tandoor ovens would be changed, which they have been and inspected and passed. The ductwork will be now professionally cleaned four times a year instead of twice a year, and checked at least once a month." I'll get back to that when I finish reading the letter.

Christine Fernandez spent a lot of time there. She was there just about every day from the Cambridge Health Department. She was there when I arrived. David Brogan, the City plumbing inspector was also there. He was on scene earlier that day. I didn't get to talk to him. And ASAP, which is the company that they have signed with.

MR. SCALI: I'm confused. So is it inspected three times a year or cleaned three times a year?

MR. TURNER: I can clarify that one. Basically there was a serious restaurant fire last

year in the City of Boston where two firefighters were killed in the line of duty, and as a result, the State Fire Marshal took a look at the code that requires the cleaning and maintenance of these restaurant hood systems. They re-wrote the regulation. Prior to January 1 of 2010, the requirement was to have the hoods cleaned twice a year, once every six months.

The regulation was re-written and now the State requires -- cleaning companies are actually certified inspectors, or inspectors have to be certified by the State Fire Marshal's office to inspect these kitchen hood systems. They also came out with a schedule and I think this is where the confusion still lies because it's a schedule of inspection and then the certified inspectors at that time, if they determine the hood needs cleaning, it gets cleaned. If not, it gets cleaned the next time.

Part of the scheduling is they have it broken down by quarterly and semiannually, and quarterly would be systems with high-volume

cooking, and semiannually would be moderate volume cooking. So I guess that's where the confusion is. How do you determine what is high volume, what is moderate volume. So I think once we get back up in operation, we can go look at the amount of cooking that's being done. Well, it's actually a certified inspector that has to look at it now. That's kind of creating a little bit of confusion on the new regulation on our part.

MR. SCALI: So a certified inspector three times a years.

MR. TURNER: Minimally four times a year, and that's going on the high-volume cooking operation.

CAPT. BROGAN: That's where the second one is either four or two, and they believe and we came to an agreement, myself and the owner that they lie somewhere in between. It's a judgment call. It's a compromise that we all agreed to.

MR. SCALI: So it could be two, it could be four, so you compromise on three.

CAPT. BROGAN: Right. And as I

stated, he's going to inspect it. If ASAP decides it definitely needs cleaning, then they clean it. If the restaurant says for some reason that they don't want to clean it that time, he's legally bound to send the State Fire Marshal within 48 hours, and the Cambridge Fire Department, a statement. ASAP will send it to these two agencies.

MR. SCALI: So you'll know then if it doesn't get cleaned.

CAPT. BROGAN: Yes. We will know if he doesn't clean it, yes.

MR. SCALI: Are you satisfied with that plan that this is going to resolve this issue?

CAPT. BROGAN: I am. I think most of his problems will go away with the change of not using a solid fuel, and adding the cleanouts that were never there before.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: Then additionally, and again, why I brought up Inspectional Services is

that another thing we looked at was the engineer design of the system itself. Before we allowed the system to be put back into service we wanted to make sure working with Inspectional under their building permit that an engineer looked at the system and certified the design of the system and approved it for its use.

MR. SCALI: Mr. Goldberg.

MR. GOLDBERG: I know that the Cafe of India worked with Captain Brogan as he indicated. They have been cooperative in any manner. The change from the solid fuel to the gas should eliminate a lot of the issues because with the past heating, there was a spark that emanated and would go up the shaft and that would create the combustion because of the accumulation of grease.

I think that in all of this, and the Caption has indicated that the Cafe of India has abided by all the suggestions that have been made, and have done what was requested of them, and they will continue to monitor and to have the inspection done by ASAP three times a year, and do what they

have required under their inspection, whether it needs a cleaning or not. I think that they will eliminate the problem that existed by changing the type of fuel that was in existence prior to the fire.

Whatever the Fire Department or the Building Department required, I think they have done that already. What remains to be done is to have ASAP come down and inspect, and if they require a cleaning then they'll go forward with that.

MR. SCALI: The main concern is the safety obviously, making sure that these fires don't occur again; that's it's done on a regular basis; that whatever circumstances were occurring don't occur again. I'm sure that people in the building are concerned about the fire safety for the people that live upstairs and that have businesses next-door. So that's our main concern.

MR. GOLDBERG: Whatever is required they will do. They want to abide by the regulations and conform to whatever is suggested by

the various departments of the City. And as indicated by Captain Brogan, they've complied with that. They've agreed to it. So that the situation with regard to ASAP will be determined in the future with regard to the systems.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: Additional commentary.

As you know, the fire department can only enforce minimal standards. It's very difficult to require somebody to go above and beyond what the laws or the codes require. I just want to clarify, Captain Brogan was correct. I stated earlier, high-volume cooking would be looked at quarterly and I was wrong, it's moderate volume.

High-volume cooking is a 24-hour cooking establishment. This is not a 24-hour, so therefore, they would fall into the semiannual or twice a year inspection, not the four times a year. And again, the restaurant has agreed to split the

difference if you will, and working with Captain Brogan do a three times a year inspection.

MR. SCALI: Anybody from the public want to be heard on this matter? Hands right here. If you could come forward and tell us your name for the record, please.

MR. LEVIN: Philip Levin.

MR. SCALI: You're the store right next door which is Settebello.

MR. LEVIN: That's right. We are very concerned about these fires. First, I do want to state that I have no doubt that everyone here is trying to make it safe. It's not an issue there, but I can't ignore a lot of history.

We've been there since '93. They've had four fires in 12 years, three in the last seven. Just looking at round numbers that's every year in the last seven years they had a 50 percent chance of having a fire in that building, approximately. Not two, not four, not 10, but 20. So just looking at that purely on its own it's shocking.

Every time there's a fire there we have either explicit or implicit assurances that that's it, we've found the problem and we should be okay. But then there's another one. And I'm very concerned with the safety of our employees and our customers, not to mention everyone else in that building and the emergency responders from fires that really shouldn't have occurred in the first place.

I don't really have much confidence that this is going to change. I'd like to. I would like to ask one question of the fire department. So they think they've fixed this because of the type of cooking, but we're the prior three fires, were they due to the same source?

CAPT. BOGAN: Yes. The biggest thing here is that it's a combination of things that happened that never happened before. Number one, they got rid of the solid fuel which created the spark which flew in the duct. Two, they never cleaned. There was a section of that ductwork that had never ever ever been cleaned, so you can

imagine the grease buildup because they could never get at it because they didn't have a cleanout to that. So they added the cleanout doors. Now from the front to the back, start to finish that entire ductwork can get cleaned out. That's never happened before because they didn't have access to it before. They now have access so if -- number one, there shouldn't be a spark going up there with a gas oven. Two, if one went up there, there shouldn't be 15 years of grease.

MR. LEVIN: But again, Fire 1, 2, and 3, were they from the same exact oven?

CAPT. BROGAN: I couldn't answer that.

MR. LEVIN: That's the point. That's exactly my point. Yes, you fixed a problem but you don't know if that's really the problem that's caused all these fires.

MR. SCALI: I think they're saying that that was the cause.

MR. LEVIN: I'm not sure. It's not clear.

CAPT. BROGAN: I think it's from a

logical conclusion. If you have grease buildup or something that can be --

MR. LEVIN: But it was from that particular oven; that's what I'm asking.

CAPT. BROGAN: Yes. There was a solid fuel.

MR. TURNER: Mr. Chair?

MR. SCALI: Captain.

CAPT. BROGAN: I'm sorry.

MR. SCALI: Your question, Mr. Levin, is whether the fire department is confident enough that this is going to solve the problem; if this is actually the cause of what these fires were in the past?

Captain, from what I'm understanding is you're saying you're confident that these were the two reasons why these fires were started. The design of the venting now has a cleanout, and the transfer over from the solid to the gas changes the source of the fuel. So it's a whole different method of cooking, if you will, from solid cooking to gas.

MR. LEVIN: I understand. I'm going to drop this issue but I'm still not convinced that was the source of fire 1, 2, and 3. It's not like you can say well, yes, that's exactly where the fire started in the first three fires. And the reason I'm saying that is because I believe you've done exactly the right thing for this particular oven, but that's not the same thing as saying that you've solved the problem that started all these fires in the first place. You fixed one problem that you know caused the last fire and that's a great thing, believe me.

MR. SCALI: I guess we can't recreate the past.

MR. LEVIN: I'm not asking to recreate, I'm asking to report. I've heard no one say -- you see what I'm saying? The distinction is you have solved this problem for the last fire probably. You have done a great job. But that's not the whole of the issue. What if you were to find out that well, fires -- I don't know. I don't know the truth frankly. I'm just wondering, what

if fires 1, 2, and 3 were actually from a different place, a difference source, a different cause? Then what that says is that their history is not really just this one issue and one incident.

MR. SCALI: What would you propose then would be a solution to the problem? We're trying to find the source. The fire department are the experts in this field and the company that inspected.

MR. LEVIN: I don't have any doubt that they did the right thing. But you've got to step back and look at the overall history and ask yourself, and be able to answer the question: why do they have a rate of fires that's 20 times normal? I've heard an answer for the last fire and I accept that one, but I haven't heard anything to answer the history, the seven or ten years of fires.

MR. SCALI: And I guess my answer to you is the same as it was before. We can't recreate the past so unless they know what the circumstances were last year, two years previously.

MR. LEVIN: That may be. Maybe there's reports on the last three fires that say it was caused by this oven, this oven, this oven. that makes a lot of sense. That's fine. I'm going to drop this issue but I do not want --

MR. SCALI: It's an important issue.

MR. LEVIN: I do not want there to be an acceptance of a solution here if there may in fact not be a solution.

MR. SCALI: We're just hearing the information right now.

MR. LEVIN: The second point I wanted to make is it's to me, just from my own experience, it's much more than these individual fires. In my experience, and mine alone has been there has been almost an attitude of lack of interest in keeping safe in this restaurant.

Why do I say this? For example, in the 2008 fire, which was very serious, it went up to the third-floor and it was a grease fire. I don't know if it could have threatened the whole building. I assume it could have. In that fire,

they were -- I don't remember the exact date but I believe it was a Friday -- they were shut down. Cafe of India was shut down by Inspectional Services. That's it, you're closed. They opened the very next day. Now why would they do something like that? I'm sure there's all kinds of explanations. Maybe miscommunication. I don't buy it, frankly. I asked Inspectional Services that time, why did they open? Were there some special circumstances? Their response was, well, they just decided to open. So you have that.

You have the fact that the City plumbing inspector reported, and this is just after that fire, he went down and inspected. He reported that there was illegal plumbing, illegal wiring -- "unlicensed" is the word he used; I use illegal -- all over the place, not just here and there, all over the place. He said that the electrical inspector actually caught someone down there doing illegal wiring. So you have that.

MR. SCALI: I haven't seen anything to that effect so that's what I'm saying. Nobody has

reported that to us.

MR. LEVIN: That's the other thing that really bothers me about the way this city works. This report was filed in Inspectional Services. It went into a folder and disappeared from the face of the earth. You can read it yourself. This is from David Brogan. "There is evidence all over of work being performed by non-licensed contractors. As one person was caught at this address by Mr. Moschel and the City Inspector of Wiring. I wonder if it would be prudent to visit any other similar locations."

So their attorney here is saying that the Cafe of India wants to abide by the regulations. I wonder. I wonder given this, what exactly they want to abide by? Whose regulations; they're own?

Then the other thing is -- I might be wrong about this but after the 2008 fire, my understanding was that they were going to have cleanings every three months, four times a year. I could be wrong. Maybe it's confused with

inspections. And yet they had the fire department's task force on 7/15/09. This was also in their file. They checked off here where it says, "cooking ventilation system." They failed, that is, cooking ventilation service, they failed. Then there is written by hand, 7/08, 11/08. I think they're implying those are the last dates that they were inspected.

MR. SCALI: We're kind of at a disadvantage because you're reading from something that we don't have.

MR. LEVIN: It's in your file. I didn't pull it from outer space. It's in your file.

MR. SCALI: I'm not sure if you're reading correctly or you're interpreting correctly unless we know what is being read.

MR. LEVIN: Feel free.

CAPT. BROGAN: I'm assuming on these task force, we don't check ductwork, we check the tags on the ancil system. They have to be inspected every six months, and fire extinguishers

every year.

MR. SCALI: Is that a task force report?

CAPT. BROGAN: That's done during task force inspections. This was a task force inspection.

I'm assuming, and this was done by Captain Sandy Francis, he was marking the date down, 7/08. One was the ancil, maybe it was late. And the fire extinguisher, 11/07 might have been late. Captain Francis isn't here to answer this but I'm assuming that's what the dates are.

MR. LEVIN: But if there's a check mark in "Fail," what would that mean?

CAPT. BROGAN: That the ancil system wasn't inspected. Every six months the ancil system which is the fire suppression system under the hood. If they had a fire, they usually located at the door. When you're walking out you pull it and the agent extinguishes the grease fire. That has to be done every six months for every ancil system in the City of Cambridge.

So I'm assuming that date was the date that it was supposed to be inspected, and the date on this was -- he inspected this 7/15.

MR. SCALI: It's just saying the tags were late, the inspections were late.

CAPT. BROGAN: He inspected this 7/15. He wrote 7/09. I went to Rindge Tech, help me with the math. He might be six days over date.

MR. LEVIN: But they failed to have those ancils inspected; is that the issue?

CAPT. BROGAN: It could be five days over.

MR. SCALI: It just means that the tags were not up to date at that point. It doesn't mean it was unsafe.

CAPT. BROGAN: It doesn't mean the system is not going to work if there's a fire, but they still have to be inspected once every six months, yes.

MR. LEVIN: Wait a minute, wait a minute. You mean it's okay if they're not inspected because it might work anyhow?

CAPT. BROGAN: I didn't say that at all.

MR. SCALI: Mr. Levin, this back and forth is not going help us here because we're not really sure what happened.

MR. LEVIN: You asked a good question, Mr. Scali. You asked what would I like to happen. I don't know in general, I don't know. I do want to point out that it's not exactly a slamdunk for me to presume that everything is okay. I remember telling my partner there that after the last fires, you watch, two years from now they'll have another one. And almost to the day they had another one and it's frightening.

If they were just individual fires, lightning strikes from the sky, I could accept it, but with all these other ancillary issues I really wonder how they can be kept safe. You have to rely on licensees to do the right thing to keep safe.

MR. SCALI: I'm just guessing from what you're saying that you want to make sure that all the inspections are up to date; that the

inspections are accurate; and that things are done in the proper fashion. That's what we want too.

MR. LEVIN: Well, almost. They also have the privilege of cooking for catering. That's my understanding that they can cater, they cook for their other restaurants their, all things which -- I asked your Chief myself, and he agreed with me that those things drive the kitchen harder. They make it -- you know, these are not his words, these are mine. Of course, driving the kitchens harder is another thing that's going to make it more of a risk.

MR. SCALI: It's still all related to safety; whatever the use is it has to be safe.

MR. LEVIN: No, actually -- well, if you turn the stove off on one end of the spectrum that's safe, but they're driving -- why do they have these privileges -- that's my question -- without letting them demonstrate first that they can operate safety? It's 20 times, 2,000 percent increase in fire rate no one can argue is unsafe. That's all I have to say. Thank you.

MR. SCALI: Thank you very much.

MR. TURNER: Mr. Chair.

MR. SCALI: Deputy Chief.

MR. TURNER: Mr. Levin, I sit here and I listen to you and I listen to your concerns and I agree with you. I feel the same way.

Mr. Chair, unfortunately we can't predict fires. I wish I could sit here and give you a guarantee that the restaurant will never have a fire again, but I can't.

Based on what we're looking at certainly you're correct. Twenty times the average for restaurants, well, I'd love to shut them down, but I'm sure Mr. Goldberg would be down the courthouse tomorrow filing the court order.

MR. SCALI: It's still a possibility.

MR. LEVIN: You're right.

MR. TURNER: I would love to --

MR. LEVIN: If they're doing the right thing then --

MR. TURNER: Can I finish please?

MR. LEVIN: Sorry.

MR. TURNER: I would love to get the owner of the property to install a fire sprinkler system, which is going to provide even more protection for both the occupants and the neighbors, but I'm sure the owner is going to go down to the courthouse with his attorney because the State law prohibits me from doing that because they're grandfathered.

So I share your concerns. I can only enforce what the laws and the codes allow me to enforce. We are working closely, perhaps more closely with this restaurant than others. And we've also stepped up across the city because of this new code that took effect, we are taking a stepped up approach with other restaurants as well.

MR. LEVIN: But what's about what the Commission had said? Can't you have a rule?

MR. SCALI: We have to look at all the details on this, not just from the fire department aspect but from every aspect.

MR. LEVIN: I understand your hands are tied because of the regulations. They're

meeting whatever they're supposed to meet and you can't do anything about it. But the Licensing Commission has rules and regulations. You'll shut somebody down if they don't pay their fees, you'll shut them down if they don't pay their Workers' Comp, you'll shut them down if they have too many parking tickets, but what about fires.

MR. SCALI: That's why we're having this hearing. It's investigation to find out the details.

MR. TURNER: The one consolation --

MR. SCALI: If we could -- we have a very lengthy agenda and the details are not going to be any different than what they are.

MR. TURNER: We now have the power to shut somebody down for being noncompliant on their suppression system. So at least we have the authority to do that.

MR. SCALI: That's just the fire department's power but the License Commission has different authority as well.

MR. LEVIN: Cleaning up the illegal

wiring would be a nice start, and the plumbing. I think that seems reasonable.

MR. SCALI: These are all concerns that we're writing down here and we certainly have the very same concerns you have.

MS. LEVIN: Can I just have a couple of minutes?

MR. SCALI: If it's the same as what your husband said I believe --

MS. LEVIN: It's just actually sort of an idea about this 90 degree ductwork. The ductwork actually extends to the outside of the building, so it takes a 90 degree turn from the actual kitchen area, then a 90 degree turn to the fourth floor of the building. So are there cleanouts at every single 90 degree angle plus the roof because of the way it's configured? Or is it just inside the kitchen?

CAPT. BROGAN: It's inside the kitchen. It might be 45 degree. I don't know if it's 90.

MS. LEVIN: Yeah, but that's what you

said at 90 degrees they were installing cleanouts.

CAPT. BROGAN: They can clean it out from forward to aft, yes. And outside there is a cleanout right where it goes up.

MS. LEVIN: I see. That's why there was a lot of fire going up there in the fire of 2008.

Another question, there are grease traps too. It's not just ductwork that we're concerned about. I think there's an overall combustible area around the stove. It's not just grease into a duct and a spark into the duct and a fire. It seems to be that there were other issues that involved the overall site. The fact that the grill area may have been greasy, the grease vents or grease traps were not cleaned out.

And that's another question I think we all have being in the building. How can we rely on a third-party like ASAP Cleaning to do the job that hasn't been done thus far on a regular sort of stable basis? Why is it up to ASAP rather than the director of the owner of the restaurant?

MR. SCALI: Is up to the restaurant. It's just that they have to have someone do it for them. So it is their responsibility.

MS. LEVIN: But you're assuming they're certified and licensed. I'm asking --

MR. SCALI: No, we're not assuming that. That has to be proven.

MS. LEVIN: Then I think when they renew their license you should see those forms that they have filled out that it has been cleaned, it has been signed-off, and in fact, we have a cleaned duct, because those fires a very greasy, they are fast fires.

Another thing I noticed on the second fire was that an employee didn't know how to use the fire extinguisher. A customer came out of the restaurant into our store to say, oh, by the way, Cafe in India is on fire. I called the management company, oh, by the way, we have a fire next-door. And the man near this pit area did not know how to use the fire extinguisher. That was a serious concern.

Everybody was out of the building, the fire department was there within minutes. But I think there was an issue of maybe an OSHA standard that all these employees have to know how to respond if this happens again.

I have another question. There was an employee that was taken out by ambulance I think two days after they had opened, and I wondered if that was related to the new gas line. I asked the fire department and I'm not sure. Jagdish was there.

MR. SCALI: Was there an issue with an employee?

