

COMMONWEALTH OF MASSACHUSETTS
CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION GENERAL HEARING

Michael Gardner, Chairman
Steven Williams, Superintendent
Lester Bokuniewicz, Deputy Fire Chief

STAFF:

Elizabeth Lint, Executive Officer

-- Held At --

Michael J. Lombardi Municipal Building
831 Massachusetts Avenue
Basement Conference Room
Cambridge, Massachusetts

Tuesday, July 19, 2011

6:06 p.m.

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P R O C E E D I N G S

ELIZABETH LINT: Okay. We are going to begin.

This is the License Commission General Hearing. Today is Tuesday, July 19, 2011, the time is 6:08 p.m.

We are in the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Basement Conference Room, Cambridge, Massachusetts.

Before you are the Commissioners, Chairman Michael Gardner, Deputy Chief Lester Bokuniewicz and Superintendent Steven Williams.

We are going a little out of order tonight. The first matter will be a disciplinary matter for Yardworks Limited due to complaints received on April 21, 2010, July 9, 2010, June 21, 2011 and July 1, 2011, regarding allegedly leafblower usage without being properly permitted as well as outside

the allowable months. The City of Cambridge Noise Ordinance allows the fine of \$300 per incident per day.

MICHAEL GARDNER: Good evening. Could you just state your name for the record, Ms. Boyer.

ANDREA BOYER: Yes. I'm Andrea Boyer, B-O-Y-E-R. I'm a licensed investigator for the City of Cambridge License Commission.

MICHAEL GARDNER: Are there any representatives from Yardworks Limited here this evening?

Were they noticed?

ELIZABETH LINT: They sure were.

MICHAEL GARDNER: Ms. Boyer, why don't you proceed.

ANDREA BOYER: The reason we are here is that allegedly Yardworks Limited has been using leaf blowers in the City of Cambridge since July 13, 2009 without proper permitting.

Yardworks was notified on July 13,

2009 via e-mail to discontinue to use during the prohibited time of June 16th to September 14th, and to apply for a leaf blower permit for the allowable time starting in September.

April 21, 2010, Yardworks used leaf blowers at Chauncy Street without a leaf blower permit.

I contacted the company again via e-mail to explain that a permit must be applied for. The company could be fined. I received no response.

So I called and spoke with Tom at Yardworks to see if either he wanted to apply or no longer use leaf blowers in the City of Cambridge.

He called on April 23, 2010 and said that he would apply.

I sent an application to the business but the permit was never applied for.

I received a call on July 9, 2010 that Yardworks used a leaf blower and I left

another message to cease operation and to apply for a proper permitting or a hearing would be were held.

I received another complaint on June 21, 2011, starting this season, that Yardworks Limited had utilized two blowers on Chauncy Street.

Again on July 1st, 2011, leaf blowers were being used. And the complainant spoke to the workers and alledgedly the workers the revved the leaf blowers as they continued their use.

Since Yardworks -- I apologize. They actually -- I received a telephone call today that Yardworks was again today at 12 Chancy Street at 2:00 p.m., which means they would have been after receiving notification.

And, basically, we are here because Yardworks continues to use the leaf blowers without proper permitting, and also using them when they are not supposed to be used in June,

July, and August until September 15th.

MICHAEL GARDNER: If you know, do you have any information about the nature of the business of Yardworks?

ANDREA BOYER: No, I do not. I do have a website that I had downloaded previously, Yardworks Limited, which kind of gave me the access information into what they do and where they are located.

MICHAEL GARDNER: And what does that tell you?

ANDREA BOYER: When they start work, what they do, that they have insurance, what their procedures are, their associations that they are connected with.

MICHAEL GARDNER: Are they a landscaping company or do they do clean-up or what can you give us?

ANDREA BOYER: Not from actually hiring them myself. But they said that they do -- all work is done in-house and no work is

subbed out to subcontractors. So I can only say like pavers, fences, irrigation, a list of different lighting that they might do.

MICHAEL GARDNER: And are the nature of the complaints essentially telephone calls from -- telephone calls from neighbors or observers or what?

ANDREA BOYER: One particular person has been calling and kind of keeping an eye on some of the leaf blower situations in Cambridge -- Sam -- and I believe he is actually here this evening.

MICHAEL GARDNER: And have you personally observed them operating --

ANDREA BOYER: Not Yardworks Limited.

MICHAEL GARDNER: Do you have any recommendations for us?

ANDREA BOYER: Since they are not here this evening, I would say that in the past when we've had the leaf blower situation -- this would be the first time that someone

actually hasn't come forward to do the proper permitting. I think that one of the -- a good points would be for me to try to see them in person.

MICHAEL GARDNER: Are there any members of the audience who have any personal information about the operation of leaf blowers by Yardworks in the Chancy Street area or elsewhere?

AUDIENCE MEMBER: You mean if somebody has observed them?

MICHAEL GARDNER: Yes. Would you state your name and -- come forward and state and spell your name for the record and then just tell us the information that you've got to share.

SAM NEJAME: My name is Sam Nejame, N-E-J-A-M-E, and I live at 10 Chancy Street. I work for myself and I'm a consultant so I'm home working.

Basically -- would you like me to go

through the litany of the times that they've shown up or what they do?

MICHAEL GARDNER: Why don't you just tell us generally what you've observed and then we can ask you about specific dates.

SAM NEJAME: Basically, what's going on is that they are maintaining the grass at Chauncy Terrace, which is what my building overlooks. It's a private road which is basically just a path, you can't get a car on it.

They come, they unload their lawn care equipment, they mow the lawn, and then they blow stuff around. And that is basically what they do.

MICHAEL GARDNER: And what is Chauncy Terrace?

SAM NEJAME: It is a private road but it is really impassable by car.

MICHAEL GARDNER: Are there residences on the road, not including your

own?

SAM NEJAME: Yes. There are condominiums along the -- it's a short piece -- it is basically a short path.

MICHAEL GARDNER: Do you happen to know the addresses of any of those condominiums?

SAM NEJAME: 12 Chauncy.

MICHAEL GARDNER: Any others?

SAM NEJAME: They may be listed as residences on Chauncy Terrace.

MICHAEL GARDNER: And so tell us about some of the specific dates of what you've observed and how you know that the workers were from Yardworks.

SAM NEJAME: They have a truck, it says "Yardworks" on the side along with the phone number. They are usually -- well, they all appear to be of Mexican extraction. It's not clear to me if they speak English.

I called one time last year in 2010,

I actually called Yardworks themselves, and somebody there told me they had every right to use a leaf blower and they were in full compliance.

It being between June 15th and September 15th, so I informed them they were lying and they knew it. And I told them the next call I made would be to the police. And immediately within a couple minutes they had bugged out. So somebody made a phone call.

I've observed them there this year on June 21st, on July 1st, on July 11th, and today. When they came, they are noisy, it is hard for me to do my job, my work.

The last time on July 11th -- and each time they have done this I've called Andrea and she's been very good listening and recording, and I thanked her for putting this forward.

On July 11th, I actually spoke briefly to an employee at Yardworks. I told

him that it was illegal for them to use a leaf blower from this period of time, between June 15th and July 15th, and asked them to turn the blower off.

I couldn't tell if the employee understood English. He scowled at me and said something in Spanish, which I took to be derogatory. I went back to my apartment.

Outside the Yardworks' employee began revving the leaf blower very loudly, on/off, on/off, on/off, at high volume for another 15, 20 minutes.

I called the License Commission and the police. And if recordings of either call still exist, you would notice that even though I live on the fourth floor of the building, that my voice is nearly drowned out by the sound of the leaf blowers.

I find it kind of irritating that I have to go and speak to these people, that they disturb my work, and that I have to chase

them down and that I have to bother the police, that I have to bother the License Commission.

In my opinion, Yardworks should be banned from doing any work in Cambridge. They have repeatedly proven they cannot follow rules, they lie, they are loud, they are angry and they are disrespectful. I can go on and on.

MICHAEL GARDNER: What is the approximate time of day that you called the police on July 11th?

SAM NEJAME: They usually come around between 12:00 and 2:00, the middle of the day.

MICHAEL GARDNER: Before you leave, I'd like to ask you if you are willing to give Ms. Lint information about the phone number that you used to make the call to the police so -- and that will remain confidential -- with the date and time. I would like to explore whether or not, in fact, the recording

is accessible. I think we should have copies of 9-1-1 calls.

SAM NEJAME: I do not use the 9-1-1 number. For these sorts of issues, I wouldn't call 9-1-1.

MICHAEL GARDNER: So do you know who you talked to?

SAM NEJAME: It would have been a dispatcher at the 3300 number.

MICHAEL GARDNER: So you call 3300?

SAM NEJAME: Yes.

MICHAEL GARDNER: Is it recorded?

SUPERINTENDENT WILLIAMS: I believe so.

SAM NEJAME: And also, I don't know if the Commission, if you've retained that call, but I know you can hear it on that call, too.

MICHAEL GARDNER: Anything else to add, sir?

SAM NEJAME: No.

ANDREA BOYER: On the April 12, 2010, call that was made, that was through the dispatcher at 3300 and an officer was dispatched to the location of 14 Chauncy Street. And there was Yardworks Landscaping, and the officer spoke with worker Juan Ramirez and then they packed up and left. And that was at 4-22 in April, when they weren't supposed to be utilized at the time because they were not licensed.

MICHAEL GARDNER: That's 4/22/2010?

ANDREA BOYER: Yes, April 21st, 2010. That's what prompted trying to pull them in last year.

MICHAEL GARDNER: Did that report indicate any observations of leaf blowers in use?

ANDREA BOYER: The officer notify -- said to the officer to notify the dispatcher company to name the violator, Yardworks Landscaping Company, working at 14 Chauncy

Street. But the call was based on noise and leaf blower use.

MICHAEL GARDNER: Any questions?