MR. SINGH: He had his own problem. He just came this one day to work. He wasn't working there. He had his own problem.

MR. SCALI: Did he have his own illness?

MR. GOLDBERG: I think what he's saying is that he had his own physical problem and that's why the ambulance came.

MR. SCALI: Not related to the inside

of the restaurant?

MR. GOLDBERG: It's not related to the restaurant.

MR. SCALI: He had some other physical ailment.

MR. SINGH: He just called to have an ambulance.

MS. LEVIN: So there's this chain of command, you know. Who's in charge of the restaurant? Who's going to be calling the cleaning company to make sure they're there three times a year, if that's the requirement? It's just the maintenance and the standard, and frankly, we've been through enough to see where that has lapsed. It's not been good for anybody in the building, the owners or the management company, or the tenants, or the customers.

MR. SCALI: Thank you very much.

Anybody else want to be heard? Yes, sir.

MR. COHEN: I'm Richard Cohen of the management company, CGI Management.

MR. SCALI: The management of the entire building?

MR. COHEN: Yes, sir.

I think what I'd like to bring out in front of the Board here is that the restaurant and the building management were upgrading, as the fire captain knows, we're upgrading the fire alarm system. And also, the restaurant has agreed to upgrade their heat detectors on their ductwork.

There are increased vents now to get into the cleaning aspect that ASAP is going to do. My request would be that the three times a year cleaning be increased to four times a year, and be required. I think that the restaurant has to continue to be diligent with their cleaning. I think ASAP would agree that four times is what should be done until the restaurant gets stabilizes and we see how the gas is doing, versus the charcoal.

I also would -- when they come to clean the ducts it's a difficult job because of the access into the space, vehicle's access and the way

that they do clean these ducts.

Oftentimes the restaurant may be - it's setting up a time in order to do it so it can be done completely, and that's been a problem. They may get halfway through the job and it's time for the restaurant to start serving, so they have to leave. That has to be resolved and it has to be done correctly.

ASAP right now needs to finish cleaning these ducts, which they quite haven't finished, in my opinion, the first round from the fire. ASAP is still of the opinion that they need to finish, and then I would like to see it done quarterly. I would like to get it done quarterly and religiously, and all those approvals.

MR. SCALI: Have you spoken to Cafe of India about this at all?

MR. COHEN: I have spoken to them.

MR. SCALI: So have you come to any agreement?

MR. COHEN: The ASAP agreement is three times and I would tend to say that again, as

the fire department is saying, it's between two and four and there seems to be this compromise. It's money. It cost money to clean. I think on the err of safety it should be four times.

MR. SCALI: Is there anything else you want us to know?

MR. COHEN: No. I just think it's real important that it is known that the contracts have been signed to do the fire work. It's being done and the contract with ASAP has been signed by the restaurant. But I still would like to see that from three to four.

MR. SCALI: I think as a License Commission we've got many different ways of resolving issues in terms of adding conditions that would reflect that. So there may be a way we can do that if we determine that it's needed. Thank you very much.

Questions of Mr. Cohen?

MR. HAAS: No. I have a question of Mr. Goldberg and I guess the owner of Cafe of India. Are you amenable to increasing it to four

times a year?

MR. GOLDBERG: Well, number one, Mr. Cohen said that he's -- I'd just like to correct the record. He has not spoken about the four times. If it's a requirement of the Board that it be four times then we will abide by it.

As I understand there was a compromise for three. Three was satisfactory, I believe it might be satisfactory to the Board; however, if because of the safety concerns and Settebello's concerns, in order to allay their concerns then we'll do it four times. It probably will be more expensive but safety is the paramount feature of the restaurant's objectives and we just have to increase the buffet price.

MR. SCALI: I'm sure the customers will appreciate that.

MR. GOLDBERG: I'm serious about it. The concerns that have been expressed here by the landlord and by the next-door neighbor are real and to allay it and to abide by the requirements, then four times a year I think we can suggest it, and if

you require it then we'll do it.

MR. HAAS: I just have one question of Deputy Chief Turner. Is there still an issue with the wiring and the plumbing in the basement of the establishment or do we know that?

MR. SCALI: I was going to suggest that that be looked at.

MR. TURNER: I would have to defer to -- I'll have to ask Inspectional Services.

Actually, Mr. Chair, through you to Captain Brogan, is the restaurant open again? Have we signed off?

CAPT. BROGAN: Yes.

MR. TURNER: I guess the assumption is where they're open again that Inspectional Services has signed off and given them the approval to open.

MR. HAAS: Mr. Chair, I would just ask that we check with Inspectional Services and make sure there are no remaining plumbing and wiring issues.

CAPT. BROGAN: I have not signed the building card yet until everything is resolved.

I have not signed the building permit yet. I told them they could open myself. Christine Fernandez, David Brogan from the plumbing said okay, the oven is in, they're being cleaned, let them operate. But I'm not signing anything until I get things in writing that I'm 100 percent sure these things are going to happen. And I still haven't signed the card yet. I have not signed the building card yet.

MR. SCALI: I think we certainly can look at this information from Inspectional Services.

I think the other thing, too, is that the reporting mechanism -- I think there is a concern about who reports what to whom in terms of the Cafe of India reporting that it's done to the fire department and to us is more important than ASAP reporting it to us, to me anyway. If that's an issue then we want to make sure that they're reporting that everything is done to us as well.

MR. GOLDBERG: Let me just understand. If I recall what the Captain said was that ASAP comes down and if there's any kind of an objection

or reluctance, then there's a letter that is to be sent out to the restaurant.

MR. SCALI: That's beside the point. I think we put the burden of proof on the owner, the restaurant owner to make sure that they let us know that it's done, as opposed to ASAP doing it. It makes the burden on the Cafe of India to make sure that that's done for us. That's not a hard thing to ask for. Just send the form in or send the information in to us as it's done.

MR. GOLDBERG: Am I correct in saying that if ASAP comes down, you want a notice that ASAP has come down?

MR. SCALI: That would be preferable to me, sure. As opposed to ASAP letting us know if they object.

MR. GOLDBERG: Fine.

MR. TURNER: That could be as simple as faxing us a copy of the receipt for the services, which is what we normally do.

MR. SCALI: Any other questions, Commissioners? We need to move on.

MR. HAAS: Deputy Chief, could you just verify the 2008, 2003 incidents? Could you check those prior reports to see if there is an incident report?

MR. TURNER: I have the fire report for the 2008 incident, and again, it was fire in the ductwork, kitchen ductwork. It does not -- the exact cause gets turned over to the -- or the cause of origin of a fire incident gets turned over to the fire investigation unit, so I don't know what the exact specific cause was.

MR. HAAS: Is there any way you can look that up?

MR. TURNER: I'll have to put a request into the fire investigators to check their files and see what the exact cause was, but as far as the fire report notes, it was fire in the ductwork.

MR. HAAS: Mr. Chair, so I just understand, what we're requesting is that the notice from ASAP will go to the fire department when they're doing the inspections?

MR. SCALI: To the fire department and also the License Commission, whichever you prefer.

MR. TURNER: We could have it faxed to us for our records and then also forward fax it to your office.

MR. SCALI: So then is there a motion Commissioners on this?

MR. HAAS: I make a motion to take this under advisement until we get further information relative to the past incidences, and also, I just want to make that we have an agreement that the inspection will take place four times a year, and we have something back from ISD with respect to the plumbing and wiring issues that are allegedly still in violation.

MR. SCALI: And the reporting mechanism to the fire department.

MR. HAAS: Right.

MR. SCALI: The motion is made.

Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: So we're looking to take this under advisement. We meet on March 4. So if we could have this resolved by the 4th, those four issues resolved by the 4th at 10:00 a.m. that would be very helpful.

MR. GOLDBERG: Will that be an executive committee?

MR. SCALI: It's the Decisionmaking meeting at 10:00 a.m.

MR. GOLDBERG: At that time will the Licensing Commission set forth items of what --

MR. SCALI: We'll decide then whether the information is sufficient or not to vote at that point as to what the future conditions, if any, will be. We're in the right direction here. If we can get those four items resolved or at looked at, we'll know more as to what we need to do.

MR. COHEN: So 10:00 a.m.; is that what you said?

MR. SCALI: Yes. It's 10:00 a.m. on March 4 we meet here again, yes. Thank you very much.

MS. LINT: Disciplinary matter: Third District Court Building, Rosa Chavez, Director of Facilities, due to a noise complaint received by the License Commission with regard to the HVAC unit on the roof at 109 Third Street.

MR. SCALI: District Court? Anybody here?

MS. BOYER: I don't know.

MR. SCALI: Anybody here from the Third District Court? Any complainants here from Spring Street? Ms. Boyer, why don't you have a seat. Ms. Boyer, state your name for the record.

MS. BOYER: Andrea Boyer, B-O-Y-E-R, Chief Investigator for the City of Cambridge License Commission.

MR. SCALI: Okay, Ms. Boyer, your report.

MS. BOYER: This has been an ongoing noise issue, a problem from the Third District Court located on the corner of Spring and Third Street, and the residents living on Spring Street. Just as a little tidbit of information; that's the

short building.

MR. SCALI: Not the tall but the lower building.

MS. BOYER: Correct, because we've had issues with that, also.

So I've been working on this since 2004, and my contact has been Rosa Chavez, a representative from the court, to find a solution for the HVAC noise violation that was on the building rooftop.

In 2004, the HVAC unit was replaced but the baffle that surrounded the old unit was discarded, which used to baffle the sound that traveled toward Spring Street. Noise measurements were taken and it was concluded that the unit was only a nighttime violation and not a daytime noise violation. Therefore, steps were taken to put the unit on a timer.

And then also in April 2005, Rosa Chavez stated she would check in August to see if the budget would allow for a new baffle to be placed around that unit just in case the timer did

not do what it was supposed to do that it wouldn't be a noise violation.

I contacted her for an update in the spring of 2006, and she stated she would address the meeting again on May 17, 2006.

In June 2006, the residents contacted me to state that the unit was on before the allowable time, 7:00 a.m., so in between that time it was a very minimal times that it may be on.

MR. SCALI: 2006 to?

MS. BOYER: To today.

MR. SCALI: Until the recent past.

MS. BOYER: Yes. And after the allowable time of 6:00 p.m., sometimes on holidays. I contacted Rosa Chavez and it was agreed between her and another representative, Michael Schola that the unit would not go on until 7:45 a.m., and it would be turned off by 5:00.

I received a letter in December 2009 from the residents requesting a hearing to have the issue addressed so that we can have a permanent solution for the problem. Basically we're just not

wanting the residents to have to police this periodically. The timer seems to have not been the ultimate solution.

MR. SCALI: Let me just see if I have this right. You had negotiated -- they changed the units back in 2004 and they put up a baffle around that and that solved the problem?

MS. BOYER: No. In 2004, there was a new unit that replaced the old unit, and at that time, the old baffle that was around the old unit that was in violation was thrown away. Unfortunately, the new unit and that wall would have been the permanent solution so that's why Rosa Chavez was looking into possibly having it in the budget, the State budget, which is -- you know, yeah.

MR. SCALI: There isn't one.

MS. BOYER: So that's why it was always put off for a few months, and a few months. Then I would periodically bring this case back up when I'd hear from the residents that it was on during a timeframe that they didn't think it was

going to be on. I think one time it was the Fourth of July, another time -- and at times when their families are home and they just didn't want to hear it all day long and they did.

MR. SCALI: When did they agree to put the timer on?

MS. BOYER: It was agreed upon in 2006, and then it was changed that the timer wouldn't go on until later even, until 7:45 based on the timer going on periodically here and there. With time change and so forth sometimes it would go on when it wasn't supposed to.

Once again the neighbors would say it went on at 6:00 instead of 7:00. We had the forward time, you know, fall or spring issues. Then it just seemed to go on. I'm sure they'll enlighten you on the times that it's happened more than just recently. For them to contact me again means that it's happening more frequently.

So we were just trying to maybe push the State into the baffling system.

MR. SCALI: So here's the big problem

I think, Ms. Boyer: Does the noise ordinance really affect a building such as this?

MS. BOYER: This is a State-owned building, which we've had issues in the past of trying to have jurisdiction over State-owned problems. With that said, our problems have been that the MBTA issue, as you are aware of, we went all the way to the State House on that one, but that was also the MBTA and that was located in Somerville and that was affecting Cambridge residents. So that is why we couldn't touch that situation.

The other problems that we've had are the train stations that's down by the Brick Works, and we don't have jurisdiction over that State property. So that sometimes with maybe the Third District not showing up tonight kind of shows us that we may have a little bit of a problem ahead of us.

But it's affecting the residents. They've seemed to work with us before and basically it was kind of to get it on the record for the

residents to have their speech.

MR. SCALI: So is Ms. Chavez not willing to work with you now; is that the problem?

MS. BOYER: No. I think that her hands are tied just as anybody else of being able to actually find a solution. Why they didn't show up tonight I don't know. She has worked with me in the past, has put it on a timer. I think she contacted Elizabeth Lint.

MS. LINT: Yes. Mr. Chair, I did speak with her either Thursday or Friday, I don't remember, and she say that she would get a representative to come so I'm surprised that there's nobody here.

MR. HAAS: Do we have jurisdiction over this building or not?

MR. SCALI: I'm guessing that a State-owned building is not going to want to submit to our noise ordinance, or that we would have jurisdiction over a State building. I think they were working willingly, cooperatively to do this and now maybe that the budget is -- the money is

not quite there to fix may be the issue.

MS. BOYER: The State building is actually on Cambridge property so there is a fine line there whether or not we have jurisdiction or not. Just because it's a State building doesn't mean we don't own the parcel.

MR. TURNER: Mr. Chair.

MR. SCALI: Deputy Chief.

MR. TURNER: Ms. Boyer, if I'm reading this correctly so far we have worked with Ms. Chavez from the courthouse. Have we tried to work with anybody at the State level? What agency do --

MS. BOYER: As I found recently trying to deliver the letter to anyone to -- because at the State a lot of people moved out of the courthouse to Woburn to another location. I was very surprised to see that Rosa Chavez was actually still at -- and she's the facilities director so she is the person to speak with and she is the one to work with on all the mechanicals. Above her I wouldn't know where to start because they don't

really lead you too well on the website to try to find somebody.

MR. TURNER: It's amazing how when they look for how fast they can find you though. Thank you.

MR. SCALI: Any other questions?

MR. HAAS: No questions.

MR. SCALI: Anybody from the public want to be heard? I saw hands. Any residents want to speak on this matter? You've got to come up. Tell us your name.

MS. SHILOH: My name is Heather Shiloh. I live at 71 Spring Street. I've lived there for just about 10 years. When I first moved there it was nice and quiet. I could have outdoor space time. I could have my kitchen windows open and be able to talk in my house and hear the person next to me during the summertime.

Over the years, once they replaced the original air-conditioning unit -- and it's beyond me why it's on the residential side. I think if it were on Brattle Street it would never be facing the

residents, it would be on the street side, but for some reason there's no respect for the residents that live on the residential side.

I don't know why it's there but as long as the baffle was there it really wasn't an issue. You could have quality time in your yard. You could think in your kitchen. You could talk to each other in the house.

I've had tenants now that I've had to put air-conditioning in their bedrooms so they can sleep at night because it goes all night long, and there's nobody in the building. I don't know why as taxpayers I'm paying for that but the noise level is awful.

What we did end up being able to get them to do is to get the hours changed so that it would shut off and turn on at reasonable hours. That was actually quite nice, although we never had holidays that were free from the every 20 minute cycling. So family and friends, we couldn't really enjoy our property during that period of time. It starts in about April and it doesn't shut down

until now around November, so it's a lengthy year.

MR. SCALI: Have you had any dealings with anybody there at the building or is it just through Ms. Boyer?

MS. SHILO: Just Ms. Boyer.

MR. SCALI: So it was okay when?

MS. SHILO: It was okay when the baffle was up. That's when it was really the best. Because what's happened is we make an agreement and they agree to do something and they change the timing, but then when the next year comes around and the time changes then what happens is they either don't reset the clock or somebody new comes in, or if there's a power outage it doesn't get readjusted, and then we're back to square one. And this past summer it just been going, going, going all summer.

We're kind of either at wits end and not calling anymore because we're just over it. It's just really frustrating. The solution of the timer is a good one if we don't have to keep calling and nagging, but I think the ultimate

solution is really putting the baffle back up again so that we don't have to call anybody.

MR. SCALI: If somebody just hadn't thrown out that baffle we probably wouldn't even be here tonight.

MS. SHILO: Yeah.

MR. SCALI: Is there a way to get a hold of Ms. Chavez? I guess I'm trying to figure out what the best way to handle this is, Ms. Boyer. I know you've been trying very hard.

MS. LINT: Disciplinary matter: Master Auto Sales, Inc. holder of a Used Car Dealer's license at 372 Rindge Avenue for failing to renew their license.

MR. SCALI: Master Auto Sales? Is anybody here on Master Auto Sales? They have not renewed their license for 372 Rindge Avenue, Mrs. Lint?

MS. LINT: Correct.

MR. SCALI: Motion to cancel the license.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye. Will we just go back and verify that they're no longer in business?

MR. SCALI: We'll have Ms. Boyer -- Ms. Boyer?

MS. BOYER: Yes.

MR. SCALI: Can you just verify that Master Auto Sales at some point is canceled or

closed?

MS. BOYER: My pleasure.

Is it 372 Rindge Avenue?

MR. SCALI: Yes.

MS. BOYER: Was that a lot or a
building?

MR. SCALI: It is a used car dealer
lot.

MS. BOYER: Okay.

MS. LINT: Disciplinary matter: Basha Cafe, LLC d/b/a Basha's, Jack Markarian, Manager, holder of an All Alcoholic Beverages as a Restaurant license and Entertainment license at 26-48 New Street due to police reports received by the License Commission regarding being open after hours.

MR. HAAS: Sergeant, you can take a seat right there.

MS. LINT: There is a second matter. Application: Continued from January 28, 2010. Basha Cafe, LLC d/b/a Basha's, Jack Markarian, Manager, holder of an All Alcoholic Beverages as a Restaurant license and Entertainment license at 26-48 New Street has applied to increase the hours of operation to be open until 2:00 a.m. on Thursdays, Fridays, Saturdays, and the night before a legal holiday.

MR. SCALI: Good evening. Tell us your name for the record, please.

SGT. FERREIRA: Sylverio Ferreira, Jr.

MR. SCALI: Sergeant?

SGT. FERREIRA: Yes, Sergeant with the Cambridge Police.

MR. MARKARIAN: Jack Markarian.

MR. SCALI: We'll start with you, Sergeant, with your report if you would. I believe we have copies of it here. We're primarily dealing with the date of October 4, 2009.

SGT. FERREIRA: I was asked to follow up in regard to an earlier incident report involving a call made from the night manager, Mr. Cabasi from the Basha Cafe to the Cambridge Police Department on October 4, 2009.

In regards to my follow-up, I conducted several interviews in regards to the incident that took place that night. The first time I had an opportunity to speak to the actual night manager, Mr. Cabasi was on Page 2 of my report, the second paragraph.

I spoke to him and basically what he had told me -- I asked him if he remembered the incident involving Mr. Galluccio on October 4, 2009. He said he did, and he proceeded to tell me

what he remembered of the event.

He said that he was the night manager of the Basha Cafe on that evening; that it was a little after 2:00 a.m. when Mr. Galluccio entered the Basha Cafe. He's known Mr. Galluccio for a period of time and said that Mr. Galluccio did not look well. With that he offered to make Mr. Galluccio something to eat. I believe he said he gave him some soup and maybe some cheese while he continued to clean up.

As you know, the Basha Cafe has their license until 1:00 a.m., and they have to have the patrons out by 1:30 a.m. After Mr. Galluccio entered and got something to eat, Mr. Cabasi had continued to cleanup the restaurant. It was sometime around 4:00 when he decided that Mr. Galluccio did not look well enough to drive home. He offered to give Mr. Galluccio a ride home. He believed Mr. Galluccio lived on Sunset Ave. at the time.