SUPERINTENDENT WILLIAMS: The notifications that have gone out, have you gotten any returns? Were they certified or letters?

ANDREA BOYER: They were not certified, no.

SUPERINTENDENT WILLIAMS: And do we know who owns the property that is being worked on?

ANDREA BOYER: No. But I can check on it.

MICHAEL GARDNER: Any other members of the audience who have information or who would like to speak on this matter?

(No response.)

The next decision hearing is scheduled for when, please?

ELIZABETH LINT: July 28th.

MICHAEL GARDNER: Pleasure of the Commission?

LESTER BOKUNIEWICZ: Can I ask a question?

I think you said you did speak to them, though, right?

ANDREA BOYER: Yes. I did speak with Tom and I asked him whether he wanted to apply or not use leaf blowers any more and he said that he wanted to apply. That was two days after the 21st complaint and the CAD call, but I never heard back from him again.

And then when I receive a complaint, that prompts me to go back and look at the file and go, "Oh, he never applied" and then to pull him in again.

MICHAEL GARDNER: So I'm wondering what the Commissioners would think of our deferring a decision on this matter until July 28th to give an opportunity to search the phone tape records to see if there is, in

fact, any information from the July 11th time period?

ANDREA BOYER: I won't be here to do that. I don't get back until the 28th.

MICHAEL GARDNER: And to prepare a letter to the company outlining the allegations, asking for a written response, and also the opportunity to inquire as to the information about the property owner.

Are you saying, Ms. Boyer, that you are not available because of --

ANDREA BOYER: I actually leave on vacation tomorrow and I come back on the 28th.

ELIZABETH LINT: We did notify them of the allegations and the dates and all that.

ANDREA BOYER: I can find out who the owners of this property are this evening. I can go through the assessor's office and find that out quickly.

MICHAEL GARDNER: We have another decision hearing on August 4th; is that right?

ELIZABETH LINT: That is just Whitney's.

MICHAEL GARDNER: It's not a --

ELIZABETH LINT: It's not a decision date, it's just a special hearing date for Whitney's.

MICHAEL GARDNER: Well, if we don't have time to get the information in by July 28th, then we either have August 4th or August 9th.

ANDREA BOYER: August 9th would give me plenty of time. Actually, maybe I can try to find it and hand-deliver the letter, so that way there would be no excuse that they didn't receive it to the company. That closes all doors.

MICHAEL GARDNER: So I would entertain a motion to defer this matter for consideration on August 9th, and to use the time in the interim for the appropriate follow-up investigation with respect to the

leads that have been presented here this evening.

So the motion having been made --

LESTER BOKUNIEWICZ: Seconded.

MICHAEL GARDNER: With the motion as having been made and seconded to defer deliberation on this matter until August 9th after additional investigation of information submitted this evening.

All those in favor signify by saying "aye."

LESTER BOKUNIEWICZ: Aye.

SUPERINTENDENT WILLIAMS: Aye.

MICHAEL GARDNER: Aye. All those opposed? None opposed.

So we'll reconsider the matter on August 9th.

Thank you for your participation this evening, sir.

SAM NEJAME: Thank you.

* * * * *

ELIZABETH LINT: Riverside Pizza & Seafood Restaurant, Incorporated, doing business as Riverside Pizza & Seafood Restaurant and Sports Bar. Alex Goulopoulos, manager, holder of an all alcoholic beverages as a restaurant license and entertainment license at 297 River Street.

This is a review of the License Commission's September 2, 2010 decision regarding your violation of Rule 25 of the Cambridge License Commission's Rules and Regulations, serving an intoxicated person.

MICHAEL GARDNER: Could I have everyone come forward and state and spell your name for the record.

ALEX GOULOPOULOS: My name is Alex Goulopoulos, G-O-U-L-O-P-O-U-L-O-S.

MICHAEL GARDNER: Who do you represent, sir, or what is your affiliation?

ALEX GOULOPOULOS: Riverside Pizza & Seafood Restaurant.

MICHAEL GARDNER: Are you the manager of record?

ALEX GOULOPOULOS: Yes.

MICHAEL GARDNER: And the owner?

ALEX GOULOPOULOS: Correct.

MICHAEL GARDNER: Ms. Boyer, you're still here.

ANDREA BOYER: Yes, I am still here. I'm Andrea Boyer, B-O-Y-E-R, License Commission.

MICHAEL GARDNER: Not having been serving on the Commission in September of 2010, can I have a very brief summary of that matter and the circumstances that led to this review here.

ANDREA BOYER: Sure. What led to this were complaints by neighbors from people kind of congregating outside smoking cigarettes. There is an access that's right next to Riverside, there's a little bit of a sidewalk and sometimes people were going down

that alleyway, and it was disturbing the neighbors also.

At that hearing it was decided that more signage be put up; the owner be more vigilant with his staff, to have someone come out more frequently; limit smokers to when they go outside to have just a few instead of many; and just kind of have more policing of the area.

MICHAEL GARDNER: Was there an allegation of underage drinking that was confirmed at that time?

ALEX GOULOPOULOS: Not underage.

ELIZABETH LINT: Not underage, intoxicated -- it was an intoxicated patron and the police were also called to the location. She had been taken to the hospital and --

MICHAEL GARDNER: Sir, could you describe the steps that you've taken since September of 2010 to correct this situation.

ALEX GOULOPOULOS: The steps, as far as serving alcohol, we make sure the bartender -- if somebody doesn't respond or so they don't act up or come from another establishment. You know, they make sure if they see anything suspicious, they have the right not to serve them. So we are being very careful who to serve, and especially if it's someone we don't know.

And at that time, the person that that happened to there, we knew the person. The situation, you know, she was on medicine, medication, that is what was explained the last time we were here. She had a couple extra drinks, so we don't know exactly what happened to trigger it.

And since that time, I don't think there has been any other problems, everything is running smooth.

And as far as the noise outside, I think we are doing a very good job with the

people going outside to smoke, make sure they go towards the middle -- side, the left side -- it's closer to the residential area. So I think they are doing a pretty good job. Things are running pretty smoothly.

I don't know if Andrea has anything to say about that, but I think things have quieted down.

MICHAEL GARDNER: Have there been any follow-up inspections or reviews, Ms. Boyer?

ANDREA BOYER: Yes, it is -- the location is basically where I come into the city. So when I work on the weekends, I am there coming in and I also try to loop around when I'm leaving. And not every single time I'm in the City, but frequently enough that I hadn't seen anything -- I haven't received any telephone calls.

I know that the neighbors were asked that if there were any problems, to alert us to it, and I hadn't received any of those.

But, I mean, I'm not there 24 hours. But I did not see anything. I'm always checking to see if there is people -- I still check for the signage, it's just out of -- it's automatic now.

MICHAEL GARDNER: Do you have an estimate about the number of times you may have made intentional observations about the location?

ANDREA BOYER: Well, at least twice on a weekend I drive in, so that's over --

MICHAEL GARDNER: I think the math could say that would be in excess of 70.

ANDREA BOYER: Definitely, in excess, and way more than that basically. So yes.

MICHAEL GARDNER: Any questions?

SUPERINTENDENT WILLIAMS: How many employees do you normally have on the bar?

ALEX GOULOPOULOS: Usually there are like three or four different people.

SUPERINTENDENT WILLIAMS: So somebody

is always available to --

ALEX GOULOPOULOS: Oh, yes. There's always one of us, me or my brother, is there all the time. We are always there.

What happened in the past, like sometimes it's the neighborhood kids that hang around, so we got with our patrons going outside and groups of people walking by and it being a little loud. So that's what happened in the past. Those groups kind of like broke up, they are not there.

So we watch our customers and keep reminding the customers -- if they forget, we keep reminding them to keep the noise down.

Usually, if it is more than three or four, I tell them, "Well, somebody has got to come inside before somebody else goes outside." So we try.

I think the neighbors are happy because I talk to the neighbors everyday and they are pretty happy. So I talk to them and

tell them, "Any problems, let me know and we'll work it out." So I think it's been working out pretty good now.

MICHAEL GARDNER: What is your seating capacity?

ALEX GOULOPOULOS: It's 89. We have been there about 25 years.

MICHAEL GARDNER: And, Ms. Lint, have we had any complaints since September?

ELIZABETH LINT: No, not at all.

MICHAEL GARDNER: Is there anything else you would like to say, sir?

ALEX GOULOPOULOS: No. I just hope everybody is happy.

MICHAEL GARDNER: Are there any members of the public who would like to be heard on this matter?

(No response.)

Ms. Boyer, anything else to add?

ANDREA BOYER: No. We are going to continue to monitor it, it is on my loop.

ELIZABETH LINT: It is on mine as well.

ALEX GOULOPOULOS: She is welcome to come in any time.

ANDREA BOYER: Every once in a while, I stop and get some deep fried chicken, what can I say.

MICHAEL GARDNER: Okay. The pleasure of the Commission?

Motion to just simply keep the matter on file and request periodic updates from Ms. Boyer. And if she has any problems -- obviously, if there are complaints that come in, we would have to evaluate those.

SUPERINTENDENT WILLIAMS: I make a motion.

LESTER BOKUNIEWICZ: Seconded.

MICHAEL GARDNER: The motion having been made and seconded to place the matter on file subject to ongoing monitoring by License Commission staff, and notification to the

License Commission should there be future complaints.

All those in favor signify by saying "aye."

LESTER BOKUNIEWICZ: Aye.

SUPERINTENDENT WILLIAMS: Aye.

MICHAEL GARDNER: Aye.

All those opposed? None.

Thank you for the improvements you you have appeared to have made over the last nine months, and continue to make, and we wish you well and continued success in maintaining your business in the proper manner.

ALEX GOULOPOULOS: Thank you very much.

* * * * *

ELIZABETH LINT: Disciplinary matter continued from May 31, 2011, for J.H. Restaurant Cambridge, LLC, doing business as John Harvard's Brew House, Steen Sawyer, manager, holder of an all alcoholic beverages

as a restaurant/brewery at 33 Dunster Street, due to a police report received by the License Commission alleging that John Harvard's restaurant was serving alcoholic beverages to a group of underage students.