He drove around for a while with Mr. Galluccio in the car. Mr. Galluccio kept

falling in and out of sleep. He was unable to locate Mr. Galluccio's house on Sunset Ave. At that time it was approximately 4:30 in the morning, a little after 4:00. Mr. Cabasi had been driving around for about a half-hour. He decided to call the Cambridge Emergency Communications Center for assistance and called the police department. He made that call while he was pulled over at the Sunoco gas station located on Concord Ave. I believe it's 515 Concord Ave.

He told the dispatcher who he was; that he was with Mr. Galluccio; and that Mr. Galluccio was drunk at the time. He asked for assistance in getting Mr. Galluccio home and dispatch ended up sending a police cruiser by to give him a ride home.

MR. SCALI: The real issue for us really has to do with the restaurant in terms of whether the restaurant was open or closed, and whether somebody, whether it was Mr. Galluccio or not was served food or alcohol after the closing hour. I'm trying to remember what you said in

terms of what the actual employee stated.

SGT. FERREIRA: The employee, the night manager, which was Mr. Cabasi said that Mr. Galluccio came in a little after 2:00 a.m., he didn't look well and he ended up giving him something to eat. I believe he said he gave him some soup and cheese, and that he did not serve him any alcoholic beverage.

MR. SCALI: You weren't really clear whether they were open at that time or they just let him in. I guess I'm trying to figure out whether they were open or whether they were doing a good deed and trying to help him when he came to the door. It's not really clear from the report, or maybe you don't know.

SGT. FERREIRA: I think what happened is Mr. Galluccio walked in at that time. The door was unlocked and he walked in, but they were not open at the time when he walked in.

MR. SCALI: Were there any other questions about whether there were other customers there or whether there was any food or alcohol out

that you recall from the reports?

SGT. FERREIRA: No. When I spoke to the manager the rest of the people that ran the establishment according to Mr. Cabasi were workers that were assisting him in cleaning up the restaurant.

MR. SCALI: Is it your understanding then from that information that they were cleaning up or something, and that he just came in? The doors were unlocked but they were closed?

SGT. FERREIRA: Yes. They closed at 1:00. By 1:30 they let all the patrons out and they were already starting to cleanup at 1:30. All the patrons according to Mr. Cabasi were out of the restaurant, and a little after 2:00, Mr. Galluccio entered the establishment through an unlocked door which was the front door.

MR. SCALI: Question?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Mr. Markarian, you have the right to ask any questions of the officer with

regard to the incident. Were you there that evening?

MR. MARKARIAN: No. I was traveling and I found out from manager that Senator Galluccio came in around 2:00 and he wasn't feeling good just like the officer said. He tried to feed him some soup and some food, and he was doing some paperwork inside the office and everybody had left. He tried to get him some more help but he couldn't so he started driving him around. He didn't know where he lived. Then he got frustrated I think or whatever. He pulled in the gas station and called for assistance.

MR. SCALI: Do you know what was happening between 2:00 and 4:00 a.m.?

MR. MARKARIAN: My understanding is when he come in he stayed about an hour. Then the manager tried to locate somebody to drive him home and then he decided to drive him. I don't know exactly what time, what happened in between 2:00 and 4:00 but he was there at least an hour, an hour-and-a-half trying to --

MR. SCALI: Were your employees still there between 2:00 and 4:00 cleaning up?

MR. MARKARIAN: No. The only one I think left was my manager. When Anthony Galluccio walked in there were few people cleaning up and they all went home so the manager was alone with Anthony Galluccio.

MR. SCALI: So just the manager there until 4:00 a.m. when he decided to take him home.

MR. MARKARIAN: I don't know if he was there to 4:00 a.m. I'm not sure.

MR. SCALI: Well, according to the officer's testimony they left at 4:00 a.m. to go home; right?

SGT. FERREIRA: That's my best estimation. What he had said was he had been driving around with Mr. Galluccio for about a half-hour. We know that the call came into the Cambridge dispatch at 4:39 a.m. Just like the owner stated, Mr. Cabasi said that he was exhausted. He had worked a double shift that day and had to be in work the next day and ran out of

options is the reason why he called the police for assistance.

MR. SCALI: Comments?

MR. HAAS: As far as you could tell, Sergeant, the manager was cooperative during the course of your investigation?

SGT. FERREIRA: Yes, they were.

MR. SCALI: Questions?

MR. HAAS: Any other violations?

MS. LINT: No.

MR. SCALI: I guess there was some information previously received with regard to some other investigations on this but nothing that was documented; is that correct? Do you know of any other incidents of past being open after hours?

SGT. FERREIRA: Not that I'm aware of, no. At one point in time, I did stop by around 1:30 at night and I spoke to Mr. Cabasi on a later date but all the patrons were exiting at 1:30 like they should be.

MR. HAAS: Mr. Chair, I can add that we actually did some follow-up surveillance of the

establishment just to verify the closing hours and each night they closed at the proper closing time.

MR. SCALI: I know that Ms. Boyer did that as well at the direction of Mrs. Lint.

MS. LINT: That's correct.

MR. SCALI: Ms. Boyer, you have no other circumstances where they were open past hours?

MS. BOYER: No, sir, I do not. They closed at the right time.

MR. SCALI: Pleasure of the Commissioners?

MR. HAAS: In keeping with our past practice I recommend we put the matter on file.

MR. SCALI: Does anybody want to be heard on this matter at all? No hands. Motion to place the matter on file.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you very much, Sergeant.

Mr. Markarian, you still have one other request in regards to your extension of hours. I gather from what information has been given to Mrs. Lint that this is a popular spot later in the evening from what Mrs. Lint has been telling us, and that you have customers that have requested to be there later in the evening.

MR. MARKARIAN: Yes. I have a lot of customers that come from far away, from Cape Cod, from New Hampshire, and for them they come in at 1:00, and you know, it's not enough. I think my neighborhood is like so industrial, it's so quiet, and now that the hotel is renewed I'm getting some customers from the hotel. So I am requesting for 2:00 for my customers needs.

MR. SCALI: So you know that closing hour of 1:00 means everyone off the premises by 1:30. Employees can stay after to cleanup for an hour after that. So you know that. So if it's 2:00 that means stop serving, everybody off the

premises by 2:30, and employees allowed to stay and cleanup for an hour afterwards.

Are you serving food up until 1:00 now?

MR. MARKARIAN: Until 1:00, yes.

MR. SCALI: food and alcohol with a full menu up until 1:00?

MR. MARKARIAN: Yes.

MR. SCALI: Is there entertainment there at that time, at 1:00?

MR. MARKARIAN: Yes.

MR. SCALI: You do have music?

MR. MARKARIAN: Yes.

MS. LINT: Mr. Chair, I do have letters of support from Councilor Toomey, Councilor Reeves, and I had a phone call from Councilor Decker in support as well. I have an e-mail in opposition from a Lisa Camacho who lives on Corporal Byrnes Road that she thinks it's a bad idea in that area because there's new development and that it will be more residential than industrial which is what it is now.

MR. SCALI: Does anybody want to be heard on the 2:00 a.m. extension of hours? No hands. Comments?

MR. HAAS: I think the only thing I'd mention is that the prior matter could really jeopardize your ability for this application. I think you realize that, but in light of the fact that the manager was cooperative, and it seems that we haven't had any other complaints in the past. Given the geographic area where your restaurant is located, I would be inclined to support the opening for a review in six months.

MR. SCALI: I guess I genuinely have a concern that between 2:00 and 4:00 in the morning that -- I'm not sure whether you were actually open or whether there was an issue with regard to you just trying to assist the Senator. I think if we were inclined to grant this application that there would have to be very strict adherence to these hours being obeyed. I guess I don't want it to be assumed in any way that there is some special allowances or some special privileges for others

that aren't there for others.

MR. MARKARIAN: If you look at my record, I've never stayed late. I've had people come in and check on me. I will obey the law just like it was 1:00 or 2:00.

MR. SCALI: Any other comments? Discussion? Motion? I think I would prefer to take the matter under advisement.

MR. HAAS: That's what I was thinking too.

MR. SCALI: I'd need some time to think about this a little bit just to make sure we're doing the right thing here. So I'm going to make a motion that we take the matter under advisement. It's moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: We'll take it up again on March 4.

MR. MARKARIAN: Thank you.

MS. LINT: Application: Continued from November 5, 2009, Decision hearing, Idenix Pharmaceuticals, Christopher Gilman, Associate Director of Facilities, has applied for a Special Variance from the requirements of the City of Cambridge's Noise Control Ordinance, Cambridge City Code, Chapter 8.16 pursuant to Cambridge City Code, Section 8.16.090(8).

MR. SCALI: Good evening. It's nice to see you all again.

MR. JOHNSON: Hello.

MR. GILMAN: I'm not sure you they sent that Elizabeth, last week.

MS. LINT: I gave it to them.

MR. SCALI: I do have it, yes. I see some of the residents here. If anybody would like to come closer, they can. If anybody can't see or hear, just step forward. Thank you very much.

Tell us who are for the record, please.

MR. JOHNSON: My name is Richard Johnston, Counsel to Idenix.

MR. GILMAN: Chris Gilman, Facilities Director from Idenix.

MR. SCALI: So this is a matter that we heard originally in the fall. We continued it again. At our request you -- we asked you to take a look at your circumstances on your rooftop again to see what you could do to improve. Your request is actually for a Special Variance to go to 60 decibels in the evening where it normally would be 50 decibels under the special circumstances that you outlined at our last hearings.

So now I guess your job today is to update us on what you've done and what has changed, so why don't you go ahead.

MR. JOHNSTON: Actually I think Mr. Gilman will tell us a couple of things. First, in a letter he submitted last week he indicated that the most recent test results showed readings below 50, which is excellent news. He is going to tell us first how Idenix got to the situation where there are lower readings and what still remains to be done. When he finishes telling you what has

been done and what still remains to be done I'll talk a little bit about what the company would like to see the Commission to by way of a continuance to allow for those things to happen.

MR. SCALI: All right, Mr. Gilman.

MR. GILMAN: When we were here last fall we left that evening with three things that we promised we were going to do. One of them was to continue the project of extending the curtains on a horizontal from the Broadway area toward Hampshire Street, and also continue the curtains down to the deck. We had had quite a long stretch of the curtain that was about three feet above the deck and we had done that for snow load reasons. Ms. Boyer had been out a couple of different times and we could see that it was probably advantageous to have that come completely down to the deck, so we have done that.

We talked about consolidating five exhaust fans into one unit, and we had also talked about ordering a replacement for the rooftop unit that was the noisiest one up there. And I'm happy

to say that we have been able to accomplish all three things.

The first thing we did were the curtains. That was extended down to the deck and as you can see from -- you've got two pictures in front of you right now. The bottom one you've seen before; that's a couple of years old. The top one, we just took this two weeks ago.

If you look up at the upper part of the picture that's the Clark Street side of the building. The top of the picture is Clark Street, to your right is Hampshire Street, to your left is Broadway. If you look, the exhaust fans and the units up at the top where you see 6, 8, and that kind of thing, you can see the wall, the sound curtains running from left to right. When we were here in the fall they ended, as you can see from the previous picture, they ended much further back to your left. So we have extended them to the right and we also had dropped them down to the roof deck.

MR. SCALI: So let me just make sure I

have this right. So the curtain -- oh, I see. So all along here where that open space was before, you've extended them all along the back end of that whole building going down to -- all the way down.

MR. GILMAN: If I may I can probably help you a little bit. When we first started we had curtains here, and then they ended. And when we were here in the fall they had come to this point, and now we've extended them down through here. Also, it only went down to the deck in this area. We've got this whole area here now that goes down to the deck.

MR. SCALI: To the very rooftop.

MR. GILMAN: Yes. And what we've done with that -- we created like a skirt situation so in the winter we can take them back off to prevent snow load.

MR. SCALI: All right.

MR. GILMAN: So that has been done. Secondly, if you look at the older picture right in the very center of the picture there is exhaust fans 2, 3, 4, 5, and 7, right in the very center of

the older picture.

MR. SCALI: Right here, yes.

MR. GILMAN: If you look at the newer picture we've eliminated them and one exhaust fan is taking the place of five.

MR. SCALI: That's good news I hope.

MR. LINDQUIST: Could you explain that again, Chris? I still see 2 and 3.

MS. LINT: This is the old picture, this is the new.

MR. LINDQUIST: Right, and I still see 2 and 3.

MR. GILMAN: No, those are different units, Peter.

MR. LINDQUIST: That's not an exhaust fan.

MR. GILMAN: Right here, 2, 3, 4, 5, and 7. We've eliminated four of those. See the duct there? So four exhaust fans have come off.

MR. GILMAN: Thirdly, RTU8, if you look on your top picture right in the very center of the picture, you see the 8 with a circle on it.

MR. SCALI: Yes.

MR. GILMAN: That is the unit that Cavanaugh-Tocci had determined was creating the greatest sound level on the roof, and we have had engineers determine what we needed to replace that. We have ordered that unit and it's on its way. It will be here in the first part of April.

That unit, we took Commissioner Haas' point from the fall. We've got the latest model you can possibly can get with sound attenuation built into it. That unit also will not be replaced where it is. It will be moved to the east toward the CDM building.

MR. SCALI: On the left side here?

MR. GILMAN: No. Toward the bottom of the picture. The bottom of the picture is where the CDM building would be.

MR. SCALI: So that's closer to No. 10.

MR. GILMAN: Yes.

MR. SCALI: So it will be moved from where it is in No. 8?

MR. GILMAN: Toward No. 10.

Then finally, we've got a couple of variable frequency drives up there that have a frequency pitch that could be heard. We've had some engineers come in and have figured out a way that we can do a couple of different things with some filters on the electrical system and some rewiring to get that pitch out of those.

MR. SCALI: Which ones are those?

MR. GILMAN: There are several of them. One and six, if you look in the center of here, the ones that aren't circled are exhaust fans.

MR. SCALI: Okay.

MR. GILMAN: Then clear over to your right, No. 20. That No. 20 in particular is the one that we are focusing on at the moment. That one has a high-pitch to it and we have found out that it's coming -- variable frequency drives, the way they work is based on the call of the building, they can ramp those fans up to run 100 percent and then all the way down to 30. So it's modulating

all the time.

Unfortunately we found that those variable frequency drives, they also are contributing to the sound. So we figured out a way to rewire those and put some filters. I'm not an electrician but I've been told the filter in the line will take that pitch out of that, and that has also been ordered and is on site.

MR. SCALI: That's 1, 6, and 20?

MR. GILMAN: Number 20 is the one we're working on currently. Number 1 and Number 6 are ones that we have been able to modulate through the variable frequency drive.

MR. SCALI: You've already done that?

MR. GILMAN: Yes.

MR. SCALI: So No. 20 you're working on?

MR. GILMAN: Yes. Number 20 is the one we were working on.

Finally, we had Cavanaugh-Tocci out on the night of January 5, and the morning of January 6 to do readings. I called Ms. Boyer and we were

probably three-and-a-half, four hours from start to finish, and Ms. Boyer stayed with us through the whole thing.

We did three points along Clark Street at two different levels; at ground height and at 16 feet.

MR. SCALI: This is in your report here, the readings?

MR. GILMAN: Yes. We have the Cavanaugh-Tocci report there. All the readings we found that evening were below 50. So after that what we had done --

MR. SCALI: Are these the ones that are 16 feet above the ground and then five feet above the ground; right?

MR. GILMAN: Right.

MR. SCALI: From the street level here?

MR. LINDQUIST: With the equipment off?

MR. GILMAN: I'm going to get to that.

MR. SCALI: Just from where you took

them? I just want to know where you took the readings from.

MR. GILMAN: We took them from five feet, so ground level, and we also have some telescoping poles that we could put the sound meters on and get them up above the roof line.

MR. SCALI: On the opposite side of the street or the same side of the street?

MR. GILMAN: On the opposite side of the street.

MR. SCALI: On the corner?

MR. GILMAN: Yes. And then we decided to try to simulate summertime conditions. I think it was Deputy Chief Turner said, see if you can try to simulate summertime conditions. What we discovered was we couldn't turn everything on at once because the temperature would drop down and there's controls in those units that will tell them it's too cold and to shut down. So all we were able to do with that was to turn them on one at a time. So that's why it took four hours. Ms. Boyer was with us and we did it from all three locations

and we took the eight units that Tocci had decided were probably the biggest contributors to the sound level, and turned them on one at a time. Then he was able to go back and take those numbers and then come back to us with some recommendations.

One of the problems and one of the reasons we don't have the VFEs repaired today, or RTU8 replaced today is that we had to wait for those readings to find out what the next step was. Then beyond that it was time limits on ordering equipment.

MR. SCALI: Okay.

MR. GILMAN: So what we've seen on that particular evening is we were below 50 on all the readings that we had done without summertime conditions. What Tocci has recommended to us was that he is not comfortable giving us that particular evening based on a simulated summertime condition, what would it be. We've done so many changes since last summer through now with the sound curtains, the five into one kind of thing, he said it wouldn't be prudent for him to recommend to

us a number to give to you, 55, 57, 58, that kind of thing.

MR. SCALI: Without taking further readings in the real conditions.

MR. GILMAN: Right. His recommendation is to wait until we can run everything under full summertime condition.

MR. SCALI: What you have left to do is looking at No. 20, trying to fix the frequency issue on that.

MR. GILMAN: Yes, and replacing RTU8.

MR. SCALI: And the RTU8 one will be done at the end of April. That's the big unit that's in the middle there.

MR. GILMAN: Yes.

MR. SCALI: That has the most noise problems that you've discovered.

MR. GILMAN: Right.

MR. LINDQUIST: What is Number 8, Chris? What is that unit?

MR. GILMAN: That's an air handling unit, roof top unit.

MR. LINDQUIST: So that's not operating now?

MR. GILMAN: No.

MR. SCALI: So what you're requesting is that we continue this matter until you can actually come up to full summertime conditions, take some readings, and then see where you are at that point?

MR. GILMAN: Yes.

MR. JOHNSTON: Coupled with the fact that some work still has to be done. So even if you had summer today, it wouldn't be fully correct.

MR. GILMAN: I apologize for the lag in time but one thing is a step by step.

MR. SCALI: I have to say I'm really impressed that you have actually come this far. You're actually changing units which is what we recommended for you to do; to look at your mechanical issues and see what you could do that way, because replacing units and taking them out and consolidating is one of the biggest keys to the issue. So you're absolutely right, I don't think

you're going to show much without the actual full summertime conditions there.

Any questions of Mr. Gilman?

MR. HAAS: No questions.

MR. LINDQUIST: I have one.

MR. SCALI: Tell us your name for the record.

MR. LINDQUIST: Peter Lindquist, 11 Market Street. You mentioned that your readings were below 50. Is that with the equipment on or off?

MR. GILMAN: We were not toggling the summertime situation right then but all our exhaust fans were running. It was the way we walked down the street.

MR. LINDQUIST: Where did you take these?

MR. GILMAN: The corner by your house, the corner of Crossland and --

MR. LINDQUIST: You'd better check that meter.

MR. GILMAN: Well, Ms. Boyer was with

us.

MR. LINDQUIST: But she didn't have her meter with her.

MR. SCALI: That was my question.

MR. LINDQUIST: I mean I hang out my window and I'm getting 57, 58 at 2:00 in the morning.

MR. SCALI: Now?

MR. LINDQUIST: Yeah, now. So I don't know where these readings came from. It actually to me it seems louder now than it was in the fall. I don't know what all this is about and I'm not the only one. I have other neighbors that have said this to me so I don't know what this is all about.

MR. SCALI: I guess what they're trying to explain is that they have taken steps.

MR. LINDQUIST: I understand they've taken steps.

MR. SCALI: Talked about hoping that this was going to reduce but you're saying you think it's louder than what it was.

MR. LINDQUIST: I firmly believe it's

louder. By my readings, by my neighbor's complaints to me, it is louder.

MR. SCALI: But we have no readings that would tell us that at this point yet?

MR. LINDQUIST: I don't believe Ms. Boyer took any readings that evening.