MICHAEL GARDNER: Let's begin by having those who are at the table to identify themselves, please. First, if we could have the city representatives identify themselves and then ask the representatives from the Brew House to identify themselves.

ANDREA BOYER: My name is Andrea Boyer, B-O-Y-E-R. Investigator for the City of Cambridge License Commission.

DANIEL HOGAN: I am Officer Daniel Hogan, Cambridge Police, Patrol Operations.

ATTORNEY STEPHEN MILLER: My name is Stephen Miller, associate at the firm of McDermott, Quilty & Miller, representing John Harvard's Brew House.

MICHAEL GARDNER: My name is Karen D.

Simao, I'm also representing John Harvard.

MICHAEL GARDNER: My memory of this matter is that it was originally scheduled for March 29th of 2011, and generally continued that day without any testimony or evidence being presented.

Is that your understanding?

ATTORNEY KAREN SIMAO: That's correct.

MICHAEL GARDNER: And that on May 31st when the matter was continued, we, in essence, took no or very little substantive evidence, based on the request from Council that the matter be continued for you to have the opportunity to attempt to contact a witness; which I understand at that time you did not know about, or you did not know about until relatively soon before the hearing.

Is that a correct and fair summary?

ATTORNEY STEPHEN MILLER: That's correct, Mr. Chairman.

MICHAEL GARDNER: So I believe essentially we are hearing this matter de novo or anew this evening. And that so both the other representatives on the Commission this evening, who, certainly not all of them I don't think were here on May 31st, I believe can hear this matter fresh and participate in any votes that may be necessary.

Do you agree with that assessment?

ATTORNEY STEPHEN MILLER: I do, Mr. Chairman.

MICHAEL GARDNER: Ms. Boyer and Officer, would you please summarize the information that leads us here this evening.

ANDREA BOYER: Our office received a police report pertaining to alleged intoxication of an underage individual at the John Harvard's Brew House located at 33 Dunster Street.

The police report and the CAD incident report were submitted previously in

the packet. It was noted in the report that the debate team guide stated that one of her students, date of birth, 10/12/1992, was intoxicated and needed medical attention.

The guide also stated that there were six other underage students and that some of them beers in front of them when she arrived to remove them from the John Harvard's Brew House.

To ask further questions, I called them up and left a message for the debate team guide and the alleged intoxicated underage student on February 25, 2011, but never received a call back.

To determine what role Greg -- the reporting person listed on the CAD report -- had, I also called and left a message for him. "Please be advised, I spoke with the manager on duty of the John Harvard's Brew House, Petra Suvirova" -- I apologize if I pronounced that wrong -- "and the general manager,

Mr. Ken Ezekwelu, E-Z-E-K-W-E-L-U, and both individuals were concerned about the alleged incident and stated that all IDs are checked for patrons on premises."

Ken sent me an e-mail, attached to the packet also, stating his concerns and what precautions have been taken since the alleged incident.

On March 1, 2011, I received a call back from the reporting person, Greg, and he gave me the following information:

He is a chaperone from a high school in New Jersey that they are all from. He received a call from another crisis counselor -- not the debate team guide who was already at the said incident -- which prompted him to go to the John Harvard's Brew House.

When he saw the alleged intoxicated female, he immediately called 9-1-1. He walked around and saw six other seniors from his high school; four students were at one

table with an empty pitcher, two students were at another table with a three-quarter full pitcher.

He did not know how the students got served; maybe they had IDs. And I state that those were his words.

When I asked him if he believed that the students were drinking beer from the pitchers, he stated that he did.

He also stated that since being back in New Jersey, all the students involved have received disciplinary action.

I asked Greg if he would be willing to document the incident and send it to me via e-mail. He explained that he was concerned about repercussions to the school and the students. I explained that we have no jurisdiction in New Jersey, and that the information that the police report submits to the License Commission Board will be redacted.

He stated that he would submit the

report by the next day. I did not receive the report. And I e-mailed him again on March 4, 2011, to see if he had changed his mind. I also called him on March 8th.

He left me a message stating that he did not receive the e-mail but that he would send the report. I did not receive the e-mail when I submitted this top report.

What I did receive on March 16th was his communication, and that was given as a supplemental attachment to the report.

Would you like me to read that report at this time?

MICHAEL GARDNER: Well, I have it in the record. I don't know if the other Commissioners would like to hear it?

Well, why don't you go ahead.

ANDREA BOYER: This was sent to me on March 16, 2011, at 8:19 a.m.

"Hi Andrea, sorry about the communication. Here's the story:

"I received a call from an administrator that a student had contacted our crisis counselor and reported that she was at John Harvard's Pub intoxicated.

"I immediately reported to the restaurant with my colleague and found her slumped over on the bar. I immediately called 9-1-1, and circled the restaurant to find the six other seniors.

"At one table I found two boys with an empty pitcher on the table. They admitted they drank. I then asked them to pay the bill and meet me outside the restaurant.

"I then circulated and found another four boys with one empty pitcher on their table and asked them to pay their bill and report outside.

"When I returned towards the bar area, I found the senior girl sitting on the floor with the other counselor and we brought them all outside.

"At that point, 9-1-1 arrived. And I took care of the other six boys as the girl was taken away in an ambulance with the other counselor.

"Hope this helps. Thanks, Greg."

MICHAEL GARDNER: Any additional information to add, Officer?

OFFICER DANIEL HOGAN: I was working Harvard 15 that night. And when I arrived on-scene, there was no students in the bar; it was just the one chaperone outside of John Harvard's Brew House with, it seemed to be, a highly intoxicated female that was basically slumped over on the stairs, and then basically -- actually, lying in front of the doorway.

And then she -- you know, I asked her what happened. And the chaperone basically said that they were inside and when she -- one of the students that was almost passed out, she apparently called one of the counselors back at the school in New Jersey.

And then there was no Chaperones with these students. And I guess one chaperone was at the -- they were both at the Charles Hotel; one male and one female chaperone.

So the female chaperone came over and she said that she seen, you know, beers in front of them, but she didn't actually see them drinking, per se.

And this individual tried to get a drink at the bar, and that's when the bartender, you know, wouldn't serve her at all. And so not only wouldn't he serve her, but asked her to leave.

And then I stayed there until the ambulance arrived and assisted the chaperone with the young female student.

And then I went inside and spoke to -- I asked to speak to the manager. It was Petra.

And she wasn't aware of the incident at the time. And then she, you know, got all

the -- spoke to all the bartenders. She was very cooperative. And they don't remember serving this particular student or any of the students that were in this group.

And she says they ID them all the time, and all the bartenders are basically trained for that. But she didn't see it and neither did any of the bartenders.

MICHAEL GARDNER: From your observations, were you able to form any opinion about the appearance of the female student, most particularly, with respect to whether there were any visual clues as to her age?

OFFICER DANIEL HOGAN: She was definitely underage.

MICHAEL GARDNER: Meaning you formed the conclusion that she was youthful looking?

OFFICER DANIEL HOGAN: Yes.

MICHAEL GARDNER: In your opinion, did she look like a high school student?

OFFICER DANIEL HOGAN: Yes.

MICHAEL GARDNER: Were you able to obtain any information about what her actual age was?

OFFICER DANIEL HOGAN: I believe I did and I put it in the report. I think it was -- I got a redacted version -- date of birth was 10/02/92.

And also I did do a follow-up at the Mt. Auburn Hospital. I spoke to the physician and I spoke to the young lady's parents who were on their way up from New Jersey.

MICHAEL GARDNER: Did the physicians have any relative information?

OFFICER DANIEL HOGAN: They, you know, without getting into the specifics about her, they just said -- you know, the doctor said she didn't want to speak to her parents and that she seemed to be highly intoxicated, and that she was receiving fluids at the time.

And that's all the information he

could give me, which I gave to her parents.

MICHAEL GARDNER: And we never obtained any medical information with respect to blood alcohol levels or any other data that assessed her level of intoxication?

ANDREA BOYER: No, we did not.

MICHAEL GARDNER: Any questions?

SUPERINTENDENT WILLIAMS: How long after the call came in did you arrive at John Harvard's?

OFFICER DANIEL HOGAN: Basically within minutes. I was at Mt. Auburn and JFK when I received the call, and John Harvard's is the next left around the corner.

SUPERINTENDENT WILLIAMS: And do you know who called?

DANIEL HOGAN: I believe it was the female chaperone that called.

SUPERINTENDENT WILLIAMS: Called what?

OFFICER DANIEL HOGAN: 9-1-1.

SUPERINTENDENT WILLIAMS: Ostensibly for emergency medical services?

OFFICER DANIEL HOGAN: Yes.

SUPERINTENDENT WILLIAMS: Do you know how long before you arrived -- that the chaperone arrived, that the female student was refused service by the bartender?

OFFICER DANIEL HOGAN: I believe it was about maybe 10 minutes. Because the female chaperone received the call at the Charles Hotel and she walked over from the Charles Hotel to John Harvard's Brew House. And they were both outside when I seen them; they weren't inside the premises.

SUPERINTENDENT WILLIAMS: And if I understood correctly, her condition was that she was lying down --

OFFICER DANIEL HOGAN: The female chaperone was holding her up and I had to hold her up and she was just totally out of it.

I did try to ask her if she was on

any medication or did she take any drugs, and she just couldn't answer any questions like that. And then she just kind of dropped.

MICHAEL GARDNER: Any questions?

ATTORNEY STEPHEN MILLER: Officer Hogan, were you provided any evidence that there was a sale or delivery of alcohol on the premises of John Harvard's to this person or anybody else?

OFFICER DANIEL HOGAN: No, I was not.

ATTORNEY STEPHEN MILLER: And you didn't see any service --

OFFICER DANIEL HOGAN: No, I did not.

ATTORNEY STEPHEN MILLER: Did the doctors tell you the cause of the intoxication?

OFFICER DANIEL HOGAN: No, they did not.

ATTORNEY STEPHEN MILLER: So it's very possible that she may have been taking some sort of drugs?

OFFICER DANIEL HOGAN: It's possible.

ATTORNEY STEPHEN MILLER: Your police report -- excuse me a second -- said that -- I assume that the debate team guide that you refer to in the police report is the female -- "white female 49 years old"?

OFFICER DANIEL HOGAN: Correct.

ATTORNEY STEPHEN MILLER: And that is not correct?

OFFICER DANIEL HOGAN: No.

ATTORNEY STEPHEN MILLER: Greg is someone else?

OFFICER DANIEL HOGAN: Correct.

ATTORNEY STEPHEN MILLER: He is the chaperone, I guess.

So this person that you spoke with specifically said that she did not see any of them actually drinking alcohol and that, in fact, the person who was later taken to the hospital was not served alcohol and was denied service of alcohol.

Now, that is what she told you, is that correct?

OFFICER DANIEL HOGAN: She told me that she did not see them actually drink alcohol, but there were beers in front of them.

ATTORNEY STEPHEN MILLER: And so she did not see any sale or delivery of alcohol?

DANIEL HOGAN: No. That's correct.

ATTORNEY STEPHEN MILLER: And she did not see any consumption of alcohol?

OFFICER DANIEL HOGAN: That's correct.

ATTORNEY STEPHEN MILLER: Did you -- Greg is referred to in the CAD incident report and later, as you heard from Investigator Boyer, as a chaperone. And he said that he came into the premises and got six other students. And after he got the six other students, he called 9-1-1.

Did you ever speak with Greg?

OFFICER DANIEL HOGAN: I did not speak with Greg.

ATTORNEY STEPHEN MILLER: Did the debate team guide, or whoever, let you speak with these other students?

OFFICER DANIEL HOGAN: No.

ATTORNEY STEPHEN MILLER: Were these other students just taken away?

OFFICER DANIEL HOGAN: When I arrived, there was only the one female and the one female guide.

ATTORNEY STEPHEN MILLER: So you weren't given an opportunity to speak to any of them?

OFFICER DANIEL HOGAN: No, I was not.

ATTORNEY STEPHEN MILLER: Are you aware if the debate team guide or this Greg or -- we have a myriad of people that are referred to as a crisis counselor, administrator, chaperones, Greg's colleagues -- there is multiple people. Do you know if

anybody spoke to the management or staff at the restaurant about this incident?

OFFICER DANIEL HOGAN: Not to my knowledge and not in my presence.

ATTORNEY STEPHEN MILLER: I have no further questions.

But I do have some for the investigator, Investigator Boyer.

Investigator Boyer, you spoke with Greg?

ANDREA BOYER: Yes, I did.

ATTORNEY STEPHEN MILLER: And I see in his e-mail he says that they admitted they drank. Did he say that they drank at John Harvard's Brew House?

ANDREA BOYER: He just said John Harvard's Pub.

ATTORNEY STEPHEN MILLER: Well, he said that she was intoxicated. But it's kind of cute, he says, at one table he found two boys with an empty pitcher of beer, and they

admitted they drank. Did they admit that they drank at John Harvard's?

ANDREA BOYER: I just wrote down what he told me. So I, unfortunately, do not have him to ask.

ATTORNEY STEPHEN MILLER: Did, at any time he see any sale or delivery service or any consumption of alcohol on our premises?

ANDREA BOYER: Not that he mentioned to me, no.

ATTORNEY STEPHEN MILLER: So the investigation basically is that no one saw any sale or service, nobody saw any consumption, and it is basically hearsay; is that correct?

ANDREA BOYER: That's what he told me, correct.

MICHAEL GARDNER: I don't think, sir, that we need to have you solicit from Ms. Boyer her opinion of what hearsay is.

ATTORNEY STEPHEN MILLER: Well, there's opinion --

MICHAEL GARDNER: You can make the argument that it's hearsay. You don't have to ask Ms. Boyer if it's hearsay. Ms. Boyer is an investigator.

ATTORNEY STEPHEN MILLER: Ms. Boyer, did you speak with anyone that -- in your investigation, did you speak with anyone who saw the sale or delivery of alcoholic beverages to any underage people on this evening at John Harvard's?

ANDREA BOYER: No, I did not.

ATTORNEY KAREN SIMAO: Ms. Boyer, if I may. My name is Karen Simao for the record.

Greg referenced in -- I believe it is referenced in your memorandum that, before this e-mail of the 16th, that he thought they might have had IDs.

Just in your conversation with him, did he indicate to you whether he, as a chaperone, searched these underage children to determine if they had IDs?

ANDREA BOYER: He did not indicate, no.

ATTORNEY KAREN SIMAO: And did he indicate to you that he spoke with management? I mean, it's pretty appalling that six -- we can all degree -- that six high school students would have been served anywhere.

So did he indicate at all that he walks in, he simply gathers these people, as I understand his statement to you. Did he indicate that he said anything to management, talk to management --

ANDREA BOYER: He did not say that he spoke with anybody on the premises, no.

ATTORNEY KAREN SIMAO: Thank you.

SUPERINTENDENT WILLIAMS: Counselor, sir, if I could, I believe it was stated that management at the John Harvard's routinely checks IDs?

ATTORNEY STEPHEN MILLER: Yes, Superintendent.

SUPERINTENDENT WILLIAMS: You have six or seven high school students that were inside this establishment. All I'm saying is they were inside this establishment. You can say with a certainty that IDs were checked on the those individuals?

ATTORNEY STEPHEN MILLER: Well, what we are going to present to you is, we have the staff that worked that night and we are going to present to you what our procedures are, what their training is, on that particular evening and the other evenings. And every staff member was alerted that a model UN, high school model UN was in town, so every staff member was alerted that there would be high school students.

But, more importantly, we are a restaurant so we would serve food to people under 21. And I think you'll hear from the staff members and the managers on how they handle a group if someone was 21 or groups

that aren't 21 and how they handle it among the staff to make sure those people aren't served.

MICHAEL GARDNER: Before we go to that, I'd like to ask Ms. Lint a question.

Ms. Lint, would you describe what efforts, if any, were made to secure the cooperation and presence of Greg and any other representatives from the high school to attend this meeting.

ELIZABETH LINT: Yes. We actually don't have his address. We do have his e-mail. I sent him a letter via e-mail. We also made a phone call, again, requesting that he appear and he said that he would not.

MICHAEL GARDNER: For the record, I understand that the representatives of John Harvard's Brew House have made certain assertions about the authority of the Cambridge License Commission, including the authority to subpoena witnesses.

I think that the Commission has advised those representatives, without imputing on the issue of whether or not we have subpoena power, we declined to attempt to issue and enforce this out-of-state subpoena in this matter, but rather attempt to obtain the cooperation of the witnesses voluntarily and unsuccessfully.

Is that a fair summary, Ms. Lint?

ELIZABETH LINT: Yes, it is.

MICHAEL GARDNER: Are you prepared to make a presentation now?

ATTORNEY STEPHEN MILLER: Yes, we are.

ATTORNEY KAREN SIMAO: Mr. Chairman, at this point what I would like to do, I'd like to call the various staff members that were on the premises on that evening and ask each one of them a number of questions. And then, should the board have any additional questions for them, you are certainly open to

ask them.

The hand-out that was handed out to you just for the record is -- dovetails on what the Chairman was asking and what the Superintendent was asking specifically regarding their policies on alcohol service, training, and I've also included evidence of server training, certificates and the like, as well as a floor plan. Just as we are sort of going through the various witnesses here, the floor plan can provide you some guidance on what we are talking about.

If you look at Tab A on your floor plan, the first opening here on the left-hand side represents the stairs where folks would walk down the John Harvard's and you immediately hit the hostess stand.

To the right you'll see that I've indicated a circle. It's complete speculation on whether this is the area on were these people may or may not have been, this is only

based on contradictory statements between the debate guide and Greg.

Nonetheless, we have the staff from all areas here to testify for you today. But just for the Commission's reference, we think that this may have been the area that Greg alleges to have seen two groups at two tables.

And I highlight that for you because and whether or not you are in this section, and you'll hear from the two women that were in that section, the various other people that are in these other sections regularly walking past this section to go to the service bar to get their orders.

And so we feel it is impossible that the staff is walking by any table of seven underage, youthful-looking people without cross-referencing, which is their policy, with both the manager and the server in that section, "Did you check their IDs?"

And with that being said, I would

like to start with Petra, who was been referenced in the report as the manager on duty that evening.

Would you state your full name and spell it for the record, please.

PETRA UVIROVA: My name is Petra Suvirova, first name is P-E-T-R-A, last name is U-V-I-R-O-V-A.

ATTORNEY KAREN SIMAO: And you were the manager on duty on the evening in question?

PETRA UVIROVA: Yes.

ATTORNEY KAREN SIMAO: Could you tell the Board a little bit about your role in management generally. Without it being this specific evening, what is the policy on how your staff is trained and what forms of IDs are acceptable.

PETRA UVIROVA: I would probably start with the procedure of when we hire a new employee. As a part of the whole package, we

take a lot of time to make sure all our servers are properly trained about our alcohol service, very responsible alcohol service, and that they are aware of the different forms of IDs. We talk about situations, how to deal with certain situations. And, of course, at the end, they have to take a test.

As a part of training, we also have all our employees tips trained. So that is definitely, you know, in addition to the basic training.

ATTORNEY KAREN SIMAO: In addition to your in-house training, you also have the outside tips training?

PETRA UVIROVA: Yes.

ATTORNEY KREN SIMAO: And as part of your training, what forms of IDs specifically is your staff trained to use as acceptable?