MR. SCALI: Ms. Boyer, did you --

MS. BOYER: I was there to verify that machinery was being turned on and turned off, and I can verify that the microphones were put above, not just at the ground level, but it was actually high in the air so that it could be at roof level to be able to do the readings, and there were many different pieces of machinery that were turned on and off.

MR. SCALI: Are you referring to the readings taken from your third-floor window?

MR. LINDQUIST: I don't know, sir. Every week I do it when it wakes me up at 2:00 in the morning.

MR. SCALI: As I recall, I think Ms. Boyer had hoped that she could get up there to

your window and take the readings.

MR. LINDQUIST: She's welcome to come. Come tonight.

MR. SCALI: I think what they're saying is it's not going to be of any benefit unless we are under the full conditions. That's why we're here.

MR. LINDQUIST: Well, I'm getting readings at 57, 58, at 2:00 in the morning. So one can only suspect when these big AC units come on, it's going to be slightly louder than that.

MR. SCALI: But we don't know, do we?

MR. LINDQUIST: No, but one would suspect that.

MR. JOHNSTON: Logically it should be less noisy now than it was because of the improvements. Logically it should be less loud in neutral conditions when additional work is done. But we've got to check the summer to see what the ambient is. Because obviously the big issue has been historically the ambient. And as Commission Haas said one of the last times is that the company

can't really be responsible for all of the ambient. We don't quite know what the situation will be in the summer, but we'd like to have the opportunity to do the testing when the additional improvements have been made.

MR. SCALI: Right. Well I mean that's the reason for your request for a Special Variance; that you feel you're not going to be able to meet up to the standard that the ordinance sets.

MR. JOHNSTON: That's correct. And as you know, we have requested a variance to 60, and maybe that's the right approach, maybe it isn't. One might say that the better approach would be to take ambient plus, as opposed to a fixed amount. We haven't asked for that yet and I don't know that we would, but it's something that has been done in other communities in the Commonwealth, in other states, and it's certainly something that the Commission could consider.

But I think before we get into that we ought to see what the results are under summer conditions.

MR. SCALI: I guess what I would hope is that once we get to the summertime conditions that you've changed No. 8, you've finished working with No. 20, and that you've finally got all your curtains in place for the summer and all that, that we would be able to take the readings from where Ms. Boyer originally took the readings, which was from the window. I know that Cavanaugh-Tocci took them on the street at five feet and at sixteen feet above, but it would be good to compare what that is at full level once the summertime conditions, along. So that would be my hope for you all to be able to do that.

Questions, Commissioners?

MR. TURNER: No questions.

MR. HAAS: No questions.

MR. SCALI: So they're asking for a continuance anyway, so we're not voting on anything this evening. Why don't you tell us what your name is?

MS. ERICSSON: My name is Bethany Ericsson. I live at One Lilac Court.

MR. SCALI: Is that in that neighborhood?

MS. ERICSSON: It's diagonally across. It sort of cuts the corner of the building on Hampshire and Webster. Lilac Court comes out right here. It runs behind the Italian Cultural Center there. I'm representing five families on Lilac Court here tonight. We have a lot of kids there. I'm surprised. It sounds nice, everything you're saying and I want to feel good about it, but frankly, I'm here tonight missing my kids' bed time because it's been louder.

MR. SCALI: I don't think you've testified before, have you?

MS. ERICSSON: I was here in the fall. It's been louder. And that high-pitched noise, I'm glad to hear you mention it because it makes me go insane. I hear it. My husband doesn't hear it. It's just like a dog whistle I guess.

MR. SCALI: What is your last name, again?

MS. ERICSSON: Ericsson. But I

wouldn't mind having a verification of the readings if we're going by the company's own readings. I'm not really pleased with the idea of waiting around until summer to do anything about it because then it will be even louder. It's loud now. It's too loud now.

MR. SCALI: We've been waiting three years. This is not exactly a new thing.

MS. ERICSSON: I know it. This came in while I've lived here and it's gotten louder and louder while I've lived there and now I'm raising a kid there. I feel angry now.

MR. LINDQUIST: Perhaps Ms. Boyer could come to Lilac Court and check the readings.

MR. SCALI: I think we have to look at where the appropriate readings should be taken. I don't believe Lilac Court is really a direct abutter as I recall.

MS. ERICSSON: You can call us not a direct abutter but the noise is coming from there. You can hear the change. Walk half-way down Lilac Court and you get the biotech on the other end.

It's sandwiched.

MS. BOYER: For the record, No. 20 is one of the main causes of the noise to Lilac Court and Hampshire Street.

MR. SCALI: It is a direct cause?

MS. BOYER: Hampshire Street, when you're standing on the corner across the street which is Lilac Court where it comes to the end there. So I've stood across the street and we have -- I've spoken to Chris about that one specific unit. He's well aware of it and that is one of the ones, No. 20 on the map, that is definitely affecting Hampshire Street and Lilac Court. That is hopefully going to be fixed as he stated.

MR. SCALI: I think our main objective is for them to do something. If we do nothing and they do nothing, then your problem isn't resolved. So our hope as it was in November is that they are changing things, fixing things, making things newer, making the units better in some way so that at least there is some relief in some way. What that relief is of course is yet to be determined.

MS. ERICSSON: Again, I would just like to say that I'm interested to hear what you said about your results and I'm interested to hear what you said about your results, because they are louder at my house and that's just my ears. I don't have any measuring things.

MR. TURNER: Mr. Chair?

MR. SCALI: Yes.

MR. TURNER: Just one question to Mr. Lindquist: What would you estimate your window height, the height of your window where you take the reading?

MR. LINDQUIST: It's about 20 feet, approximately. Maybe 22 feet depending on where you hang out the window.

MR. SCALI: Any other questions?

MR. TURNER: No more questions.

MR. HAAS: No questions.

MR. SCALI: Does anybody else want to be heard on this matter?

MR. PRUSSIA: Commissioner, I just want to put on the record --

MR. SCALI: Hold on one second. This lady is first.

MS. BROOK: My name is Nellie Brook. I'm just here in -- having gone through a long noise case myself, I'm here in sympathy with Mr. Lindquist and his neighbors. I'd just like to say a couple of things. One is that at 58 decibels, if his measurements are correct, is already considerably above the nighttime allowable level in the wintertime. Why we have to wait, why anyone has to wait for the summer when it will be maybe even louder or even quieter, I'm not really sure I understand that.

However, I would like also to say that the general tenor of this discussion makes me more hopeful than the idea that Idenix was going to ask for formal permission to ignore the noise ordinance. The noise ordinance, ladies and gentlemen, is all we have. If we don't have that we have nothing. And you know, ambient noise plus a new noise is a new ambient, plus a new noise is a new ambient, and pretty soon it's pandemonium. So

I entreat everybody involved to respect the noise ordinance, and that's what I have to say. Thank you.

MR. SCALI: Thank you.

Sir, you've got to come forward. Just tell us your name, please.

MR. PRUSSIA: Kevin Prussia for Idenix. I'm sure Ms. Boyer will be able to confirm it's the same measuring points in all of the reports that we submitted to the Commission over the course of the past few years. The 16-foot level has been the same measuring point at the three points along Clark Street in the several reports that Cavanaugh-Tocci has submitted.

MR. SCALI: Thank you.

Anybody else? Comments?

MR. LINDQUIST: Just a couple of things. One, the counsel for Idenix mentioned certain more lenient aspects of State regulations but we happen to live in Cambridge and we have a Cambridge regulation. You buy into Cambridge, you buy into the regulations, and we hope that the

regulations stand.

Secondly, this issue of ambient noise, as I understood the regulation you move into a neighborhood and there's ambient noise there. You add to that ambient noise and it brings it over the noise limit, you're in violation. Am I correct or incorrect?

MR. SCALI: I think maybe you're all forgetting a lot of the history already. This is a hearing on their Special Variance. Separate and apart from all of this we've already found them in violation and that's in court. So if for some reason they are not able to come under 60, or we don't give them the Special Variance, we're back to court.

MR. LINDQUIST: But if they're in violation, why should be granted a variance? They created this issue.

MR. SCALI: That's a very good question.

MR. LINDQUIST: Since November of 2005, they have been aware that this is a problem.

November 2005, Chris Gilman and I discussed the noise issue and the noise increased and increased. Since 2007, we've been discussing it here and it hasn't gotten considerably better. The patience of this neighborhood is wearing very thin. This is a problem and this Board doesn't seem to recognize that.

MR. SCALI: Mr. Lindquist, I really have to take exception. We have already found them in violation; they are already in court. If we choose not to grant them a Special Variance, they'll just go right back to court. So it's not -- it's very serious to us. We found them in violation. They have their lawyers.

MR. LINDQUIST: So the solution then is to grant them a variance?

MR. SCALI: I'm not saying that. I'm saying that we're hoping that they fix it in some way. That's what we're hoping.

MR. LINDQUIST: The way they're approaching it I guarantee is not going to fix it. I guarantee you that.

MR. SCALI: I don't know how you can do that.

MR. LINDQUIST: I have some special experience in this and I guarantee you that these Band-Aids will not fix the problem. It was poorly designed from the start and it was put in the wrong place.

MR. SCALI: We have already heard all this and we agree with all of things you've said before because we found them in violation.

MR. LINDQUIST: But have they even considered -- then deny the variance then.

MR. SCALI: We haven't voted yet.

MR. LINDQUIST: It's wearing us down. We cannot stand this noise anymore, and it's not just me.

One last thing: Two years ago the Board requested, and Idenix guaranteed that prior to any of these hearings any information that they were going to present was going to be given to the neighbors prior to the hearing. This is now the third hearing in a row which that has not happened.

This company presents a great image to this Commission and presents a little different image to our neighborhood. Thank you.

MR. SCALI: Pleasure of the Commissioners?

MR. HAAS: Make a motion to continue the matter until April.

MR. SCALI: They're looking for a continuance until June.

MR. HAAS: June?

MR. SCALI: Yes. They're going to be changing out a unit by the end of April, and then they are waiting for summertime conditions to kick in which would be I assume as soon as June.

MR. TURNER: Mr. Chair?

MR. SCALI: Yes.

MR. TURNER: Any reason to involve legal counsel in where we stand on this decision?

MS. LINT: One has nothing to do with the other.

MR. SCALI: It is a separate matter. This is separate from the legal lawsuit.

From my point of view, I see no reason why we shouldn't grant them a continuance until June because I think what we want is for them to actually do the work to change the units, no matter what. So I would hope that it's going to bring some relief. Whether it comes under the legal limits, I don't know, but there isn't anything -- I guess I want the neighbors to understand that if we do nothing and not grant the Special Variance, nothing changes. It goes back to court and is in court for how many years we don't know. I guess the issue for me and I hope the other Commissioners is to find a solution to changing the problem and reducing the noise.

MR. LINDQUIST: Fine. Put them in court and bankrupt the company.

MR. SCALI: That's certainly --

MR. LINDQUIST: They seem to have endless amounts of money to bring all these experts in here every time, and high-priced legal firms. They don't want to make the commitment to fix it the way it should have been done in the first

place. And it would be very expensive to do that, but they made a mistake, and they should fix it and not put Band-Aids on it, because the Band-Aids are not going to fix it.

MR. SCALI: Motion by any of the Commissioners?

MR. HAAS: I have to think about the changes.

MR. SCALI: Motion to take the matter under advisement.

MR. HAAS: Motion to take the matter under advisement.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. JOHNSTON: Can I just say one more thing about the timing of it. We thought a bit about how long we would want to ask for the continuance, and we understood that there might be concern about doing it through June, but our

problem was that if we came in, in April and said here are the test results, people would say, but that's not the worst part of the year. We need to know what it's like in the summertime. And then we'd say, well, we were told to do it quicker so we did it quicker, but June is probably a more appropriate time.

MR. SCALI: No matter what time of year you take the readings, they may not be the ultimate conditions. It could be hotter in April, it could be hotter in July. We don't know.

MR. JOHNSTON: As a matter of probabilities, June is probably more appropriate.

MR. SCALI: Thank you very much.

MS. LINT: Application: Maria Laranjeira d/b/a Ten-75 Coffee House, has applied for a Common Victualer license to be exercised at 1075 Cambridge Street. Said license, if granted, would allow food and non-alcoholic beverages to be sold, served, and consumed on said premises and to have a seating capacity of 16. The hours of operation will be from 6:00 a.m. to 6:00 p.m. seven days per week.

MR. SCALI: Good evening. How are you?

MS. LARANJEIRA: Good, and you?

MR. SCALI: Good. So you're the landlord; right?

MS. LARANJEIRA: Yes.

MR. SCALI: And you previously operated this location.

MS. LARANJEIRA: Yes.

MR. SCALI: And your tenant is gone; right?

MS. LARANJEIRA: He's leaving at the end of this month.

MR. SCALI: So you want to go back in.

MS. LARANJEIRA: Right.

MR. SCALI: Same hours?

MS. LARANJEIRA: Less hours. His hours were longer.

MR. SCALI: So 6:00 a.m. to 6:00 p.m.

MS. LARANJEIRA: Right.

MR. SCALI: Sixteen seats.

MS. LARANJEIRA: Right.

MR. SCALI: Selling?

MS. LARANJEIRA: Coffee, muffins, bagels, and sandwiches.

MR. SCALI: So that's what you were selling before; right?

MS. LINT: Right.

MR. SCALI: Is it just you that's going to be there?

MS. LARANJEIRA: My husband, my daughter, and my son.

MR. SCALI: Questions?

MR. TURNER: Mr. Chair? Are you using the whole bakery?

MS. LARANJEIRA: No, just the front.

MR. TURNER: You're not baking the products?

MS. LARAJEIRA: We will be baking some of the products in the back, which is a bakery.

MR. SCALI: Do you have a problem? Has that always been a part of it, the back?

MS. LARANJEIRA: Yes. That's always been part of it.

MR. TURNER: It's a huge building, if you will. It goes back quite a bit. I'm just curious and then when I saw seating for 16 I was trying to figure out --

MS. LARANJEIRA: It's divided. There's a wall between the coffee shop and the bakery.

MR. SCALI: So you will be using the coffee shop for the seating but you'll be actually baking in the back part?

MS. LARAJEIRA: Just a small oven there in front.

MR. SCALI: In the description you put

-- you put that in your description; right, the kitchen area?

MS. LARANJEIRA: There's no kitchen area, really.

MR. SCALI: Where will you be doing the baking?

MS. LARANJEIRA: It's just a small little oven; that's all I need.

MS. LINT: It's sounds like downstairs at Burdick's.

MR. SCALI:

MS. LARANJEIRA: No, no, no.

MR. TURNER: Future plans for back there, hopefully?

MS. LARANJEIRA: I'm trying to get somebody to lease the back.

MR. TURNER: Another bread maker. I'm comfortable Mr. Chair. There's so many closed up businesses on Cambridge Street it will be nice to see something opening.

MR. SCALI: Does anybody from the public want to be heard on this matter? Pleasure

of the Commissioners?

MR. HAAS: Make a motion to approve.

MR. SCALI: Motion to approve, moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Make sure you come down,
do your inspections, and pay your fee, and get your
license.

MS. LARANJEIRA: Yes. Thank you very
much.

MS. LINT: Application: Coleman Murray, Inc. d/b/a The Field, Jerry Coleman, Manager, holder of an All Alcoholic Beverages as a Restaurant license, 2:00 a.m. closing, at 20-24 Prospect Street has applied for a change of premises description to include seasonal outdoor seating for 16 on a public patio with service of food and alcohol.

MR. SCALI: Good evening, Mr. Rafferty. How are you?

MR. RAFFERTY: Good evening, Mr. Chairman, members of the Commission. For the record, James Rafferty on behalf of the applicant. Seated to my right is the president of the corporation, manager of the license, Jerry Coleman. And to Mr. Coleman's right is the project architect whose name has escaped me.

MR. SCHAEFER: It's William Schaefer.

MR. RAFFERTY: Sorry, Mr. Schaefer.

MR. SCALI: So this is for your patio on the public sidewalk.

MR. RAFFERTY: That's correct. The

last time the application was here there was an issue about notice, which we cured. There was also concern -- we had the opportunity to get some initial feedback -- about the proximity of the space to the travel lanes and the newly expanded sidewalk on Prospect Street. Mr. Schaefer has made some significant modifications, improvements to the design that are intended to address those. I think he'd like to walk you through them.

MR. SCALI: Okay. Do you have some photos?

MR. SCHAEFER: There's three sets here and then there's also the original.

This is the amended version.

Essentially what we did is -- one of the comments was would somebody be able to put their arm over the side and possibly create danger? So what we did, on the second page you'll see a larger scale detail. We raised the barrier there to a three-foot-six, which is essentially the height of a bar, like this. So that is significantly higher. What we also did was we put a piece of plexiglass as a

barrier there. And then underneath that which is on the first page, in the rendering there's a perforated metal mesh that shows down here in this elevation. So it's part psychological and it's also a real barrier, so it prevents the arm and it also prevents on the lower level. So that's the modification that we made. I believe that it's a good practical and psychological barrier.

MR. RAFFERTY: Mr. Schaefer has reviewed this -- watch yourself there.

MR. SCALI: Are you okay?

MR. SCHAEFER: Yes, I'm fine.

MR. RAFFERTY: As I said, Mr. Schaefer has met with DPW over this design and they approved it. We wanted to draw your attention that there's an added buffer that doesn't appear on the plan, which there is a five-foot bicycle lane between the sidewalk and the vehicle travel lane on Prospect Street.

I think given the limitations of the space Mr. Schaefer has done a very commendable job in trying to incorporate this. It's the thinking

as you know of the City that in locations particularly in Central Square, the use of sidewalk patios can really enliven the entire pedestrian experience. This is a sidewalk on a street, Prospect Street, that is trying to be slightly transformed to be more pedestrian oriented and perhaps less so for traffic. So a travel lane has been taken out of this length of Prospect Street, the sidewalk has been widened.

The Field has contributed greatly to the quality of the life in the neighborhood. They took over you'll recall a prior establishment that didn't enjoy the same reputation and cultivate the same clientele that they have under their stewardship. It will provide an opportunity for them to remain a vibrant factor in the Central Square community.

MR. SCALI: Refresh my memory; what are the hours on the patio?

MR. RAFFERTY: We will be consistent with the existing hours.

MR. SCALI: Until 1:00 a.m.?

MS. LINT: This is 2:00.

MR. SCALI: Are you open until 2:00
a.m.?

MR. MURRAY: Until 2:00 a.m., yeah.

MR. SCALI: I think our policy is
until 1:00 a.m.; right? The latest 1:00 a.m., if
at all.

MR. RAFFERTY: Far be it for us to ask
for more than what you're giving.

MS. LINT: You would never do that,
Mr. Rafferty.

MR. RAFFERTY: I've tried repeatedly
over the years and it's gotten me nowhere so I've
just stopped doing it.

MR. SCALI: Food at all times out
there; right?

MR. MURRAY: Yes.

MR. SCALI: No alcohol alone?

MR. MURRAY: No.

MR. SCALI: So if someone is sitting
out there and they want to have a beer, what
happens?

MR. MURRAY: They have to have food. They have to be eating.

MR. RAFFERTY: I imagine it would be the same as for any other establishment that has a sidewalk patio in Central Square. I believe it's a policy that is intended to serve as primarily dining.

MR. SCALI: So a customer would be required to order some food with the beer?

MR. RAFFERTY: Is that a policy on the sidewalk?

MR. SCALI: Yes. Questions?

MR. TURNER: Is this a proposed new sidewalk?

MR. RAFFERTY: Oh no, the sidewalk is there.

MR. TURNER: Because I was down there last week and I don't recall one lane of traffic and bike lanes and a new sidewalk. I'll have to go back and look at it again. I was down the next block.

MR. RAFFERTY: My office looks over

it. It's there. It's an expanded sidewalk. The travel lane heading towards Broadway is gone. It's been reduced. It's two lanes coming up.

MR. TURNER: Coming Broadway to Mass. Ave. it's one lane?

MR. HAAS: It's a travel lane.

MR. RAFFERTY: It's almost Parisian in its appeal now.