PETRA UVIROVA: So for IDs, which is a Massachusetts driver's license, a Massachusetts liquor ID, also a U.S. passport

and military ID, which is active only, of course.

ATTORNEY KAREN SIMAO: In the event of -- this is a city full of tourism. Do you accept out-of-state IDs?

PETRA UVIROVA: We do. Our staff is definitely trained and aware that if we are presented or we are handed an out-of-state driver's license, it has to have a backup, always ask for a photograph. We ask additional questions.

If there is any kind of a possibility it looks like it's not good, it is fake, then are always ask for a manager. We always check -- and if it's not a hundred percent sure, we always refuse.

ATTORNEY KAREN SIMAO: Do you also have the ID book on the premises to compare the --

PETRA UVIROVA: Yes, we do.

MICHAEL GARDNER: Sorry to interrupt.

You said that when there is an out-of-state ID you also ask for backup --

ATTORNEY KAREN SIMAO: With a photo.

MICHAEL GARDNER: I'm not sure what you mean. Do you mean an alternative ID that has a photo?

PETRA UVIROVA: Correct, yes.

MICHAEL GARDNER: And if the ID itself has a photo, then you were not looking for a second form of ID?

ATTORNEY KAREN SIMAO: No even with the photo --

PETRA UVIROVA: Yes. Even with it.

ATTORNEY KAREN SIMAO: To avoid people taking someone else's and not having that backup. So there has to be a second form of identification also with a photograph on it as well as the ID book, which is on the premises.

PETRA UVIROVA: That is the general training.

ATTORNEY KAREN SIMAO: Do you have preshift meetings before every shift on every day that you are working?

PETRA UVIROVA: Yes, twice a day seven days a week.

ATTORNEY KAREN SIMAO: Do you recall having a preshift meeting on the evening in question?

PETRA UVIROVA: Definitely.

ATTORNEY KAREN SIMAO: And on that evening, did you conduct the preshift meeting?

PETRA UVIROVA: Yes.

ATTORNEY KAREN SIMAO: And do you recall addressing the fact that there is a high school model UN or a high school event in the city on that evening?

PETRA UVIROVA: Yes. We were aware and we -- and that's always -- basically that is the main reason why we have meetings twice a day, every time the employees shift, so in the morning and the p.m. shift, we want to

make sure that our staff is aware of what's going on in the Square.

We are highly alert and aware of that just because Harvard Square is a student location and there is always something going on.

ATTORNEY KAREN SIMAO: So on that evening, it wouldn't be unusual that there were youthful-looking -- to use that phrase -- people having dinner and eating at this time of day, is that correct?

PETRA UVIROVA: Yes.

ATTORNEY KAREN SIMAO: And your staff was reminded about alcohol-serving issues --

PETRA UVIROVA: Yes.

ATTORNEY KAREN SIMOA: -- and on a heightened awareness for requests for alcohol service?

PETRA UVIROVA: Yes.

ATTORNEY KAREN SIMAO: When you are on the premises on that sort of floor plan as

I have given, could you describe either your position or what you are doing throughout the night here, both you and the two hosts that I understand were directly under your wing at that time?

PETRA UVIROVA: Yes. Of course, me, as a manager, I work most of the time, basically almost 100 percent, on the floor. I talk to customers, I talk to our staff. I'm trying to help everywhere where it is needed.

ATTORNEY KAREN SIMAO: So you are regularly floating through all these tables?

PETRA UVIROVA: Exactly. I make sure I make very frequent appearances at the bar. I talk to the customers in the pub area. I basically am everywhere.

ATTORNEY KAREN SIMAO: So if you are floating, or the host that is floating, and they see a youthful-looking table with any alcohol in front of them, what's the protocol there?

PETRA UVIROVA: Well, if this was just water --

ATTORNEY KAREN SIMAO: No, we talking about alcohol.

PETRA UVIROVA: Well, of course, that's highly impossible. But as far as hypothetically, they will immediately notify the manager and the server in that section.

ATTORNEY KAREN SIMAO: And on this evening, because you were floating, at any time did you see someone, anyone slumped over the bar, whether it is this young woman or anybody else? At any time was there anybody on the floor with people around them?

PETRA UVIROVA: No.

ATTORNEY KAREN SIMAO: At any time did someone, purportedly in a position of authority overseeing a group of high school students, come to you as the manager and say, you know, "What are you guys doing? There are seven kids here with pitchers in front of

them."

PETRA UVIROVA: No.

ATTORNEY KAREN SIMAO: Did you see this female debate guide come in and escort this young lady out?

PETRA UVIROVA: No.

ATTORNEY KAREN SIMAO: When is the first time that you were made aware of any of this?

PETRA UVIROVA: When I talked to the officer.

ATTORNEY KAREN SIMAO: Officer Hogan?

PETRA UVIROVA: Yes.

ATTORNEY KAREN SIMAO: And is it accurate to say that that is simultaneously or at the same time that the bartender, Sean Barney, said that everything happened so quickly in terms of becoming aware that there is someone outside?

PETRA UVIROVA: Yes. Basically it was almost at the same time. He just started

talking to me and I saw Officer Hogan coming downstairs and I immediately went over to talk to him.

MICHAEL GARDNER: So at no time were you made aware that anybody needed any medical assistance?

PETRA UVIROVA: No.

ATTORNEY KAREN SIMAO: And your staff would normally advise you of this?

PETRA UVIROVA: Of course, yes.

ATTORNEY KAREN SIMAO: And as soon as you found that out from Officer Hogan, what did you do?

PETRA UVIROVA: We went up, I saw the ambulance in the street, there was a female chaperone who was with the girl that was being put in the car or in the ambulance. And I actually managed to talk a few quick words with the female chaperone and she was just saying, "Oh, I saw her. I don't know what's going on." She even said like, "Don't worry,

like nothing is happening." She seemed really not like way too worried. But she also was in a hurry -- I assume she was in a hurry to get to the hospital. So she did not talk to me about it.

ATTORNEY KAREN SIMAO: I have no further questions for this witness.

Do any of the Commissioners?

SUPERINTENDENT WILLIAMS: I have have a question for Officer Hogan.

Sir, you said that you spoke with Petra that night as the manager?

OFFICER DANIEL HOGAN: Correct.

SUPERINTENDENT WILLIAMS: There was also a reference to the bartender not serving this young girl. Did you speak to the bartender and get that?

OFFICER DANIEL HOGAN: Once the ambulance arrived and we assisted the ambulance crew with the young female in the ambulance, then I went to the bartender and I

spoke to the bartender and I said, "I'd like to speak to whoever is in charge, a manager."

And I didn't ask him directly if these individuals were served, I asked Petra, and Petra went back and asked the rest of the bar staff. And that's when we found out that the bartender refused to serve her.

MICHAEL GARDNER: I'm not clear how far you found that out.

OFFICER DANIEL HOGAN: Initially, the female chaperone says she was at the bar -- apparently, the female chaperone told me she was at the bar trying to get served, and the bartender refused her and told her that not only was she not going to get served, she should leave the premises.

I didn't speak with him directly, just the female guide.

And then I spoke to manager Petra. And then she went back to speak to the manager to get all the staff and so we could determine

if these -- if that individual or other individuals were actually inside the bar. So I let her do all the talking to the staff and the bartender.

SUPERINTENDENT WILLIAMS: And when Petra came back to you after talking to the bartender, what did she tell you?

OFFICER DANIEL HOGAN: She told me that this young female did try to get a drink at the bar and she was refused and was asked to leave the premises.

But also the other bar staff -- I guess there is some people or only certain employees can serve alcohol besides the bartender. There are wait staff in the restaurant, but I guess they don't serve alcohol. I think that's how they explained it to me.

SUPERINTENDENT WILLIAMS: So you went back in and spoke to your staff?

PETRA UVIROVA: Yes.

SUPERINTENDENT WILLIAMS: And that's how you determined that one of your bartenders said no to that girl and asked her to leave?

PETRA UVIROVA: Exactly.

SUPERINTENDENT WILLIAMS: And that was 10 minutes or 15 minutes after she had been told -- no, that's when you first found out about that?

PETRA UVIROVA: Well, the way I found out, I talked to Sean later on -- it was not even a period of like 15 minutes or so. It was really fast for me even, you know, the transition from me talking to Sean and Sean talking to Officer Hogan.

So, basically, there was not enough time for me to act, you know, just on my own and find out what happened because I did not see the girl at the bar.

The moment when I found out, both the chaperone and the girl were outside.

SUPERINTENDENT WILLIAMS: What I'm

saying is, when you first found out that the girl was outside and EMS was arriving, you went outside first and talked to whoever was outside?

PETRA UVIROVA: No. That was very simultaneous because I went -- I went there with Police Officer Hogan.

SUPERINTENDENT WILLIAMS: You talked to Officer Hogan?

PETRA UVIROVA: Yes.

SUPERINTENDENT WILLIAMS: And at his request you went back in and spoke to your staff?

PETRA UVIROVA: Yes

SUPERINTENDENT WILLIAMS: So it was after you spoke to him that you spoke to your staff; is that correct?

PETRA UVIROVA: Yes.

SUPERINTENDENT WILLIAMS: And found out that she had been refused, about 10 minutes? After she was refused, about 10

minutes?

ATTORNEY KAREN SIMAO: I would just like the record, just on that point, Superintendent, if I might, Petra did testify that as Officer Hogan was coming to tell her, Sean had just started to tell her about an incident at the bar. So I don't know if that was heard or picked up on the record, but that was her testimony.

SUPERINTENDENT WILLIAMS: But it was five to ten minutes, whatever.

And this is something that you submitted in evidence, and in three locations in this document it says that you refused -- all of your staff has to refuse to serve an intoxicated person. And the very first thing that they need to do is to notify the manager. In this document, in three different locations it says that. And, yet, you weren't notified right away.

A person who, by Officer Hogan's

testimony, appeared to be or was intoxicated, needed medical attention, and you weren't notified right away?

PETRA UVIROVA: Basically, I mean, I don't even think it was such a big period of time. Because from what I understood, and, you know, I talked to all the staff, when the girl or the chaperone took her out, and when Sean talked to me, it was a matter of like seconds or, literally, if it was one minute that was way too much.

ATTORNEY KAREN SIMAO: This is the first time that Sean spoke with you?

PETRA UVIROVA: Exactly. So that was, literally, it was a matter of seconds that he spoke to me, they went outside, and then I had a conversation with the officer

SUPERINTENDENT WILLIAMS: I think we can agree to disagree on a time. But is it -- based on what you heard of the young girl's condition, is it customary for your staff to

just send somebody away?

PETRA UVIROVA: No, of course not.

SUPERINTENDENT WILLIAMS: What would your staff be trained to do? If a person was highly intoxicated, what would your staff be trained to do?

PETRA UVIROVA: Immediately, of course, call the manager on duty and, of course, provide first aid if necessary, but then call 9-1-1 for help for an emergency, and, of course, immediately notify the police.

SUPERINTENDENT WILLIAMS: So that didn't happen in this instance; instead, your staff told the young girl to leave?

PETRA UVIROVA: Well, I believe the chaperone was involved at that point and immediately she took the lead of the whole situation.

And, you know, if it's a person -- in my opinion, if a person appears that, "Okay, I'm in charge of this person, I'm taking her

out," of course I cannot see how our bartender could tell her, "No, wait for my manager."

And if the person was probably kind of emotionally disturbed and, you know, the chaperone -- I would think that it was probably disturbing to see the person being so intoxicated, and she wanted to take her out.

Then, at that point, Sean was coming down to me and telling me what was happening. And then I met the police officer and we went outside.

ATTORNEY KAREN SIMAO: And if I may, Superintendent, I would, respectfully, for the record, object to the statement that this individual looked highly intoxicated. We don't have any medical records to back that up.

Mr. Barney is, in fact, here, who was the bartender, and will testify directly to you on the interaction he had.

And what he'll testify to you was

that the person did not -- when she was at the bar, she was refused, for different reasons other than appearing to be intoxicated. So I will put that on the record at this time and save the rest for his testimony.

SUPERINTENDENT WILLIAMS: Okay.

ATTORNEY KAREN SIMAO: Anything further?

MICHAEL GARDNER: Did you make observations of this young woman?

PETRA UVIROVA: Very briefly, I --

MICHAEL GARDNER: Did you form a conclusion as to whether she was under the influence or intoxicated?

PETRA UVIROVA: I wouldn't say she -- I mean --

MICHAEL GARDNER: Look, this is really very serious. What were your observations of her?

ATTORNEY KAREN SIMAO: Where was she when you saw her?

PETRA UVIROVA: She was in the ambulance, she was laying down and being taken care of.

MICHAEL GARDNER: So you never saw her out on the sidewalk?

PETRA UVIROVA: No, sir.

MICHAEL GARDNER: Did you have any conversations with her?

PETRA UVIROVA: No.

MICHAEL GARDNER: Did you hear her say anything?

PETRA UVIROVA: No.

MICHAEL GARDNER: So as far as you saw, she was simply a young woman who was put in an ambulance?

PETRA UVIROVA: Yes.

MICHAEL GARDNER: And you didn't have any opportunity to observe whether she was intoxicated or not, right?

PETRA UVIROVA: Right.

MICHAEL GARDNER: What is your

conclusion as to her level of intoxication, if any, from any of the conversations you had with your staff?

PETRA UVIROVA: Basically, what I've been told about her behavior at the bar, it was that she was not even -- it wasn't even clear if she was intoxicated or not because her behavior was rather strange, almost like crazy like. That doesn't necessarily -- it wasn't necessarily showing intoxication as, you know, you can usually see. So that was questionable.

And as my staff told me, she was trying to get alcohol from the bar, refused, and, you know, then she was taken away by her chaperone. And that is basically the information I got about her behavior.

MICHAEL GARDNER: Did you have any conversation with the hosts or hostesses who would have checked the ID of anybody entering the premises that evening?

PETRA UVIROVA: I spoke to all my staff.

ATTORNEY KAREN SIMAO: Does the host check IDs at the entrance?

PETRA UVIROVA: No, they do not.

ATTORNEY KAREN SIMAO: It's a family restaurant.

PETRA UVIROVA: Each table -- everybody who orders a drink, their IDs are checked.

MICHAEL GARDNER: Did you ask any of the staff if they had observed this strange-acting young woman who may or may not have been intoxicated when she entered the premises?

PETRA UVIROVA: No -- sorry. I talked to all my staff and nobody noticed, you know, any particular person or young woman that was kind of, you know, acting super crazy or anything unusual.

MICHAEL GARDNER: How long have you

been a manager at the restaurant?

PETRA UVIROVA: Since January 2011. I've been working at John Harvard's for two years now. I started as a hostess.

ATTORNEY KAREN SIMAO: And you've been a manager since January 2011?

PETRA UVIROVA: Yes. I've been working for a total number of years two. And I started January 2011 as a manager. Prior to that I was a hostess, server, floor manager.

MICHAEL GARDNER: Did you make any inquiries of the staff as to whether any relatively young-appearing men, shortly after this incident, paid a tab that included alcohol service?

PETRA UVIROVA: No. As I said, I immediately spoke to everybody.

MICHAEL GARDNER: I'm asking if you made inquiry as to whether any young-appearing males paid an alcohol-related tab, if you asked that question?

PETRA UVIROVA: Yes.

MICHAEL GARDNER: And the answer was?

PETRA UVIROVA: No.

MICHAEL GARDNER: And from your assessment of the situation, did the staff at the Brew House do anything wrong that evening?

PETRA UVIROVA: No.

MICHAEL GARDNER: So from your view, you really bear no responsibility for either the state of the woman taken away from your premises in an ambulance or the claims by the chaperone that had escorted six underage students out, no responsibility for that?

PETRA UVIROVA: Well, we always check IDs. And there is not a situation -- I cannot see that it's possible, with all we do, and the way our policies are and the way we act and we are very strict -- I just cannot see that happening.

MICHAEL GARDNER: As a matter of fact, you regard it as highly impossible that

anyone underage could be served in your premises?

PETRA UVIROVA: Yes.

ATTORNEY KAREN SIMAO: Speak up for the record.

PETRA UVIROVA: Yes.

MICHAEL GARDNER: And in your experience, either as a manager or in the two years you've been there, has that ever happened?

PETRA UVIROVA: No.

MICHAEL GARDNER: So you know of no instances where underage people have been served in your premises?

PETRA UVIROVA: Exactly.

MICHAEL GARDNER: Do you regard your procedures as foolproof?

PETRA UVIROVA: Yes.

LESTER BOKUNIEWICZ: I have a question for you.

I think you said that when the

chaperone came in, the girl had her head down on the table?

ANDREA BOYER: I have look back at my notes to see what I said because this is all based on the report.

LESTER BOKUNIEWICZ: I thought that's what I heard.

ANDREA BOYER: One moment.

He did state in the letter that he sent the e-mail that he sent. "I immediately reported to the restaurant with my colleague and found her slumped over on the bar. I immediately called 9-1-1."

LESTER BOKUNIEWICZ: So right after she asked the bartender for a drink, she slumped onto the bar?

ATTORNEY KAREN SIMAO: No one has ever seen her slumped on the bar; and everybody is here that was there, including the bartender.

ATTORNEY STEPHEN MILLER: If I might,

Investigator Boyer, doesn't, what he said is, "I came in the restaurant with my colleague, found her slumped over the bar." He then went around and supposedly rounded up his group and told them to pay their tabs and then called 9-1-1?

ANDREA BOYER: What he said was, "I immediately reported to the restaurant my colleague and found her slumped over the bar. I immediately called 9-1-1 and circled the restaurant to find the six other seniors." That's what he says.

MICHAEL GARDNER: And your point, sir?

ATTORNEY STEPHEN MILLER: It just seems very unusual that he would have her slumped over the bar and then leave her. And this whole statement is extremely inconsistent with the prior statements told to the police officers.

So just when he says, "they admitted

they drank," he is being very cute with his statements; he's not saying they drank there.

And they could have been in there eating, so they could have paid the tabs for their hamburgers.

And he doesn't say any anything there, you know, that there was any service or sale of alcohol or they were paying a tab with alcohol. That was my point. Thank you.

ATTORNEY KAREN SIMAO: Anything further for the manager.

MICHAEL GARDNER: What was the strange behavior, if you could elaborate on what that was?

ATTORNEY KAREN SIMAO: Do you prefer to hear that directly from Sean Barney? Otherwise it is for a hearsay, Sean telling her and her repeating it to you. But if that's what you want --

MICHAEL GARDNER: We'll wait.

ATTORNEY KAREN SIMAO: Mr. Barney.

SEAN BARNEY: My name is Sean Barney, B-A-R-N-E-Y, bartender on duty.

ATTORNEY KAREN SIMAO: How many years have you worked there?

SEAN BARNEY: It will be seven years in the fall.

ATTORNEY KAREN SIMAO: And you were the bartender on duty on the evening in question?

SEAN BARNEY: That's correct.

ATTORNEY KAREN SIMAO: You heard Petra's testimony as to the in-house training and tips training that all staff undergoes. And did you undergo that training?

SEAN BARNEY: I did.

ATTORNEY KAREN SIMAO: And on that evening were you present for the preshift meeting?

SEAN BARNEY: Absolutely.

ATTORNEY KAREN SIMAO: And do you recall a statement from Petra regarding the

high school event and that everybody needs to be on heightened alert?

SEAN BARNEY: Yes. The junior debate thing going around and there's probably going to be a lot of students around.

ATTORNEY KAREN SIMAO: And so on this evening, you are behind the bar this entire evening; is that correct?

SEAN BARNEY: That's correct.