MS. LINT: I do have an e-mail in opposition from Denise Heinz that she thinks --

MR. SCALI: She lives where? You don't know?

MS. LINT: No. Just in general that using public sidewalks may be ill advised public policy and that that area is not amenable to it; that even though the sidewalk is widened there's not enough space.

MR. SCALI: Does anybody else want to be heard? The gentleman right here.

MR. MAGINI: Could I just see the plan please?

MR. SCALI: Just tell us your name for

the record.

MR. MAGINI: My name is Elio Magini and I live at 15 Douglas Street.

MR. SCALI: 15 Douglas?

MR. MAGINI: That's correct. The only reason I really have a concern about this proposal is that I've seen these go in like at the -- where is it -- the Asgard, and in front of the Middle East Cafe, and frequently what you have happening is because of the traffic that you have and the business going back and forth, the pedestrians themselves frequently end up just walking in the street and around the side because of the kind of constricted traffic that there is in the middle there. And especially there, I mean I kind of agree, I don't recall this being widened as much as this proposal here really shows, but that's really the only concern that I would like to voice on that at this time. It's not even really what I'm here for. I'm here for a different matter but it caught my eye. Thank you.

MR. TURNER: Mr. Chair, one other

question?

MR. SCALI: Deputy Chief.

MR. TURNER: Is this is a light?

MR. RAFFERTY: Yes. That's the existing street light.

MR. TURNER: I pay attention when I drive so I focus my eyes forward. I'll have to park and go for a walk.

MR. RAFFERTY: I'm sure the Pole and Conduit Commission approved the relocation of those street lights.

MS. LINT: In fact they did.

MR. RAFFERTY: That's what I meant, I'm sure they did.

MR. SCALI: Does anybody else want to comment at all? No hands. Comments?

MR. HAAS: No Comments.

MR. SCALI: You've allayed my concerns in terms of people's elbows being out. It's a heavily trafficked street, I mean it's Prospect Street, so I was just concerned that people would have their elbows and hands cut off if they go over

the side. But you put up a plexiglass and it's a little higher so no one can get hurt. That's the main concern.

Public Works has actually looked at these, every patio lately, and their original ruling was four feet for access. Now they've changed it to five feet, and so this is five-foot-three-inches, so I think that's expanded a bit for wheelchair accessibility and all that.

I guess I would be willing to give it a try for the summer months and see how it goes and then we can review it. I don't know if there's any opposition or comments.

MR. HAAS: So this structure, is it a permanent structure or can it be taken down?

MR. SCHAEFER: It will be taken down at the appropriate time. It's just for the summer. November I think is the date it comes down.

MR. RAFFERTY: And the structure gets approved by DPW, its installation is permitted by them.

MR. HAAS: So they're already looked

at this design?

MR. RAFFERTY: Yes, they did.

MR. SCHAEFER: Usually when we do them we meet with Public Works before the installation and just review it one final time.

MR. HAAS: And they're satisfied with the width of the sidewalk?

MR. SCHAEFER: Yes. They've approved the drawings.

MR. RAFFERTY: What's the gentleman's name?

MR. SCHAEFER: Vinny Best is the person that we've worked with.

MR. RAFFERTY: He's been closely involved.

MR. SCALI: Motion.

MR. HAAS: Make a motion to approve.

MR. TURNER: Seconded.

MR. HAAS: Six month review.

MR. SCALI: Motion to approve with a six month review.

MR. TURNER: Seconded.

MR. SCALI: Moved, seconded. All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: This still has to go to the ABCC. Our season starts March 1 to November 30, depending upon how that works but when we get it back, you'll know.

MR. RAFFERTY: Thank you very much.

MS. LINT: Application: Floating Rock Restaurant, Inc. Jenny Chan Sok, Manager, has applied for a new All Alcoholic Beverages as a Restaurant license and Entertainment licenses at 485 Massachusetts Avenue. Proposed hours of operation are 11:00 a.m. to 1:00 a.m. seven days per week with a total occupancy of 116 (106 seats and 10 standing). Located in Cap #3.

MR. SCALI: Good evening.

MS. SOK: Good evening.

MR. HANLEY: Good evening, Mr. Chairman. Attorney Joe Hanley with Dermott, Quilty, and Miller. With me is Jenny Sok who is the proposed manager of record and the sole proprietor of the corporation seeking a license. Natasha Stickney will be her general manager in the operations.

I have some materials to pass out for the Board.

MR. SCALI: Thank you very much.

MR. HANLEY: If I may, Mr. Chairman, you have in front of you presentation materials, a

description of the Floating Rock Restaurant, which by way of background is an existing well-regarded, well run Thai/Cambodian restaurant in Revere. We are very pleased to be here with Ms. Sok's proposal to essentially relocate and expand to Cambridge.

The bulk of her clientele and customers at the existing restaurant, many are Cambridge residents who have been expressing an interest for her to look at the City of Cambridge. She spent the last year-and-a-half, two years looking at locations. This is 485 Massachusetts Avenue at the corner of Douglas and Mass. Ave. that we're looking at proposing to go into. It was the Venus Wig business for many years. It was at one point a restaurant operation as well.

MR. SCALI: What was it before? I can't remember the restaurant that was there.

MS. SOK: I think it was Peking Duck. We went downstairs and one of the signs said Peking Duck down there.

MR. SCALI: That's many many many years ago. And you're closing your facility in

Revere?

MS. SOK: Yes.

MR. HANLEY: It's a fairly straightforward application. Again, looking to invest in the site, Ms. Sok will be putting resources into the build-out. We have a ten year lease with the landlord. This would be a full-service restaurant. We think there is a need for this in Central Square for a full-service, fairly good-sized sit down Thai/Cambodian restaurant.

You have in front of you a description of the existing business with several reviews and accolades just to give you a flavor as to what they would bring. You also have a proposed floor plan and a proposed menu.

With regard to the Commission's standard for overwhelming community support, we have a vast amount of letters in support from area Cambridge organizations, residents, and business owners. You'll see the Area 4 Neighborhood Group, which is our most immediate residents group is very enthusiastic in support of this application.

We have also adopted a local Cambridge-based nonprofit called Heading Home, which is located just around the corner as our local charity. Ms. Sok is very committed to being a part of the community where she operates. You'll see letters from numerous area Central Square businesses and Cambridge residents in support as well as a letter from the Cambridge Chamber of Commerce.

The final leaflet that you have are letters of recommendation attesting to the character and fitness of the applicant, specifically Ms. Sok, with regard to her good character and experience; two from her former professors and one from a City Councilor in Revere, the city in which they operate, again, attesting to her experience and good character.

I'd also say that Ms. Sok is also TIP certified. She is very aware of the rules with regard to liquor service for the ABCC and for the City of Cambridge. She takes this very seriously and looks forward to being part of the community.

I'll just give you a quick synopsis of what is proposed with respect to the facility. The initial floor plan was for 116 seats. That's what we applied for. They've taken another look at that and there's some ability to do some private dining for additional seating. I don't know if the Board has the ability to hear that tonight.

MR. SCALI: Say that again.

MR. HANLEY: The initial floor plan that was filed with the application was for 116 seats. You'll see the one that was submitted in the packet has 116, plus the ability to do I believe 29 for private dining.

MR. SCALI: If that wasn't included in the description then you will have to re-apply because of the alcohol issue.

MR. HANLEY: Okay. This is a 1:00 a.m. closing hour. We're familiar with the Board's full-service alcohol policy. This is alcohol served with food at all times. It's not a bar operation. It's a full-service restaurant.

MR. SCALI: Did you have a full

license in Revere?

MS. SOK: No.

MR. SCALI: No license.

MS. SOK: No.

MR. SCALI: So this is your first time with a liquor license?

MS. SOK: Yes.

MR. HANLEY: And that's really a driving force here. To put the amount of money into this premise, and you know, 3,300 square feet approximately is the size of the restaurant. It's not huge but certainly not small-scale. I would suggest to open that type of an operation without the amenity, a complementary kind of fashion of full alcohol would not necessarily be a very good business move, at least that's how my client feels. I think the market supports that.

MR. SCALI: You've given us her experience, you've given us the overwhelming support through letters. Did you try to buy a license in the City already, or did you not attempt that at all?

MR. HANLEY: We looked at it. Again, this is a small business expanding and it was just cost prohibitive. This is really about I think economic development on the community level for a great restaurant to come here. The budget didn't work. For the amount of money that is being put in here, and this isn't a small landlord either.

MR. SCALI: Who's the landlord?

MR. HANLEY: It's through Lincoln Properties. The landlord is Reed out of New York, which is in the application materials. So the lease is --

MR. SCALI: Is the lease in here?

MR. HANLEY: Yes.

MR. SCALI: Is the lease linked to the license at all? There's no stipulations in the lease that require the landlord to have some control over the license?

MR. HANLEY: No. There's no pledge. We're not seeking a pledge. Certainly with the use aspect of the lease we have the right to have the license in there.

MR. SCALI: The reason why I say that is there are a few landlords in the City who have very easily slipped in conditions saying they have control over the licenses, which they don't.

MR. HANLEY: Which is blatantly illegal is my understanding.

MR. SCALI: So you realize this would be no-value, non-transferable license. You cannot use it for equity or any kind of capital for any kind of loans. Once you leave or should you close, you turn the license back into us. We do require that all new owners, managers, servers go through our 21-Proof training program through Frank Connolly at the Prevention Coalition.

MR. HANLEY: I also have just for the record too, which I'll provide, the TIP certification for Ms. Sok, but obviously we'll go through the City's process as well. It's just further evidence of --

MS. LINT: Do you have the abutter notifications?

MR. HANLEY: Yes.

MR. SCALI: Any new licenses that we grant have higher fees than our normal fees because they are given free to you. So we want to make sure you're able to afford that fee per year. Many smaller businesses have not been unable to do that and thus, turned the licenses in, so I want to make sure that that is clear before we consider this; that you're able to afford the license fee. Have you talked about that with your client?

MR. HANLEY: We have reviewed that.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. SCALI: Anybody from the public want to be heard? This gentleman first.

MR. BASSANTI: My name is Michael Bassanti. I am here as a resident and a business owner in Central Square. I just wanted to stand up for Jenny in support of her idea.

One thing I've noticed in Central Square in the past couple of years since I've been here is the alarming amount of vacancies that have been up and down the street. So I look at her

idea, her concept for a restaurant, and I see that it can bring another great thriving business to the area.

I think there is definitely a need for a nice Cambodian restaurant. I know there are a lot of other ethnic places here but I don't see really anything to fill that niche. I think it would complement a lot of the other great restaurants that have been opening up in Central Square in the past four to five years. So I just wanted to voice my support.

MR. SCALI: Thank you very much, Mr. Bassanti. Sir?

MR. MAGINI: Again, I'm Elio Magini from 15 Douglas. Hi, Jenny. Good to meet you finally. I've actually spoken with Jenny via e-mail and such.

When I'd originally gotten the registered letter I was actually a little concerned, mostly because of the entertainment portion of the license. Actually I've lived in Central Square for 21 years and owned property here

for 16. I've noticed a large change in that time from proper nightclubs like Nightstage, Manray, the Middle East, which were properly sound reinforced, and now things like Zuzu and the corner at the Middle East, which has no soundproofing.

So at my place at 15, frequently I'm trying to get to bed at 1:00 at night and you can here the pumping of that bass drum going on. But I'd spoken to Jenny and she assuaged my concerns that it was not going to be used in kind of a more nightclub kind of capacity, and that the entertainment portion of the license would be used more for kind of low-key entertainment. So especially since the proximity would be closer, my concern would be that you would now have dueling nightclubs across the street turning up their sound.

So as long as that's not going to occur, I think it's great to have another tasty restaurant in the area. I love Craigie, love Rendezvous, I like the tasty drinks.

I question whether or not the full

liquor license is mandated because Mary Chun's has operated very nicely in the area with just beer and wine, but you know, again, I like the tasty drinks. So I'm in favor of that.

My question then would be how long are these licenses for and how does a person like me find out when they're up for renewal so in case things to go awry, we can come back and voice our concerns?

MR. SCALI: It makes no difference when the renewal period is. If you're having a problem you just call immediately to the office or to Ms. Boyer and we'll handle it immediately if there's an issue. So you do not have to wait until the renewal period.

MR. MAGINI: Good to know. So I guess that's all I have to say and other than that I wish you good luck.

MR. HANLEY: Mr. Chairman, I should have noted as well that this is background entertainment only.

MR. SCALI: Background music?

MR. HANLEY: Yes. It would be an audio amenity to the dining similar to most full-service restaurants, and there are two TVs.

MR. SCALI: So there's no live music, there's no dance floor?

MR. HANLEY: No. In the application you can see that we only applied for the background music and the two TVs.

MR. SCALI: Great. Yes, sir.

MR. LIU: My name is Liu. I'm the owner of 9 Douglas Street just behind the proposed restaurant. I was not aware of this. I hear of this a few days ago. One concern I have is how do we handle the exhaust fume and air-condition. Right now there's two air-conditioners in the rear and they are very noisy. We are going to file a complaint. How do you handle the exhaust fume and the air-conditioner? If you are adding more --

MR. SCALI: That is a big concern. That's something I forgot to ask you. I'm glad you brought that up.

MR. HANLEY: It's an existing system

that was put in place as part of the restaurant that was there before.

MR. SCALI: Is it a power vent; is it on the roof?

MS. SOK: It's right in the back of the building. Our contractor is actually working on trying to get it up to date so that it won't make as much noise.

MR. SCALI: That's a big concern. We want to make sure that the HVAC system is up to date and not noisy. You are responsible for that. Ms. Boyer will tell you all the problems she's had with all these units, power vents, and everything else that may not be up to what it should be after all those years that a restaurant hasn't been in there.

MR. HANLEY: It was mandated in our lease. I actually negotiated the lease with the landlord so part of the TI was to make sure it was upgraded. It's an existing system, it was already there, but to make sure that it's upgraded. We'd be happy to work with the gentleman from 9 Douglas

to assure that that happens.

MR. LIU: I just bought the house and I have not had time to complain yet, but I'm going to. Mostly the stuff in the top, I see a lot of air-conditioning stuff on the top of the building or you make a new system that will be a quieter system. That would be good.

MR. SCALI: That's going to be required because we want to make sure that you're not causing more noise. As you've already heard all the other cases we had with noise in the City, so you don't want to add to that.

MR. HANLEY: Right.

MR. SCALI: As far as deliveries and trash, when do those take place?

MR. HANLEY: Off peak traffic, after 9:30 and before 4:00.

MR. SCALI: In the back of the building?

MR. HANLEY: Through the existing receiving that's in the back of the building.

MR. SCALI: Are you going to have your

own dumpster?

MS. SOK: We're going to have our own dumpster.

MR. SCALI: Do you have a contract with a company?

MS. SOK: We're working on a contractor that's taking care of all that.

MR. SCALI: How often will the pick up be?

MS. SOK: Once a week.

MR. SCALI: And that's after 9:30 a.m. and before 4:00 p.m.?

MR. HANLEY: For receiving, for deliveries. So after typical peak traffic.

MR. SCALI: And trash pickup has to be -- Ms. Boyer, refresh my memory. Is that a 7:00 a.m.?

MS. BOYER: After 7:00 a.m., before 6:00 p.m., but if this is on Mass. Avenue and it's a front delivery, then they can pick up at another time.

MR. MAGINI: Actually it would be on

Douglas Street on the side.

MR. SCALI: So if it's going to be in the back of the building it has to be after 7:00 a.m.

MS. BOYER: I'm just clarifying, sir, that if it's on Mass. Ave., it can be any time.

MR. SCALI: Anybody else want to be heard? Comments? Abutter notifications you have, Mrs. Lint?

MS. LINT: Yes.

MR. SCALI: Background checks?

MS. LINT: Yes.

MR. SCALI: Pleasure of the Commissioners?

MR. HAAS: Motion to approve with a six-month review.

MR. SCALI: Motion to approve new All Alcoholic Restaurant license, no value, non-transferable, 21-Proof training.

MS. BOYER: HVAC in compliance.

MR. SCALI: HVAC and other systems compliant.

MR. TURNER: Subject to a Certificate of Occupancy approval from Inspectional Services.

MR. SCALI: A six-month review from Opening and Certificate of Occupancy. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Good luck.

MS. LINT: Application: T.W. Food, LLC, Tim Wiechmann, Manager, holder of a Wine and Malt Beverages as a Restaurant license at 377 Walden Street has applied for an Entertainment license to include background jazz with three instruments and no vocals. Applicant is also applying to extend the current Saturday and Sunday hours, which are 5:00 p.m. until 12:00 a.m., to 9:00 a.m. to 2 p.m., and then re-opening at 5:00 p.m. Alcohol service will start after 12:00 noon on Sundays.

MS. LINT: Good evening.

MS. DREYER: Good evening. I'm Nancy Dreyer, D-R-E-Y-E-R, attorney for the business owners.

MS. WIECHMANN: Bronwyn Wiechmann, owner of T. W. Food Restaurant.

MR. SCALI: So this is for essentially background jazz with three instruments, no vocals, no amplification.

MS. WIECHMANN: Right. It's this right here. I brought what would be an example of

it. It's to stretch the length of the restaurant.

MR. SCALI: That's the amplifier?

MS. WIECHMANN: That's the amplifier.

It's really to truly just --

MR. SCALI: This is for the microphone or for the instruments?

MS. WIECHMANN: For the instruments. Just because it's in the very front of the restaurant so to have the instruments, the sound of it to reach the back of the restaurant.

MR. SCALI: Where are you putting this; in the front of the restaurant?

MS. WIECHMANN: The very front entryway, which is before any of the dining area starts. It really just stems out of really nice events that want to have --

MR. TURNER:

MR. SCALI: A floor plan?

MS. WIECHMANN: I submitted it along with the application but I don't have a copy of it here.

MR. SCALI: Are you taking out any

tables and chairs?

MS. WIECHMANN: Taking up any room?

MR. SCALI: Are you taking out any tables and chairs?

MS. WIECHMANN: No.

MR. SCALI: So you have space there.

MS. WIECHMANN: There's a seating area in front and the trio would be essentially in that. that.

MR. HAAS: .

MR. SCALI: So you taking a tables and chairs speed and there aren't any there aren't any tables and chairs their.

MR. SCALI: And it's only on Saturdays and Sundays from 9:00 a.m. until 12:00 noon?

MS. WIECHMANN: That's regarding the brunch application.

MR. SCALI: So when is the entertainment?

MS. WIECHMANN: This would be during dinner service as background entertainment but it would be during dinner hours.

MR. SCALI: So between 5:00 and 12:00.

MS. WIECHMANN: Uh-huh.

MR. SCALI: Seven days a week?

MS. WIECHMANN: No. It would really only be for special occasions. This is for like on Valentine's Day to have a nice little trio, or if it's a private party, or we can have one kind of special night to invite some people in to play. So we've had to say no to people who wanted to have for like a little graduation surprise they wanted to have a little classic trio. So it's really just to kind of heighten the dining experience but not to hinder it. This is not going to be above and beyond actual conversation. This is not a band that's being invited into the restaurant.

MR. SCALI: And you won't be able to hear it out on the sidewalk; right?

MS. WIECHMANN: No.

MR. SCALI: And you're also applying to open for brunch from 9:00 a.m. until 2:00 p.m. Saturdays and Sundays.

MS. WIECHMANN: Saturdays and Sundays.

MR. SCALI:

MS. WIECHMANN: Exactly. It stemmed out of customers bringing it to our attention that it would be a great idea and a great complement to the neighborhood. Initially when we opened two years ago, we didn't have it ourselves to be open at that hour, but now it's available, and people have said that they would definitely come in and they would love to be a part of it. So we said okay, let's make it a goal for 2010 to be open for brunch.

MR. SCALI: Abutter notifications?

MS. LINT: All set.

MR. TURNER: Mr. Chair, through you to the applicant: Is the background jazz with three instruments, is that a check box on the form or do you know what the three instruments are?

MS. WIECHMANN: I would think it would be ever-changing, maybe two guitarists and --

MR. TURNER: Trumpets, trombones?