ATTORNEY KAREN SIMAO: And at what point, because you have the direct knowledge on this particular individual, could you walk the Board through the time line and what happened with this individual, what you said, and at what point you notified management.

SEAN BARNEY: Yes. Starting from the beginning? Absolutely.

So I'm on the bar, on the service bar, it's a full bar but it's not -- and so this girl is kind of like talking really loud, but then, you know, she seemed a little

twitchy and strange. And so then she comes up to me and asks me for a rum and Coke. And, as it's my discretion, and we get a lot of odd people being in Harvard Square, Central Square, if there's any question in my mind, I immediately refuse service. I didn't even ask for an ID. She seemed a little bit off to me. She didn't seem like she was slurring her words or anything like that.

And then instantly she says, "Please can I have a rum and Coke?" And I said, "No. I can't serve you." I didn't say "get out."

At that moment, I was coming around the bar, which is like seven seats to come around, and at that same time the female chaperone starts to whisk her up the stairs.

And then I immediately contacted Petra. And Officer Hogan was -- had already been -- apparently somebody called 9-1-1 and he was right on the spot.

And as I'm talking to Petra about the

incident, Officer Hogan comes down the stairs.

ATTORNEY KAREN SIMAO: How much time had lapsed between you denying service and you coming around to tell the manager what's going on?

SEAN BARNEY: Seconds.

ATTORNEY KAREN SIMAO: So, again, if I may reference the chart, I've indicated where the service bar is -- it's all attached to the full bar. If you go into the premises, it's pretty evident that someone standing there is kind of obvious.

I think when she was standing there, the young woman, your observations, did you find her speech to be slurred?

SEAN BARNEY: No.

ATTORNEY KAREN SIMAO: Did you find her to be wobbly on her feet?

SEAN BARNEY: No. She was more animated, and then incidentally quiet. It was really strange.

ATTORNEY KAREN SIMAO: So when you say "strange," can you give some more elaboration on what strange meant?

SEAN BARNEY: I mean, she was very manic, and that doesn't always coincide with intoxication from alcohol.

ATTORNEY KAREN SIMAO: And at any time, did you see her slumped over that bar?

SEAN BARNEY: No. She actually wasn't tall enough to be slumped over our bar.

ATTORNEY KAREN SIMAO: And when you came around, did you see her on the floor? Did you see the chaperone pick her up off the floor?

SEAN BARNEY: The chaperone had her arm around her and was just literally whisking her up the stairs.

ATTORNEY KAREN SIMAO: But she was walking on her own?

SEAN BARNEY: Absolutely.

ATTORNEY KAREN SIMAO: And at the

time you came around, you start telling Petra what happened, your testimony is that that is simultaneously at the same time?

SEAN BARNEY: That's correct.

MICHAEL GARDNER: Did you observe, since you seem to have the firsthand view of this woman and this female chaperone, did you see a male chaperone assisting the female chaperone?

SEAN BARNEY: There was no male chaperone present what so ever.

ATTORNEY KAREN SIMAO: Did you see anyone -- did anybody come to you in any alleged position of authority to say "My six kids are over there and they've been served. What are you guys doing"?

SEAN BARNEY: No, in fact. It was under my impression that she was the last girl left in the restaurant.

ATTORNEY KAREN SIMAO: So to your knowledge --

SEAN BARNEY: No, not for all patrons, but as far as the students went.

MICHAEL GARDNER:

ATTORNEY KAREN SIMAO: Did she at any time reference another person --

SEAN BARNEY: No.

ATTORNEY KAREN SIMAO: So she was just by herself?

SEAN BARNEY: Yes.

MICHAEL GARDNER: The "she" you are talking about is the chaperone?

ATTORNEY KAREN SIMAO: The young woman.

There's two separate statements. The first statement was that the debate team guide was by herself, that there was no male guide.

And then I believe the statement was that the female that was at the bar trying to get service was also by herself, there was no group with her.

MICHAEL GARDNER: There was no group

with her.

ATTORNEY KAREN SIMAO: There was no group that followed this shuffling of her out.

Because you are right there?

SEAN BARNEY: Right. There's only one exit and entrance.

ATTORNEY KAREN SIMAO: Again, he is the closest person in proximity here to these stairs that people come in and out. And so that is why I'm asking the question.

Based on these statements made by these folks, it all happened simultaneously. So it would seem that Mr. Barney would see this commotion, I mean, he is right there, and there is none, nor does he see a male chaperone.

SEAN BARNEY: That's correct.

MICHAEL GARDNER: And where would people pay their bills?

SEAN BARNEY: To the individual waiters.

ATTORNEY KAREN SIMAO: And if they are at your bar, they pay?

SEAN BARNEY: They pay me.

ATTORNEY KAREN SIMAO: I have no further questions of Mr. Barney. I would open it up to the floor.

MICHAEL GARDNER: Sir, are you aware of any instances where underage people have been served at the Brew House?

SEAN BARNEY: To my knowledge, there has never been an instance where someone underage has been served.

MICHAEL GARDNER: Including -- there's never been a time when either you or anybody that you know of had to call a manager over because they were suspicious about somebody who had been served?

SEAN BARNEY: About their age or --

MICHAEL GARDNER: Yes.

SEAN BARNEY: No, because we are pretty hard and fast.

MICHAEL GARDNER: The procedures you have about "if there is a question, then you get in touch with the manager right away," that is part of the preliminary introduction, and, in fact, that has never happened?

SEAN BARNEY: Not in my experience. Because we also have the authority at our tables or at our bar, if we see anything suspicious, to instantly deny service.

ATTORNEY KAREN SIMAO: On an average day to you deny service? Or on an average night to do deny service?

SEAN BARNEY: On an average night?

ATTORNEY KAREN SIMAO: Or an average week?

SEAN BARNEY: Yes.

ATTORNEY KAREN SIMAO: How often on average each week do you deny service for any number of reasons? For identification issues?

SEAN BARNEY: We are always having identification issues because of all of the

foreign students at Harvard and they'll come in with, say, a Belfast driver's license. And I have to say, "Sorry, I can't accept that." That happens constantly.

ATTORNEY KAREN SIMAO: And management is not called on that because you made the call?

SEAN BARNEY: The only time that management is called is if they have a complaint about it. Because we have the responsibility and the confidence to deny improper identification.

MICHAEL GARDNER: Did you ever deny someone and then have to call the manager?

SEAN BARNEY: Absolutely. You know, someone says, "Come on, I'm 28 years old. It says on my Belfast -- or my, you know, Columbian driver's license, it says that this is my age."

And I'm like, "I'm sorry. This is not my rules, this is the rules of the city

and the state."

And then it will be like, "I need to speak to a manager." And at that point, you know -- it mostly occurs for my own -- you know, to have to upset customers, you just have the manager handle it in an official capacity.

MICHAEL GARDNER: I think you said either that you didn't see a male chaperone or there wasn't one. I am just wondering if you could clarify what your observations were?

SEAN BARNEY: The only person of authority surrounding the girl in question was the female guidance counselor. There was no one else.

MICHAEL GARDNER: You are not in a position to say, I take it, that someone else came and went to another area of the establishment searching for the other members of the debate team, are you?

SEAN BARNEY: No. Because they

obviously did not announce their presence to anyone, if they were there.

MICHAEL GARDNER: Do you doubt they were there?

SEAN BARNEY: I do. Because I've seen everyone come in and out. Especially in a situation like that, your senses are completely heightened, you know, and you are ultra paying attention and really focused, even more than you normally are.

And so with all that commotion going on, you really want to pay attention to who is coming in and who is still there. I never for one moment thought that there was another person in authority with the woman in question.

ATTORNEY KAREN SIMAO: If I may, just to emphasize the point -- Greg, who is the male chaperone, says that he reported to the restaurant with his colleague -- who we are not sure who they are -- and found her, being

the young woman slumped on the bar.

Your testimony is that the only person that approached this young person was the female chaperone?

SEAN BARNEY: I'm 100 percent confident in that.

ATTORNEY KAREN SIMAO: And that she wasn't slumped on the bar?

SEAN BARNEY: It is physically impossible -- she is really short, there is no way she would be slumped over the bar.

MICHAEL GARDNER: Is that because there aren't any stools there?

ATTORNEY KAREN SIMAO: In that section --

SEAN BARNEY: Oh, she never sat down at the bar. She approached me from the service bar. In the service bar area, there are no stools because that's how the waitresses and waiters get their drinks.

SUPERINTENDENT WILLIAMS: You

mentioned, or it actually was brought up that there are numerous instances where you have refused to serve somebody?

SEAN BARNEY: Correct.

SUPERINTENDENT WILLIAMS: Obviously the ID issue was one. What are some of the other reasons, and what actions have you taken as a result of those other reasons? And I'll let you explain.

SEAN BARNEY: Well, obviously, if someone seems too intoxicated, you alert the manager, they write it down in the report book. We also offer to call a cab and water. And food is obviously not an issue at that point. And we make everyone in the restaurant aware of that fact.

SUPERINTENDENT WILLIAMS: Is it totally at your discretion yourself to serve -- you mentioned that this girl was twitchy. You refused to serve her because she was twitchy?

SEAN BARNEY: Yes. She was loud and then quiet. And she was talking to patrons at my bar and she just seemed off.

There is other times -- you know, you just get weird patrons in Harvard Square. And I've also worked at the Middle East in Central Square.

And people come in and you are kind of like -- I don't know if you've been drinking. I'm not sure. I just don't feel comfortable serving you. And we totally have that at our discretion.

ATTORNEY KAREN SIMAO: And when you don't feel comfortable serving someone, whether they are there to eat or whatever, and you don't feel comfortable serving them, what is the protocol for making sure that nobody else is serving them?

SEAN BARNEY: Oh, you tell everybody else in the restaurant. You'd be like, "That guy, he can definitely stay and have water."

He's trying to order some food. But make sure that at no point do you ever see a beverage in front of him other than a glass of water."