MS. WIECHMANN: No, but that's a --

MR. TURNER: You say jazz and my

picture of jazz is New Orleans and Mardi Gras.

MS. WIECHMANN: I think that would be kind of against what we're trying to have as the end effect. Anything too loud would then pull away from the dining experience.

MR. TURNER: Right, it is a very small establishment, and that's why I asked for the floor plan.

MS. WIECHMANN: And we're really just keeping it to this size so it's something that can extend to the back of the restaurant.

MR. TURNER: So it's people playing three instruments I guess.

MS. WIECHMANN: That's right.

MR. TURNER: What is your current occupancy load?

MS. WIECHMANN: It's 22.

MR. TURNER: With that said, now we're going to have 25?

MS. WIECHMANN: Yes, three more people, if we're at full capacity.

MR. TURNER: So you lose three patrons

to accommodate the three.

MS. WIECHMANN: I can do that. I hadn't actually thought about that before.

MR. SCALI: That doesn't include the staff.

MS. WIECHMANN: But if that's a concern I would definitely take out a table or three chairs.

MR. SCALI: I really think it depends on what is allowed.

MR. TURNER: The only other concern I have is the curtain behind the front door has to go. It's in violation of law. The curtain used to block the cold air, you can't have it. It's obstructing the egress so that has to go away.

MS. WIECHMANN: Okay. I'll do it. Sorry, it's news to me.

MR. TURNER: You can't obstruct an exit.

MS. WIECHMANN: Okay.

MR. SCALI: It happens to be full-time it helps with the breeze coming in the door but

it's a problem with exiting issues.

MS. WIECHMANN: Absolutely. We've always abided by every code so far and it's not a curtain that we just put up recently; it's been there for over a year. Now that it's been brought to our attention we will definitely do something about it.

MR. SCALI: Does anybody want to be heard?

MR. HAAS: No and.

MR. SCALI: I know Ms. Boyer has something she wants to say.

MS. BOYER: Only if it's brought up.

MR. SCALI: Go ahead. Just tell us your name.

MS. BERRY: My name is Jean Berry. I live at 379 Walden Street, No. 4, in the same condo complex as the restaurant. First, I have a letter from the residents, the renters who live above the restaurant. If I can read it because they're not able to be here.

MR. SCALI: Okay. It's brief?

MS. BERRY: Yes.

MS. DREYER: What were their names?

MS. BERRY: It's Michelle Contreras and Marta Picasso.

MS. DREYER: And they're renters or owners?

MS. BERRY: They rent from upstairs.

"Because we live directly about the establishment we have already had issues with music and noise at T.W. Foods. Their peak hours coincide with our down time from long workdays. We have not complained about the current noise level because we have tried to be understanding that it's a business and noise will be a part of it. However, adding a live band would most definitely overstep the limited of how much noise we can tolerate during our down time at home.

Regarding their request to extend hours we have the following concerns: Again, the times they are requesting coincide with our limited time at home. It's already bothersome to have loud patrons leaving T.W. Food on a Sunday night and

other work nights. It would be bothersome to put up with this noise on a Saturday and Sunday morning.

Additional issues related to these petitions include the fact that when T.W. Foods operate the back bedroom of our apartment shakes every time the door is open and shut. It is impossible to achieve a good night's rest until after the restaurant is closed. The problems will be exacerbated by extended hours.

The back bedroom is also inundated with cooking smells, another problem that will be exacerbated with extended hours. The washer and dryer in the basement, T.W. Foods had basically taken up most of our common basement area. When we go downstairs to do laundry we need to compete for a space and machine use with the restaurant staff. There is also an overflow of garbage to the point that sometimes residents don't have room for their own garbage.

The restaurant also uses a vent that makes a large roaring sound. We have accommodated

but more of this would be overstepping our flexibility.

We would like the neighborhood's business to thrive and actively make it a point to try to consume from these establishments; however, we also feel that businesses that operate within residential areas should operate in a way that's respectful and thoughtful to its residents.

We appreciate your attention to our concern and hope you can take them into account when making your decisions."

My own personal statement, Jean Berry, condo owner. I've been in the building for about 10 years. We've had a series of restaurant renters using the ground floor tenant. The condo association consists of seven residential units and four small commercial units of which T.W. Food is one.

I'm opposing any change in the hours of T.W. Food based on the noise and the extended hour time issues. Currently an ongoing issue has been the noise from the vent which we've tried to

make allowances for and tried to discuss with them. It's a continuing problem. It starts every day, seven days a week at about 10:00 in the morning, and it runs until 11:30, 12:30 at night. It causes vibrations in one of the units which another member will talk about. And noise disturbing sleep for other units. So I strongly oppose any change in the hours.

MR. SCALI: Is it the vent that is --

MS. BERRY: It's a large outside vent. I guess it's an exhaust vent.

MR. SCALI: On the back of the building? Does it go up to the roof?

MS. BERRY: Up to the roof and it sits on the roof.

MR. SCALI: Anyone else?

MR. BATTAGLIA: Yes.

MR. SCALI: Tells us your name first.

MR. BATTAGLIA: I'm Ben Battaglia and my unit is actually the one that the vent is attached to. So the timing of this is interesting because I've actually been going back and forth

with Bronwyn's husband, Tim, about hoping to try and amicably resolve the vent issue. It is kind of physically attached to my home. It's kind of had a fairly significant impact on my life, frankly. I can't really use that bedroom because it vibrates.

MR. SCALI: Are you in the condo there?

MR. BATTAGLIA: I'm the owner of the top floor in the middle.

MR. SCALI: What number are you?

MR. BATTAGLIA: 379, No. 5.

MR. SCALI: You're No. 5. Okay.

MR. BATTAGLIA: So really it's kind of had a pretty significant effect, and it's been like that for a couple of years now. I haven't really cared that much about it simply because I don't tend to use that bedroom very often; however, I'm due to have a child at really any moment. That's why my phone is on vibrate and not completely turned off. So as kind of a consequence of that is that I really can't use half of my home.

I would also like to throw a caveat

out to what you said earlier in a previous case, which was if you have a problem, let us know and we'll come and help you. So I tried to do that, and this is kind of part of an ongoing negotiation with Tim and I. And to be fair, I'll talk about the ownership situation that he is kind of subject to, which is unfortunate to say the least.

And I did lodge a complaint, because Tim and I spoke about it. We went back and forth a great deal of time and kind of the resolution that we got to in the end was, you know what, you've got to do it. So I did talk to Ms. Boyer a little bit. I believe Section 8.16 says that any sort of vibration perceptible to a human being you can't have, or something along those lines.

The problem with that is that you can't have it as long as you're not part of a condo association. So kind of immediately that ties his hands. Really what I think Jean and I, and other residents are hoping to achieve here is to help kind of encourage Tim and Bronwyn to go back to the owner of their unit and tell him; point to these

pieces in our condo documents and say, here is where it says that you have to maintain this unit.

I have a video if you'd like to see it of the vibration in my home.

MR. SCALI: I think Ms. Boyer can clarify that but I guess the issue has to do with the vent being noisy within a building and not out onto the public way; am I right?

MS. BOYER: No, no. Let me clarify. It's partially yes, but it's intra-building related. One of the things that we've had previous cases in the past that is something I believe when I spoke with you is to check your condo docs first to see if there's anything that points at any rules and regulations.

I believe that Jean had put it out to me that the condo docs were checked. The is something in the condo docs and the next step I recommended because of the previous case is that they would have to find a lawyer to be able to go within the condo association and figure out a solution and the commercial space. I also

recommended someone they could speak with. So that's where we kind of ended based on trying to negotiate something for themselves. It's not something that we can actually be a part of based on the intra-building relationship.

MR. SCALI: I guess the issue really is not a noise ordinance issue but it's more a restaurant issue now. So I guess putting the noise ordinance aside, in order for you to operate a restaurant in a compliant fashion without causing any disturbance or noise --

MS. WIECHMANN: We had definitely been onboard to try and solve this problem, especially when Ben brought it to our attention again. Jean and I had been in touch when we first moved in, and we spent quite a bit of money updating everything and making sure everything worked perfect, and we've been maintaining it since. It of course has not been to their liking, which we hear the concern and we completely understand.

We have spoken with our landlord and our landlord and us have offered to split the cost

of a new ventilation system, or moving it to a more beneficial spot. The only thing is that it is the condo complex that has to decide on this. It's not something that really you guys can say just go ahead and move it. We're willing to move it to wherever it is amicable for everyone.

It's already been moved in '97 from one alcove to another, but to move it again to another spot, that's fine, we'll do it as long as it makes everybody happy at that point. If we need a new one, that's fine, we've already offered to split that cost.

MR. SCALI: Ms. Boyer, is that --

MS. BOYER: I'm out of the loop on this. I don't know if anybody wants to split the money. Or if they just want one person responsible is something that they should speak with a lawyer about.

MR. SCALI: Is it a monetary issue or is it just a vote of the condo board?

MS. WIECHMANN: I think it's an issue where everybody needs to get together and actually

work out to solve the problem. It's already been moved twice and we have -- since that move both Jean and Ben are new tenants. So our restaurant has been there prior to the two of them moving in, but their concerns are our concerns too. I don't like being able to come into the restaurant and not say hello to the people who live in the building because they look to me as the enemy, and frankly that's not a lot of fun. But we did inherit this problem from the previous owner and we are very willing to work it out.

MR. BATTAGLIA: And I would like to back that up, like there's no question about it. The issue here is not an issue of someone really wanting to help someone out. The issue surrounds getting something done.

The fact of the matter is an expansion of hours will expand the disturbance, and that is really the subject at hand. We have had a discussion. It clearly states within our condo documents that the renter, the owner of that unit is solely responsible for the upkeep. They have

said we can split. I think we as a group of trustees have made the decision that given the fact that we have other commercial units that are explicitly talked about in our condo documents, we cannot make an exception. We cannot say okay, in this one instance because it really bothers me, I'm going to pay for it.

MR. SCALI: It sounds like a legal issue.

MS. DREYER: If I can just make a point just so that the Board understands, the business owners are renters from the condo unit owner. They are not themselves a condo unit owner. So relationship between the condo unit owner and the trust, which I'm sure you're familiar with these types of issues, the condo unit owner has the clear right in the master deed to operate a restaurant. That goes with it; that delineation, noise, order. I don't know how you totally avoid that.

I think that both Mr. Battaglia and Ms. Berry purchased with these condo documents on

record and we're aware that they were buying into a building that had a restaurant.

MR. SCALI: Let me cut to the chase before you go on.

MS. DREYER: Sure.

MR. SCALI: We as a Board make sure that these issues for a restaurant are resolved before they can operate. So if you're disturbing someone, one person or many people, it's a disturbance. So under our authority under the Common Victualer and other licenses we look to the licensee to resolve the issue operating noise.

MS. DREYER: What I want to say to complete that thought is that it is not within the power of my client under the lease to make that change unilaterally, and that's why the discussion began between my client, their landlord, the unit owner, and I believe Mr. Battaglia. I don't know if there's been any communication from the condo board. So the conversation has been just among those three. If the board wants to get involved, that may actually make sense.

MR. SCALI: It sounds like you all need to go back and

MS. WIECHMANN: I think this is a great opportunity, I really do, and I hope you feel that way too.

MR. BATTAGLIA: To be clear, it is my hope that they eventually are able to do it. It is my hope that they are eventually able to open up but it is my firm belief that that needs to be done with the consideration of the residents in mind. Regardless of whether or not Bronwyn and Tim own the unit or not, I need them as a partner in speaking to their unit owner to force his hand to fix this problem, because frankly it has been a great deal of a disturbance to us.

MR. SCALI: It sounds like you all need to maybe call a condo board meeting and everyone sit down at the table and decide who's responsible for what. Have a special meeting or whatever you need.

MS. WIECHMANN: I do have all the maintenance records of the vent in case

MR. SCALI: Ms. Boyer, have you been out there to listen to this noise?

MS. BOYER: It's not my jurisdiction. That's the other thing too that --

MR. SCALI: It's not a noise ordinance issue.

MS. BOYER: No, it's not.

MR. BATTAGLIA: If you give me an e-mail address, I will e-mail you a demonstration of the vibration in my home.

MR. SCALI: I'm not disbelieving you. I just want to make sure that we know --

MS. BOYER: They've got to read their own condo guidelines.

MR. SCALI: So we're not really ready to talk about the extension of hours until we resolve this issue.

MS. WIECHMANN: Okay.

MR. SCALI: Does anyone else want to be heard?

MS. STEVEN: I'm Victoria Steven. I'm 379 Walden Street, Unit 2. Our building is

basically an E-shape with the back facing Walden Street. The restaurant is in the middle of the E. Ben is the third-floor here, and I'm the second-floor over here, so I'm next door to the renters whose letter Jean read.

Just as a vote of support, I honestly don't have an issue with the vent, but then I don't about it as Ben does. I'm also an architect and I've talked to some engineer friends of mine and I think we probably need to look at some better vibration isolation, which should be able to limit what's happening at Ben's apartment if he's actually getting vibrations.

I've slept in both -- the fan is at the back of the building. It used to be in this alcove which then just bounced off all the walls, so they moved it to the back of the building. I've used that bedroom and I don't hear the noise but I'm a floor below Jean. So Jean is pretty close, about 10 feet just below it.

I think we need a constructable solution and right now -- and it doesn't help that

Bronwyn's owner isn't really helping. We just need a constructable solution. I don't think anybody knows exactly how to fix it. I've gotten some indications of how to do better vibration isolation from the -- because it's basically a 20-inch stack that goes up and there's mushroom cap 10 feet above the roof.

MR. SCALI: This is not uncommon. This happens all the time so it's not uncommon. There is a solution to the problem.

MS. STEVEN: And I'd be curious to see how much that would help it.

MR. BATTAGLIA: I think that's the ultimate intention is to be able -- and it's unfortunate it has to play out this way, but I believe that the residents do not have any leverage based on the fact that the License Committee will not adjudicate a health and safety issues within a condo association. But we have been unable to be able to get that owner to take a seat at the table.

MR. STEVEN: Bronwyn and Tim have been terrific.

MR. BATTAGLIA: We have no issues with them.

MR. HAAS: Are these two issues interlocked with one another or are they two separate issues? No matter what they do with the vent, you'd still be opposed to the hours?

MR. BATTAGLIA: I can only speak for me. I would not be opposed to the new hours as long as the new hours didn't mean an expansion of this vent which causes a disturbance in my home, which by definition it does, currently.

MR. HAAS: So they are somewhat linked.

MS. BERRY: For my issue, the vent is on at 10:00 in the morning and they want to open until 5:00 in the evening, and if they're opening at 9:00 in the morning on the weekends, I would assume the vent would be on at 6:00 or 7:00, and it's just too much of a disturbance. I feel that for 10 years there has been a restaurant, I've known that but it's become too much.

MR. SCALI: Thank you. If you're all

going to say the same thing they've said -- this gentleman right here in the front and then we'll take the gentleman in the back and then the gentleman to my right.

MR. STEVERSON: My name is Alfred Steverson. My situation is a little bit different.

MR. SCALI: What is your address?

MR. STEVERSON: 304 Concord Ave., so I live right next door to the back of the building.

MR. SCALI: You live next door to the back of the building.

MR. STEVERSON: The very back of the building like where the back door of the restaurant is faces the sleeping area of where I live. Right in that very area there.

First of all, I've been in the food business probably for 30 years, so I support all restaurant scenarios as we speak. As a matter of fact, I even gave Tim a tape of music that I went to a Jazz Festival, so I support T.W. Food. I follow all restaurant scenarios and the good things that they've come up with creatively, et cetera.

As well as that's a very difficult place to run a restaurant because there's no parking, so most of their business I know is from word-of-mouth.

So I've never really had any other type of negativities and try to support them; however, the problem is to me that Sunday is a reverent day so the idea of something developing at 9:00 a.m. to 2:00 p.m., which in itself is a little unusual in terms of - I know brunch has its own financial gains. But the going from 5:00 to midnight, which then will probably incorporate not closing until maybe 1:00 in the morning.

MS. WIECHMANN: Our Sunday hours close at 9:00, and have always been.

MR. STEVERSON: But you want to extend it until later on, on Sunday; right?

MS. WIECHMANN: No. Our dinner hours will not change.

MR. SCALI: They're still keeping the same hours they have at night but they just want to expand the brunch hours from 9:00 a.m. until 2:00 p.m. They're not extending the Sunday night hours.

MR. STEVERSON: So Sunday night would end at you're saying at 9:00.

MS. WIECHMANN: Yes. and two hours and.

MR. SCALI: So is your issue the vent or is your issue the operation itself?

MR. STEVERSON: The operation needs some work in terms of even at the quietest times, I'm sure that someone mentioned, I believe this lady mentioned it, the doors slamming. I don't know exactly how that works but that usually goes on until late at night every night. And the bottles, the bottles These are things that I'm not sure how they work but those things go on until later on into the evening, most evenings. So that's something that I think should be --

MR. SCALI: So this is separate --

MR. STEVERSON: The noise level --

MR. SCALI: and apart from propagation positions the complaint in general about the operation without the two hours.

MR. HAAS: No significant that she

have a workout because that the company related to do a lot basically.

MR. SCALI: I have a very good standard. If it can be heard from outside the building its violation that's an our rules. I cannot be heard a site on the sidewalk who spent about inside the building.

MR. SCALI: That's in the same issuance before were talking about a truck building issue.

MR. BATTAGLIA: What about inside the building?

MR. SCALI: That's the same issue Ms. Boyer was talking about. It's an intra-building issue. This gentleman back here.

MR. RHODES: I'm Michael Rhodes. I live at 97 Chilton and I've lived in the neighborhood for eight years. T.W. Foods has been a real welcome addition to our neighborhood. As a person who does enjoy to have a drink and does enjoy great food, it's a real pleasure to be able to walk to and from a great restaurant that's

really added to our neighborhood. So I would love to see any addition to their business. It would be much welcomed by myself and my family since it's a place that we find ourselves dining at frequently.

MR. SCALI: So you are in support?

MR. RHODES: I am definitely in support.

MR. SCALI: Sir.

MR. TRUMBELL: My name is Mark Trumbull. I live at my own house at 348 Walnut Street. I can understand the problem with the vents and people worrying about the noise from the vents, but I don't think it's fair to conflate that with a jazz trio. The vents are one issue but the a jazz trio that you can't hear from the sidewalk shouldn't be dismissed just because of a vent issue that's internal within the condo association.

I live like four doors up on Walden Street and T.W. is just a great addition to the neighborhood. My wife and I are there once a week because we can just walk over. So I'm in support of certainly the jazz trio and in support of being

open for brunch. It would be great to have a place you could just walk to and have brunch on a Sunday morning. Thank you very much.

MR. SCALI: Thank you very much. I appreciate your comments. Does anybody else want to be heard? Sir, please come forward.

MR. CANTER: My name is Jay Canter. I live at 335 Concord Avenue, and I'm really just echoing what the last speaker said. The restaurant has been a tremendous addition for our family. It's a wonderful place within walking distance where we can have a great meal. I'd like to support -- I'd love to go over there for brunch.

MR. SCALI: Thank you very much. Anybody else?

I think this is a resolvable issue. I think you get a hold of your landlord and try to get him to participate in some way. Maybe your attorney can help you to do that.

MS. WIECHMANN: He's really the change it and that's the way he sees it.

MR. SCALI: There's a way to fix those

vents. It's been done hundreds of times in the City. It's just a matter of design and making sure it's in the right direction. Ms. Boyer has seen this hundreds of times so this is nothing new.

I guess I would suggest you continue this application to try and resolve this with the vent issue and come back to us when you are ready for that. Any comments?

MR. HAAS: No.

MR. TURNER: No.

MR. SCALI: We can certainly put you on another agenda to give you three or four weeks to do that. Our next available agenda is March 23, so that would give you about a month to figure out what is going on and come back to us.

MS. DREYER: The point being raised about the music as a separate issue, is the Board willing to consider permitting that at this time?

MR. SCALI: I think they're all intertwined in terms of additional capacity that may come to the restaurant. Are you having one day events at all now? This is special occasions;

right?

MS. WIECHMANN: Yes, it is.

MR. SCALI: So it may not happen between now and --

MS. WIECHMANN: We just have groups of private parties, graduations, and they expressed interest in bringing in background trios. It's nothing that can -- it's nothing right away. We want to do everything in compliance.

MR. SCALI: I think you can do it especially if you can do it very quickly. Let's continue the whole thing and see what you can come up with. My motion is to continuing the matter until the March 23rd agenda. Discussion?

MR. TURNER: No discussion.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you very much. I'm

sure you all can work it out.

MS. LINT: Application: Richard Philip Brunet d/b/a Verna's, Richard Brunet, Manager, has applied for a Common Victualer license to be exercised at 2344 Massachusetts Avenue. Said license, if granted, would allow food and nonalcoholic beverages to be sold, served, and consumed on said premises and to have a capacity of 19 seats. The proposed hours of operation are 5:30 a.m. to 6:00 p.m. seven days per week.

MR. SCALI: Mr. Brunet, good evening. How are you?

MR. BRUNET: I'm doing very well. How are you?

MR. SCALI: Nice to see you.

I know we've had trouble back and forth with getting you in here. And you've been there a while now.

MR. BRUNET: Three years in January.

MR. SCALI: I don't go know how the miscommunication came along with this but I guess we've been trying to get you to come in to apply for a while. You're finally here. Everyone loves

you, they love your doughnuts, they love your location. You've been doing a good job but we just have to make sure that you're licensed for this location just like anybody else.

You haven't changed anything; right?

MR. BRUNET: No.

MR. SCALI: There's still 19 seats?

MR. BRUNET: Yes.

MR. SCALI: It's 5:30 a.m. to 6:00

p.m.?

MR. BRUNET: Correct.

MR. SCALI: Seven days a week?

MR. BRUNET: Yes. The only thing that was changed is the previous owner was not opened open on Sunday, but I do open 7:00 to 2:00 on Sundays, yes.

MR. SCALI: Is it just you alone? Are there any partners?

MR. BRUNET: There is another partner.

MR. SCALI: They should be on the license as well.

MR. BRUNET: Not right now, because we

just felt it was better not to have him on the license right now.

MR. SCALI: That makes you solely responsible for the operation; is that what you want?

MR. BRUNET: Yes.

MR. SCALI: So if for some reason you leave you can't operate the location.

MR. BRUNET: Understood.

MR. SCALI: And you did pay your hearing fee; right?

MR. BRUNET: Yes, I did.

MR. SCALI: Any questions, Commissioners?

MR. HAAS: No.

MR. TURNER: No.

MR. SCALI: I appreciate your patience. I don't want you to feel at all offended. This was not to harass you in any way. We were trying desperately to get you just to come in and fill out the paperwork. I know you had a genuine concern about being harassed in some way.

I hope you don't feel that way. We just wanted you to comply.

MR. BRUNET: I totally understand.

MR. SCALI: Thank you so much.

Pleasure of the Commissioners?

MR. HAAS:

MR. SCALI: Yes. He was the last thing on this list of things to do.

MR. HAAS: Make a motion to approve.

MR. SCALI: Motion to approve.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: This comes up for renewal every year in December.

MR. BRUNET: Right.

MR. SCALI: You don't have to come in here. All you do is pay to renew your license every year in December.

MR. BRUNET: Very good.

MR. SCALI: You're all set.

MR. BRUNET: Thank you very much.

MS. LINT: Application: JFS Group, LLC d/b/a Fire & Ice, John Schall, Manager, holder of an All Alcoholic Beverages as a Restaurant license and Entertainment license at 50 Church Street has applied for a change of premises description, an alternate floor plan for entertainment, and an increase of capacity.

MR. SCALI: Good evening.

MR. SCHALL: Good evening. My name is John Schall. I'm the owner of Fire & Ice in Harvard Square in Cambridge, manager of the license.

MR. SCALI: Mr. Rafferty.

MR. RAFFERTY: Good evening.

MR. SCALI: Nice to see you all.

MR. SCHALL: In addition to what Ms. Lint said there's also an expansion of the time from 1:00 to 2:00 on Thursday, Friday, and Saturday.

MR. SCALI: Is that advertised?

MR. SCHALL: Yes, it was. It was in the advertisement.

MR. SCALI: When last we were here there was a question of -- we went through a question about the outside patio space being covered over and then we had a question about capacity. We recommended to you that you go back and look at it and try and come up with a better way to handle two alternate floor plans. And that's what you've done; right?

MR. SCHALL: Yes, that's correct.

MR. SCALI: Tell us what the two floor plans are going to look like.

MR. SCHALL: The existing capacity is 276. There's 201 seats inside the existing restaurant, 50 in the courtyard, and 25 standing, and that's the 276.

MR. SCALI: That's what's existing?

MR. SCHALL: That's the existing. With the new courtyard covered, the 201 in the existing restaurant will stay the same, the 25 standing will stay the same, and there will be 100 seats in the new space, 94 inside and 6 in the little outside courtyard. So that will increase

the capacity to 326.

The nights when there is dancing there will be 39 seats that will go into a storage room. There would be 61 -- so then there would be 201 in the existing restaurant, 61 seats in the new space, 75 on the dance floor, and 25 in the standing, for a total of 362.

MR. SCALI: So we're going from 326.

MR. SCHALL: From 276 to 362 will be the -- so an increase of --

MR. SCALI: Without the dance floor it's 326?

MR. SCHALL: It's 326 without the dance floor.

MR. SCALI: So on the new plan it's 326 without the dance floor, with the dance floor it's 362?

MR. SCHALL: Yes.

MR. SCALI: Explain then to me about the entertainment, how the entertainment works. It's a function area but it's also -- how often does the entertainment occur?

MR. SCHALL: On Monday night there will be a trivia night. On Tuesday night there would be a karaoke night. And that would be just from 9:30, 10:00 until 12:30 is when it would end, because the license on those nights would be a 1:00 license so the entertainment would end.

On Thursday, Friday, and Saturday when it's a 2:00 license, the last seating in the space would be at 8:00, and then at 9:30 to 10:00 is when the tables would be removed and it would be used as a dance floor.

There would be theme nights. On Thursday night -- and I've talked with dance studios in both Cambridge and surrounding communities, and also at the dance complex in Central Square, so Thursday night would be swing and hustle, and on Friday night it would be a Latin night with Meringue, Salsa, Rumba, Cha Cha. And on Saturday night it would be house music. So there would be different themes on different nights and I would work with --

Then in addition to that it will be a

function room as well, so there will be times when on a Saturday that room will be used as a wedding reception or as a reception for Harvard. Harvard, Lesley College, and Cambridge College have all expressed interest in having functions in this space.

MR. SCALI: Who will be in charge of those nights when you have those theme nights? Will it be you organizing those nights or are you going to have someone come in and do that?

MR. SCHALL: It will be internally to my staff. We'll do those nights.

MR. SCALI: You're not bringing in some outside promoter to do these events?

MR. SCHALL: No, absolutely not. All of this will be done internally with my staff.

MR. SCALI: And your target audience's age group is?

MR. SCHALL: Well, on Thursday and Friday night the age group would be relatively broad because it will be -- it's partner dancing so it's swing dancing, hustle. It's people that swing

and hustle and for the most part they're doing classes and I'm working with those dance studios to have a place for it.

MR. SCALI: So we're not talking hip-hop and 18-year-olds and that kind of thing?

MR. SCHALL: There will never be 18-year-olds because it will 21 and up.

MR. HAAS: So you're not counting the functions from the college and universities being part of that mix; right?

MR. SCHALL: No. Those don't occur because there's a function in the room.

MR. HAAS: So that rule wouldn't apply to private functions.

MR. SCHALL: Right.

MR. RAFFERTY: What's happened, and I'm sure the Commission knows the background, is an opportunity was created by this courtyard being closed over so it really becomes an added resource. So it can accommodate live dancing but when it's being used in private dining or a private function there may be some dancing but that wouldn't be the

primary use of the room. It's a whole new opportunity to use the space.

MR. SCALI: It could be a function area where there's a wedding with dancing and it could be a function where there's Harvard students dancing?

MR. SCHALL: Right, there could, and it could be a function where there's no dancing at all; it's a breakfast for the --

MR. SCALI: It could be a mix.

MR. SCHALL: There will be many different types of functions in the space.

MR. SCALI: Abutter notifications?

MR. SCHALL: There were seven broadly conceived that went beyond the immediate abutters just to cover everybody.

MR. SCALI: So if we did allow this, the increase in the capacity would be non-transferable and non-salable. So if you sold the license it would go back to the original capacity.

Questions from the audience? Let's take the gentleman in the back. Tell us your name.

MR. CHAFETZ: I'm Gary's Chafetz. I live at 18 Farwell Place. I've lived on Farwell Place for 22 years. In fact, I lived on Farwell Place when the Oxford Ale House was open. I don't know if you gentleman remember the Oxford Ale but we do.

I'm certainly not opposed to business. In fact I was driving here and I was passing Bowl and Board. It was very sad to see all those businesses closed. This is tough times, and so I'm not opposed to business. I recognize that these hearings, sitting here since 6:00, often is an expression of conflict of interest. John wants to extend his business and make more money; that's fine. I'm not opposed to that.

On the other hand, I'm a resident. I live on a tiny dead-end street called Farwell Place. It's a micro-neighborhood and an historic neighborhood. Unfortunately I wasn't notified as an abutter. Maybe technically I'm not, but in fact I am. There is something --

MR. RAFFERTY: (Inaudible.)

MR. CHAFETZ: Okay, Mr. Rafferty.

I am directly -- I'm only 100 feet away from the front door of Fire & Ice because there's something called the Church Street Parking Lot. So there's absolutely no obstruction, no baffles, no detriment to sound transmission.

In this micro neighborhood, and I actually raised this the last time I was here, we have to endure something called Oktoberfest. I can't get to my street, I can't leave my street. We put up with it because it's only once in a while, maybe once or twice a year.

But my concerns about this nightclub, because effectively that's what it will be, it won't be just people who are over 21. Because if you have teenage kids, you know everybody has a fake ID. My concern is that people will be coming out, 262 potential people coming out, spilling into Church Street, 100 feet from the back of my house at 2:30 in the morning. They will be high either on alcohol or whatever. And inadvertently, I mean they're not probably inconsiderate but they'll be a

little drunk, they're young, they will be making noise and they won't realize that there is a residential neighborhood very close by.

We already have to deal with the loudspeakers coming from Passim and the Border Cafe. My guess is that all of us in this room, including the Commissioners, if you had nothing -- including Mr. Schall and Mr. Rafferty -- if they had nothing to do with this matter, and if they lived on Farwell Place, they'd be standing here together with me in opposition.

MR. RAFFERTY: I would not. Since my name was invoked, I absolutely would not. So pardon me for interrupting.

MR. CHAFETZ: Fine. Thank you for the interruption, Mr. Rafferty.

MR. RAFFERTY: I'm included in his argument. I would not be opposed to this. If I had a house in Harvard Square, I would not come here and oppose it.

MR. CHAFETZ: That doesn't mean you should interrupt me, Mr. Rafferty.

MR. SCALI: Mr. Chafetz, just direct your comments to us in terms of what you feel.

MR. CHAFETZ: Sorry. My supposition is that everybody in this room would be standing in opposition to this, not because we are opposed to business but because there will be noise, people spilling out at 2:30 in the morning. They will be loud, there will be fights, and that's what we had with the Oxford Ale House.

So I just want to say with all due respect to Mr. Schall, I regret to have to say this, I am vigorously and robustly opposed to this. Thank you.

MR. SCALI: Does anybody else want to be heard on this? Please come and sit down right here. Our agenda is very lengthy tonight. It's very unusual.

MS. GIFFORD: Pebble Gifford, 15 Hilliard Street, Cambridge. Some of the people who were going to come tonight are a bit older, or old, and retire earlier. One is 80 who wanted to come but she gave up, and that's 12 Hilliard Street.

Doctor Peter Shaw who is a Harvard professor at the Harvard Medical School, he has to get up at 5:00 to operate so he had to go home. He's at 17 Hilliard. He's a neighbor of Mr. Schall's. Robyn Miller and Laurie Hallow have live on Hilliard Place. They both had conflicts and had to be out-of-town. Elizabeth Bossilette, a professor at the Harvard Business School --

MS. LINT: I have a letter from her.

MS. GIFFORD: -- asked me if she --

MS. LINT: I have that.

MS. GIFFORD: Well, do they see them?

MR. SCALI: Yes, we do.

MS. GIFFORD: I was tempted to read it into the record but I'll spare you.

MR. SCALI: We do have it.

MS. GIFFORD: And Olive Holmes, who lives at Farwell Place.

The last time we were here some of you -- I wasn't aware of the premises and how this was all going to work, so a group of us went over and met with Mr. Schall last Saturday. I see a number

of problems with the layout in that place.

One I will comment on right away is the fact that he is going to have perhaps people, a line of people waiting to get in at any given time depending on the event. At the moment, there is no place for any people to stand except in this small entryway at the top of the staircase. I noticed just on Saturday there were people waiting up there. If there were any more they could sit in this little entryway, they'd have to be lining up downstairs, which is a problem we had at the Oxford Ale House and we have it still today at the Border Café. I gather that's against the fire laws.

Right at the bottom of the staircase is a bar. That is a passageway into the back bar area where the big pit for cooking is. That is a passageway that runs past - there is a passageway that by the bar stools in the back. If people decide waiting to get into this room that has this limited capacity that they want to have a drink and stand back there, we're looking at the same problem we've seen over and over again. How is that

policed; how many end up standing there?

It's not a good layout for an entrance to an establishment of this kind. I just have to point that out to you. I can see many potential problems of fire hazards developing.

Between the residents I've mentioned I think there's probably 10 of us who feel effected by this operation.

The other problem I see is function room. Now, what is a function? Doesn't that have to be defined? Aren't we going to run into some problems here? Is it a wedding? I can see a wedding? I can see a bride and groom there. But what about the rock band that wants to rent the place and invite the public? Is that considered a function?

MR. SCALI: It's not a function. A function is a private rental. The entertainment license will be limited to whatever entertainment he gives us on the entertainment list.

MS. GIFFORD: He's going to have live music, an orchestra. Does that mean an independent

other private orchestra couldn't rent the place?

MR. SCALI: He's telling us what his plans are and that's what the plan will be. So other than what he's telling us, he wouldn't be doing, wouldn't be able to do.

MS. GIFFORD: I don't understand that. He said he'll rent it for functions. Can you limit the type of function? Can it be an independent band hiring the place and inviting their friends? Why isn't that a function?

MR. SCALI: That's not the kind of function he's talking about.

MS. GIFFORD: I'm not going to rely on what he's defining; I want to know if there's a definition we can live with as to what a function is? What if a Harvard group of students want to rent a band, rent the room, and have a so-called function?

MR. SCALI: I just asked him whether he was going to be handling the entertainment himself or doling it out or renting it out, and he said no, he'll be handling all the entertainment

coordination himself.

MS. GIFFORD: But what entertainment will he turn away? Can anybody who entertains and has music and has a band rent the premises?

MR. SCALI: They're not renting the premises.

MR. RAFFERTY: They aren't renting the premises.

MR. SCALI: He's coordinating the entertainment. He's not renting the premises out for entertainment.

MS. GIFFORD: He's renting it out for functions.

MR. RAFFERTY: It's not like a VFW hall. He's running the restaurant and there's a private room, and like any -- you can have a bar mitzvah, you can have a wedding, you can have a christening.

MR. SCALI: It won't be open to the public. It would be a private function, not an open to the public event.

MS. GIFFORD: Harvard students aren't

a private function if they want to rent it and have a band?

MR. SCALI: It could be a private function, yes.

MS. GIFFORD: With a band? Yes, it could. So I think the need here given the location of the premises to define clearly what kind of functions he can have and what kind of music he can have. Right now, it's pretty heavy on the entertainment end. It's these theme nights; it's trivia night; it's karaoke.

Now, I'm not clear. Where are these advertised that he's having all of these theme nights? If the public gets used to the idea that on Monday it's karaoke, and Tuesday it's trivia, and Latin dancing on Friday, how does he notify that public that if you come it's going to be closed for a private function? Now that presents a problem. Can you the people coming to this place thinking they're going to have a karaoke night and he's - what, does he have a sign up saying, sorry, no karaoke, private function?

MR. SCALI: I don't know.

MS. GIFFORD: I think that's something you have to address because those people will be there trying to get in. So I urge you to take a look at that; the ambiguity behind the function.

MR. SCALI: The what?

MS. GIFFORD: The ambiguity behind how you're treating function is disturbing.

Tonight was an interesting night, because we were hearing constant conflicts between residents and commercial, and that goes on all the time. One of the reasons is the configuration of the commercial in Cambridge. It's built around squares and corners so you do have these areas roped in and rimmed by residents, and that's certainly the case in Harvard Square.

I, having listened to enough of these so-called conflicts, I would like to suggest in connection with Fire & Ice that the Commissioners consider a policy, propose a policy that streets that abut on the residential edge of these commercial areas be treated a little bit

differently. I understand there are 93 restaurants now in Harvard Square. How many of those have liquor licenses? I don't know.

MR. SCALI: Fifty-something.

MS. GIFFORD: How many of those have this kind of entertainment, karaoke and trivia? I know of OM, Red Line, Pizzeria Uno.

MR. SCALI: There are not a lot.

MS. GIFFORD: But if you think about it those are all -- Red Line does have problems all the time. Not all the time but frequent problems.

MR. RAFFERTY: Excuse me, as counsel for Red Line I must object. There's nothing in the record, there's no history of discipline.

MS. GIFFORD: Yes, there is. Yes, there is, Mr. Rafferty. Maybe not recently.

MS. LINT: I have no complaints.

MS. GIFFORD: You have what?

MS. LINT: I have no complaints.

MS. GIFFORD: Since when?

MS. LINT: The last almost five years that I've been here.

MS. GIFFORD: I get these complaints from you, so. . .

MR. SCALI: I've been here -- all right. Keep going, go ahead.

MR. GIFFORD: I hear complaints from the --

MR. SCALI: I don't know of any complaints with Red Line, but go ahead.

MS. GIFFORD: There was a fight about three years ago when they came out of Red Line, four different people across the street in the Square.

MR. SCALI: We'll check the record but I don't have any recollection.

MS. LINT: I don't have any.

MS. GIFFORD: I don't want to argue with you about it. Those palces are central to the Square. There are no residents on Winthrop -- well, there are the people in the condo in Winthrop Square, but mostly those who are sort of centered in the Square where you have a critical mass of entertainment places, and places serving liquor.

MR. SCALI: the truth of the matter is there's really -- if you were part of the group that met a few years ago and I don't think you were, there was --

MS. GIFFORD: I probably wasn't told about it.

MR. SCALI: -- quite a huge policy on entertainment discussion that we had that went on for months and months and months. Part of the discussion was that there is no entertainment in Harvard Square, and that our policy was that we passed back then, I think it was in 2007, that we were looking for more facilities to have entertainment because of it going the other way. So I'm just telling you what the public records says is that there was a huge discussion about that. We had a huge hearing on this and we passed a policy that we were going to encourage more entertainment facilities.

MS. GIFFORD: I know, over the objection of some of us residents who weren't on the committee, number one. Now I've learned from

you that the nightlife committee is established. I don't who appointed the members.

MR. SCALI: I think Ginny Nathans was on that committee as a matter of fact. So she was part of that discussion.

MS. GIFFORD: The nightlife committee I'm now on, but I was certainly not told about it except inadvertently here at the hearing. These so-called discussions, there's always the resident component that seems to get the short shift. And you know as well as I do that licenses aren't a privilege, they're not a right. I mean they're not a right, they're a privilege, and the license laws are designed to protect the residents of the City, and the licensing should be controlled by the number of people who live in the city.

Well, we're way past that now, and I just come here to say one thing to you gentleman and that's to please remember the residents. These liquor licenses -- the Business Association wants more business. Councilor Reeves wants more nighttime entertainment; I've talked to him about

it. But that isn't the only goal in Harvard Square. There are others who live, work, and shop there and have another vested interest in keeping it not an entertainment center.

There is a balancing act you're having to do, and I don't think it's fair that businesses in Cambridge keep focusing on Harvard Square. I moved there and I knew there were businesses there, and I knew all the problems with Harvard Square, but I didn't expect it to become an entertainment Mecca when I moved there. I've never heard of it being discussed.

MR. SCALI: It's far from that now. It's far from an entertainment Mecca anymore.

MS. GIFFORD: That's not true. I just named you three places where you can go and be entertained. How about the - you can have this kind of entertainment but to put it on Church Street and to have --

MR. SCALI: It's a far cry from what it used to be years ago.

MS. GIFFORD: I have a feeling that

it's been pre-decided that this is going to go in here as is and I think it's a shame.

MR. SCALI: Nothing is pre-decided.

MS. GIFFORD: It isn't? Well he's opening. He's all set to open.

MR. SCALI: He has not been granted permission.

MS. GIFFORD: The Harvard Square Business Association for instance, is having its annual meeting there and that's like a cocktail party.

MR. SCHALL: It's a brunch.

MR. SCALI: Actually I think we've already had that discussion and they're staying within their current description to do that. They're not changing anything. It just has a cover over it as opposed to being open.

MS. GIFFORD: All right. I just urge you to look at the waiting situation if you go over there and see how that's going to work. I hope he's going to all this trouble that it's a popular place. That's the problem for those of us who live

near it. If it's too popular, we get all the problems we have with other popular places, which is street problems, parking lot problems, noise problems, and all I'm trying to do is to see you put some limits on this now, before we get those problems so we don't have to keep coming back here.

MR. SCALI: We know the drill.

MS. GIFFORD: I know you do, and I know it too. Functions at the Charles Hotel for instance, can be tightly controlled. They're in a defined room and --

MS. LINT: Well, that's what he said, a function would be in a defined room.

MS. GIFFORD: I know, but it's also people around in the hotel policing it, waiters and so forth and so on. It's a self-contained entity. There's no way to control the crowds if they come in here unless they go to the bar, unless they stand at the stairs, unless they go upstairs. You're not going to do that at the Charles Hotel. So there is a difference and just hope he's taking care of that.

MR. SCALI: I understand your point. Thank you very much. Does anybody else want to be heard? Ms. Jillson.

MS. JILLSON: I promise I'll be very brief. Good evening, my name is Denise Jillson, the Executive Director for the Harvard Square Business Association. Just to clarify a couple of things, particularly on JFK, in fact at Uno's, there are residents directly upstairs, and as far as I know we've had no complaints at all from those and they do have karaoke night and they have a trivia night and that sort of thing. So the fact is that it's not far removed.

The other issue relative to this function and I think we mentioned it before but it's worth mentioning again is that this new room is below grade. In order for music to travel over to Farwell, with all due respect to all of the residents on Farwell, it would have to go through Dado Tea, out to the sidewalk, across the parking lot, up a brick wall, and onto Farwell Place. That is relative to noise coming out, you know, music or

whatever, if that was the concerned.

MR. SCALI: We don't even have to worry about that because if you could hear it from the sidewalk outside his door, he's in violation.

MS. JILLSON: Exactly.

MS. GIFFORD: We're not worried about the noise.

MS. JILLSON: So if it's people that we're concerned about, and certainly we're seeing plenty of crowds coming out of Border Cafe at night, and they're coming out of Fire & Ice already at night. If you think about how many people are coming out of Fire & Ice already, I don't believe we've had any complaints, or if we have, I certainly haven't heard about them.

So we already have several hundred people coming out and we're not receiving any complaints so it's inconceivable to me that this would lend itself to creating more noise. John is such a responsible and thoughtful owner.

MR. SCALI: I think you can see their concern in terms of if it changes the atmosphere of

the location where people are there later and people are not eating as much but they're drinking more and having more fun that perhaps it is causing more disturbance with people coming out. That part I can understand.

MS. JILLSON: Yes. I would agree with that and it's something that we have to watch and be careful with.

But again, just getting back to John and the support for John's new venture. We are wholeheartedly in support of it but we'd want to obviously take those concerns and monitor them closely. I know that John is willing to do that and that's all I have to say. Thank you.

MR. SCALI: Does anybody else want to be heard? Mr. Rafferty, you have the last word.

MR. RAFFERTY: Thank you. Just briefly, Commissioners, as noted, the licensee has a 13 year history of operating in this location without incident or discipline. That record should address some of the legitimate concerns any time you would look at an expansion of this nature. But

the type of entertainment that's being proposed here is entertainment that is quintessential Harvard Square.

There is a dearth of entertainment places compared to historically. We have lots of venues in other locations in the city where things of this nature go on in far greater proximity to residents. I know there's Salsa dancing at Ryle's one or two nights at the corner of Inman Street in the heart of a residential neighborhood. It gets managed.

We're talking a space that's in the basement; that was previously an open air space. When one thinks about it there's a greater potential for noise in an open air space than in a covered space.

There are legitimate concerns and then there are concerns that are frankly a bit alarmist. I think it's fair to say that over the years that there have been views expressed here about certain types of licenses that I think haven't borne out. I think for that reason the Commission should take

into account the experience that the city has had with them.

I've been here in Harvard Square when -- I think of the Dolphin Restaurant that came in here to put a full liquor license in there in a bar with six or eight seats. Some of the same voices you hear tonight were there years ago in this room claiming it would be the ruination of the neighborhood, opposing it. It's been a fine addition.

So there's a reason for concern. The Commission has a long history of being able to address resident concerns. I don't think you need any lectures about looking out for residents. I think there's an opportunity here to allow this type of entertainment, trivia nights, dancing. These aren't things that are objectionable in nature that should arouse a great deal of concern.

Certainly the opportunity that's being described here or the application that's before you needs to be viewed in the context of the existing operation, the success it had. The

description of someone who perhaps recently went into the restaurant and describing a problem with the bar in an operation that's been there for 13 years, to suggest that there are going to be problems now, I mean I think one has to really filter out some of the objection and recognize that there are legitimate concerns but there are established protocols to address and mitigate those.

Mr. Schall has a track record to demonstrate that he can do that. This space will add to the vibrancy of the Square, and I think there is a public need to allow this type of entertainment to occur and I would urge you to approve it.

MR. SCALI: Thank you. No rebuttals on this because this is our process.

MS. GIFFORD: But it's different now. It's going to be a different operation. That's all I want to say. It's going to have dancing. It doesn't have it now.

MR. SCALI: I understand your point.

I hear it loud and clear. I know exactly what you're talking. I've got it right up here. I know exactly what you're talking about.

Pleasure of the Commissioners?

MR. HAAS: Take the matter under advisement.

MR. SCALI: Motion to take the matter under advisement. Moved.

MR. HAAS: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MS. GIFFORD: When will you be voting on that?

MR. SCALI: March 4 at 10:00 a.m.

MS. LINT: Application: Dalu Arruda d/b/a Stefani Pizzeria, Daluziana Arruda, Manager, has applied for a Common Victualer license to be exercised at 263 Brookline Street. Said license, if granted, would allow food and non-alcoholic beverages to be sold, served, and consumed on said premises and to have a seating capacity of 18 seats. The hours of operation will be from 9:00 a.m. to 11:30 p.m. seven days per week. The applicant is also applying for an Entertainment license to include a TV, radio, and a compact disc.

MR. SCALI: Hello. Thank you for your patience.

MS. LINT: Do you have the green cards?

MS. ARRUDA: They're in there too. Everything is in there. If they're not, they should be in there.

MS. LINT: I have the receipts. I don't have the cards.

MS. ARRUDA: They are. That's not it, the green card.

MR. LINT: No. It's what comes back to you.

MR. ARRUDA: They sent me these.

MR. SCALI: Did you get the receipts Back?

MS. ARRUDA: What happened was -- you know what I did; right? What's that inside? I think that's another letter because I did it wrong again and then I had to go back and re-do it.

MR. SCALI: You've been back and forth a number of times, I know.

So you finally have decided that you're going to stick with the hours of 9:00 a.m. to 11:00 p.m. seven days a week, nothing after that, no deliveries.

MS. ARRUDA: No. I don't want it.

MR. SCALI: There's 18 seats, keeping it exactly as it was.

MS. ARRUDA: As it was, yes.

MR. SCALI: You notifies abutters. Is there anybody from the neighborhood that wants to be heard on this matter?

MS. LINT: I heard from a neighborhood who forwarded me many pictures of trash. He said he spoke with Ms. Arruda back in September or October and she denied knowing anything about the trash. He doesn't see why it needs to be open until 11:00 p.m. This is the same person that --

MS. ARRUDA: That's the one I had to call the police to solve an argument with him.

MS. LINT: I think we're talking about somebody else.

MR. SCALI: One photo I see bags and trash by your barrels. Are those yours?

MS. ARRUDA: That's probably a picture before I was even there because we have four barrels from Carti, from another company. That's the only person that I see flipping pictures. When I first started over there, there was one neighbor over there that's always taking pictures of everything that he can possibly take pictures of. I think this may have happened before like when I was there because I've only been there since August. I know the first month I was there, there

was a lot of picture taking.

MR. SCALI: What is your situation with the trash now?

MS. ARRUDA: It's the same that has been. We put four barrels outside and they pick it up. And it's very difficult the trash in there because he has these big barrels that have to walk through this door because we can't even go through the gate because the neighbor next door doesn't allow it. He creates a big scene over that.

MR. SCALI: The new law that was passed requires you to have covered trash barrels; right?

MS. ARRUDA: Which we do.

MR. SCALI: So there's no more plastic bags out there?

MS. ARRUDA: No. And I don't even know if that's me because my barrels are gray.

MR. SCALI: So you have all the covered trash barrels and you abide by the law?

MS. ARRUDA: Yes, I do.

MR. SCALI: You have to have

everything in them with the covers. That's not even us; that's the DPW.

MS. ARRUDA: I understand. I know that.

MR. SCALI: That's the whole rodent issue.

MS. ARRUDA: Absolutely

MR. SCALI: We did allow you to operate pending this application so you are open now; right?

MS. ARRUDA: Uh-huh, just no tables and chairs in there.

MR. SCALI: No tables and chairs?

MS. ARRUDA: No, no, because we took them out. I think I spoke with you, Elizabeth.

MS. LINT: You didn't give her permission to have tables and chairs.

MS. ARRUDA: We had no permission to have tables and chairs. I took them out.

MS. LINT: As long as it was take-out she could operate.

MS. ARRUDA: Because the issue was the

Common Victualer, the CV. So there's been no seats in there since December sometime.

MR. SCALI: Questions?

MR. HAAS: You're not going to do any after-hours delivery?

MS. ARRUDA: Any what?

MR. HAAS: After-hours delivery.

MS. ARRUDA: Oh no.

MR. HAAS: That was your original plan.

MS. ARRUDA: That was the original. My sister wanted to do that. It just doesn't work. I'm already like on house arrest I call it. I'm there in the morning until 11:00. Why would I want to be there until 3:00? I can't do that. I call myself on house arrest right now. I go in there and I can't get out.

MS. LINT: Kind of like we feel right now.

MR. SCALI: Pleasure of the Commissions?

MR. HAAS: Wasn't there an issue about

-- that had to do I guess with delivery. There was an issue about parking for your vehicle. But that's not an issue anymore?

MS. ARRUDA: I park in the street, because I used to rent from the same guy. I know it's him that took those pictures because I know him. He's always taking pictures.

We used to rent space in there next-door but it's been always an issue with this next-door neighbor on the corner there, so I gave up. I don't rent space from him.

MR. SCALI: Where does your delivery car park?

MS. ARRUDA: We park out on the street and get tickets. That's what we've been doing.

MR. SCALI: We have another restaurant in the City who has that same problem. He has \$3,000 worth of tickets so he's going to get shut down very soon. If you continue to get tickets that's not good.

MS. ARRUDA: We pay them.

MR. SCALI: Well, you pay them. All

right.

MS. ARRUDA: We've been paying them. We get them. Like not every day we get a ticket but every once in a while. I think because of the fact that the whole street is on construction I don't think the ticket man comes around very often because of that fact.

But we need to find another solution for the parking. The guy next-door does rent space. I'm not interested in renting from him because he is very rude and he treats us very mean so I don't want to get into an issue. I already had to call the police once to help me solve the issue with him, and I just don't want to get into it. It's not very pleasant.

I'm going to look around to see. There's a friend of mine that lives in the neighborhood. Sometimes she rents space in here driveway but that doesn't work either. So I have no solution for parking right now, I really don't. But I think a lot of people in Cambridge don't have any solution for parking. I'm not the only one.

MR. SCALI: Comments?

MR. HAAS: How's business been so far?

MS. ARRUDA: It's 30 percent down.

How about that? It's hard. That little spot is hard. I'm learning that it's hard. I figure if it doesn't work, I give it back to the people who own it, which is Costa Provisions. They can take it back and give it to somebody else. I think it's been many people over there, hasn't it? Quite a few? I'm determined to make it work, at least that, and like I said, I'm in house arrest over there to make it work, day and night. So if it doesn't work, you know, I talk to a lot of people, my friends that have a business and the only one that I know is doing well is the Kendall Hotel, which is my friend. You know the Kendall over there?

MR. SCALI: Tell them to send some customers over to you.

MS. ARRUDA: I know, but they're different customer.

MR. SCALI: Pleasure the

Commissioners?

MR. HAAS: Motion to approve with a six-month review.

MR. SCALI: Motion to approve, six-month review.

MR. TURNER: Seconded.

MR. SCALI: Moved, seconded. All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: So you're approved. You need to come back and get your license. You can put your tables and chairs back in, 18 seats, 6:00 a.m. to 11:00 p.m. only.

MS. ARRUDA: No, 6:00 a.m. --

MR. SCALI: 6:00 a.m. to 11:00 p.m.

MS. ARRUDA: No, but I open --

MR. SCALI: Sorry, 9:00 a.m.

MS. ARRUDA: I was going to say no.

MR. SCALI: I messed it up already.

MS. ARRUDA: When can I put them back on?

MR. SCALI: As soon as you come down and get your license.

MS. ARRUDA: When is that; tomorrow?

MR. SCALI: Call first.

MS. ARRUDA: Thank you for your patience with me. I'm always forgetting everything.

MR. SCALI: Don't forget to come down and get your license.

MS. LINT: Application: Mount Auburn Memorial Post No. 8818, Ronald Muti, Manager, holder of an All Alcoholic Beverages as a Veteran's Club license at 688 Huron Avenue has applied for a change of premises description.

MR. SCALI: Someone had to be last. I know what you're going to say: why me, why me; right?

MR. MUTI: No. I would never say that. There's ladies in the room.

MR. SCALI: Tell us your name.

MR. MUTI: My name is Ron Muti. I'm the manager, the commander of the VFW in Cambridge. What did I do to deserve this? I thought I was a member of CLAB.

MR. SCALI: Do you come to CLAB?

MR. MUTI: I've missed one meeting.

MR. SCALI: If you are, I apologize greatly.

SO you've been there a while; right? This was changed when the building changed over a couple of years ago; right?

MR. MUTI: The building built it.

MR. SCALI: It was supposed to be the Post's responsibility to apply for the change in premises description. It's a State requirement. We all knew it happened but it has to be heard and approved by the State. So that's why we pushed you to make sure you did this even though everyone knew that it had happened already. Now we have the description as you being on the lower level; right?

MR. MUTI: Lower level now, yeah.

MR. SCALI: And the capacity is?

MR. MUTI: The fire department was just there not too long ago. We just got - through the License Commission. I think it's 240 now, or something like that, 230.

MR. SCALI: I don't have the file in front of me. So capacity is 240?

MS. LINT: I don't think I have that in here. Oh, 230.

MR. SCALI: So 230, and that's just on one level.

MR. MUTI: One level, and that's two

rooms. I believe you have the diagram for it.

MR. SCALI: You know that if you rent out it has to be members and guests of members only.

MR. MUTI: That's all, of course.

MR. SCALI: No outside groups.

MR. MUTI: The only thing we do on the outside group would be -- what's it called -- we do the Special Olympics and stuff like that.

MR. SCALI: Sponsored by a member I'm sure.

MR. MUTI: Oh yeah.

MR. SCALI: Pleasure of the Commissioners?

MR. HAAS: Motion to approve.

MR. SCALI: Motion to approve, moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. MUTI: When will I get the license with my name on it?

MR. SCALI: It has to go to the ABCC. We have to process this whole thing, send it to the State. When it comes back then you get it. Probably about four to six weeks.

MR. MUTI: Okay.

MR. SCALI: Thank you for your patience.

MR. SCALI: This young lady is here for?

UNIDENTIFIED SPEAKER: I wanted to hear what happened with Idenix but I came late.

MS. LINT: We have another matter, too.

MR. SCALI: We didn't vote yet.

MS. LINT: No. It's continued to Decisions.

MR. HAAS: Under advisement.

MR. SCALI: We took it under advisement.

UNIDENTIFIED SPEAKER: Okay.

MS. LINT: You can call me tomorrow and I can discuss it with you.

MS. LINT: Disciplinary: All Common Victualer licensees that failed to complete the renewal process for their 2010 licenses. There's not that many: Central Brew, Carberry's, Japanese Bakery and Cafe, Boloco.

MR. SCALI: Boloco?

MS. LINT: Yes. Village Grill and Seafood, Ben and Jerry's, Mass. Ave. Restaurant.

MR. SCALI: Are they still operating?

MS. LINT: Yes. Carberry's certainly is; Central Brew is.

MR. SCALI: I make a motion that a letter be delivered by either Officer Szeto or Officer Arcos or Ms. Boyer to each one of them saying that they will be closed in 10 days if they do not to renew their license, and therefore, have to reapply to be heard to reopen.

MR. HAAS: So they're got to come back before the Commission?

MS. LINT: You don't want them to come back, do you?

MR. SCALI: Yes, I do.

MS. LINT: You do?

MR. SCALI: To reapply if they're going to close.

MS. LINT: No, no, if they pay?

MR. SCALI: Oh, if they pay.

MR. HAAS: If they come in, in 10 days they don't have to --

MS. LINT: That's what you meant, yes?

MR. SCALI: If they don't come in within 10 days and they close down, they have to come back.

MR. HAAS: Okay. The way you said it I thought if they came in within the 10 days they would still have to come before the Commission.

MR. SCALI: No.

MR. HAAS: So if they can renew within 10 days then they're okay.

MS. LINT: With an administrative fee.

MR. HAAS: Right.

MR. SCALI: Moved.

MR. HAAS: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MS. LINT: Ratifications: Medallion 148, 174, 257G, 249A, 201, 36, and 176, twice. I'm not sure that's a mistake.

MR. HAAS: Is that a mistake?

MR. SCALI: I think that might be a duplicate.

MR. HAAS: Could it be a different Medallion though, maybe?

MS. LINT: No.

MR. SCALI: He just typed it twice.

MS. LINT: He either typed it twice or they actually -- some of them do it and then they do it again.

MR. SCALI: Just check on that. Is everything else in order?

MS. LINT: Yes.

MR. SCALI: Motion to accept.

MR. HAAS: Motion to accept.

MR. SCALI: Moved, seconded. All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Anything else before us?

MS. LINT: No.

MR. SCALI: Motion to adjourn.

MR. HAAS: Motion to adjourn.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

(Whereupon, the deposition was
concluded at 10:14 p.m.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY, SS

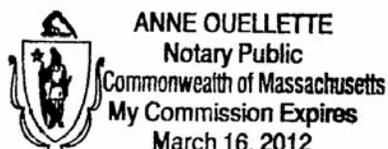
I, Anne Ouellette, a Professional Court Reporter, the undersigned Notary Public certify that:

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I further certify that the proceedings hereinbefore set forth is a true and accurate transcription of my record to the best of my knowledge, skill and ability.

In Witness Whereof, I have hereunto set my hand this 4th day of February, 2010.

Anne Ouellette



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