SUPERINTENDENT WILLIAMS: And the last question I have, you mentioned the Belfast ID and the Columbian ID. And what do you do for a New Jersey ID?

SEAN BARNEY: New Jersey ID? You reference it with the book behind the bar, if it looks at all fake. Otherwise, you ask for another form of photo identification.

A lot of credit cards these days have a picture on them and they have the name and they have to match up.

SUPERINTENDENT WILLIAMS: And what is the book behind the bar?

SEAN BARNEY: It shows all the proper licenses and identifications that are acceptable. And if the card looks a little bit off, you can go -- say, if somebody from North Dakota comes in and you haven't seen

that ID, you instantly go check it with that group of book.

SUPERINTENDENT WILLIAMS: And the wait staff, if they need to do it, what do they do?

SEAN BARNEY: They do the exact same thing.

LESTER BOKUNIEWICZ: I have one question. To your knowledge, did any of the students pay their bill with you?

SEAN BARNEY: No, they didn't.

MICHAEL GARDNER: And the approximate time of the events, if you remember?

SEAN BARNEY: Say, 10:00, 10:30, I think.

MICHAEL GARDNER: What is 2100 hours.

ANDREA BOYER: 9:00.

MICHAEL GARDNER: So if the police report said 9:00, would that cause you -- or 9:20 -- would that cause you to question the validity of your memory with respect to the

times that these events occurred?

SEAN BARNEY: No. That makes sense. Because it was right when -- it was definitely -- because the dining room was just closing down and it closes down at 10:00, around that time on a Sunday. So it would be before 10, my apologies.

SUPERINTENDENT WILLIAMS: On a Sunday.

MICHAEL GARDNER: Do you have any other questions?

ATTORNEY KAREN SIMAO: I have no more questions.

MICHAEL GARDNER: Thank you very much.

ATTORNEY KAREN SIMAO: Just to sort of the outline here. Joan is one of the servers in this pub section, and she will be able to offer -- she did have a visual, again, of the chaperone and the woman at the station.

Really, she is here to testify, as is

the rest of the staff after her, as to whether or not it is possible that seven or six high school students were served alcoholic beverages. None of the other folks have any knowledge of the woman at the bar or the chaperone coming in.

But at the tail-end of Joan's testimony, she can testify that she visually made an observation at that point. -

Okay. Will you state your name and spell it for the record. And make sure you speak up, please.

JOAN GIORDANO: My name is Joan Giordano, J-O-A-N, G-I-O-R-D-A-N-O.

ATTORNEY KAREN SIMAO: And how many years in total have you worked for John Harvard's Brew House?

JOAN GIORDANO: For John Harvard's, as a company, I've worked there since November of 2002.

ATTORNEY KAREN SIMAO: And for this

location?

JOAN GIORDANO: For this location, I started there in January of 2006.

ATTORNEY KAREN SIMAO: So you've been there for a while?

JOAN GIORDANO: For five and a half years.

ATTORNEY KAREN SIMAO: And you were working there on the evening in question?

JOAN GIORDANO: That's correct.

ATTORNEY KAREN SIMAO: And you heard Petra's testimony as to the in-house training and tips training. And is it your testimony that that is accurate?

JOAN GIORDANO: Yes.

ATTORNEY KAREN SIMAO: And you received the training --

JOAN GIORDANO: I actually lead the training for many of the new hires.

ATTORNEY KAREN SIMAO: And you regularly have preshift meetings?

JOAN GIORDANO: Every shift.

ATTORNEY KAREN SIMAO: Do you recall the preshift meeting for this shift?

JOAN GIORDANO: Yes.

ATTORNEY KAREN SIMAO: And you were told by Petra that to be on heightened awareness?

JOAN GIORDANO: Yes.

ATTORNEY KAREN SIMAO: Not just you, but all the staff was told to be on heightened awareness?

JOAN GIORDANO: Actually, all weekend long, this debate final championship -- I'm not exactly sure what it was called -- but it does happen every year, and we regularly get large reservations with this group of students.

So sometimes groups of 20 or 30 of them, with chaperones, will reserve our private dining room. They'll come in and get sodas and burgers. So we've dealt with these

people. We knew they would be in and out all weekend long.

ATTORNEY KAREN SIMAO: So let's take the example -- whether or not it was the case here, we really don't know -- but because you brought it up, the example of a chaperone makes a reservation for them and presumably they are overage and a table of six -- underage and a table of six.

And can you walk the Board through what the procedures are -- I'm going to call it, a mixed-use table, just for the record -- can you walk the board through what the procedures are when you, as a waitress, are dealing with a mixed-use table?

JOAN GIORDANO: So in other words, if they are people who are underage and people who are overage at a table?

ATTORNEY KAREN SIMAO: Correct.

JOAN GIORDANO: Because we are a full service restaurant, we serve food and

alcoholic beverages, we don't card at the door. We let people who are underage come in and sit down. We card people only upon them asking for alcohol service.

So if there is a group of six kids and the chaperone, and the chaperone ordered alcohol, I would still most likely ID the chaperone. Unless they looked like -- I would ID anyone that appeared under the age of 30. And for anyone who does have a valid identification, I would serve them.

If there were only one person at the table who had valid identification and they ordered a single alcoholic beverage, that would be fine. We would monitor the table to make sure they are not passing the drink to anyone who is underage.

ATTORNEY KAREN SIMAO: So if there are two older people at the table and they were ordering alcoholic beverages.

JOAN GIORDANO: If there were two of

them, then we would give them two glasses, if there were two people of age. And, again, monitor the rest of the table to make sure they are not passing off drinks.

There would never be any additional glasses brought to that table so underage people would not be able to have a glass of alcohol.

And we do try to monitor as well, say, if we gave them a soda in the beginning of the night, that over the course of the night it is still soda in the glass.

ATTORNEY KAREN SIMAO: So you either would refill it or remove the glass?

JOAN GIORDANO: Correct, yes. We always try to get empty glassware off the table as fast as possible in any situation.

ATTORNEY KAREN SIMAO: And the same would go for water. Let's say if it's a glass of water, you'd keep refilling the water or remove the glass?

JOAN GIORDANO: That's correct.

ATTORNEY KAREN SIMAO: On this night, do you think it is possible that seven youthful high-school-age students were served alcoholic beverages by you in your section

JOAN GIORDANO: Absolutely not.

ATTORNEY KAREN SIMAO: And, in your opinion, do you think it is possible they would have been served in any other section, having worked for John Harvard's for as long as you've worked there?

JOAN GIORDANO: I don't believe so. I can positively say that if I had seen kids at a table with a pitcher in front of them, if they were in my section, I would have automatically asked them for IDs. If they had, like, sat down with a pitcher or something like that, I would ask them for IDs. And if I had seen them in another person's section, I would go to the server and say, "Did you ID every one at that table?"

And if they said "no," I would probably address the people myself, if not with the other server, and I would certainly get a manager involved.

ATTORNEY KAREN SIMAO: In the years that you've worked for John Harvard's -- whether at this location or another location because this is a company-wide policy -- have you ever had to cross-check another server to say -- have you ever gone by a table and said, "I want to double-check them" and either you'd double-check them or you'd ask the manager to double-check them?

JOAN GIORDANO: I have certainly gone to the server to make sure that they have ID'd the appropriate people. I don't believe that I'd ever gotten myself into the situation where I'd seen people that looked underage and then addressed the server who was taking care of them and felt like they weren't being honest or that they weren't taking it

seriously. But if that were the situation, I would certainly bring it to the attention of a manager.

ATTORNEY KAREN SIMAO: So when you have approached the server with that question, you felt confident that they also followed the protocol and checked the IDs?

JOAN GIORDANO: Correct.

ATTORNEY KAREN SIMAO: And on the evening in question, because of where you were stationed, routinely you are sort of walking in this open area here and you have a line of sight of not only the bar, but specifically the service bar; is that accurate?

JOAN GIORDANO: That's correct.

ATTORNEY KAREN SIMAO: And on the evening in question, at any time point in the evening, did you witness anyone slumped over the bar?

JOAN GIORDANO: I did not.

ATTORNEY KAREN SIMAO: Did you notice

anyone on the floor at any time?

JOAN GIORDANO: I did not.

ATTORNEY KAREN SIMAO: Did anyone at any time while you were serving these tables, did anyone come up to you, and identify themselves as someone in a position of authority -- a chaperone, a debate guide, a counselor, we have lots of different names here -- to say, "Hey, these are my kids, these kids were served. This is a problem."

Nobody ever made that statement?

JOAN GIORDANO: No.

ATTORNEY KAREN SIMAO: Do you recall any table with youthful people paying a tab that would have included any alcoholic drinks on it on that evening?

JOAN GIORDANO: No.

ATTORNEY KAREN SIMAO: Do you recall seeing -- subsequently I think you found out she was the chaperone -- but could you testify to the Board what your observations were and

then how you found out that, in fact, that was the chaperone and what that story was? Can you walk the Board through your observations.

JOAN GIORDANO: I believe it was right before Sean, the bartender, was walking around the bar to go get the manager, Petra. I did see a girl and an older woman. At the time I assumed it was a mother and daughter kind of arguing in the service bar area. I'm only piecing it together after the fact that this was the underage girl and the chaperone.

I did not have any personal interaction with them. But I did observe them standing across from one another, freely, not holding herself up on the bar and not being held up by the other woman, but I did see them interacting with each other in kind of an argumentative way. It looked as though the older woman was lecturing or kind of yelling at the younger girl.

But she was definitely standing on

her own. She did not look to me to be intoxicated. She just looked like a girl who was getting in trouble with her mom.

ATTORNEY KAREN SIMAO: Did you see the older woman walk the younger woman out?

JOAN GIORDANO: I did not. Like I said, it looked like an argument between a mother and daughter. So when I saw them, I believe I was probably going up to the service bar area to retrieve drinks to bring to another table. I think I just walked up and walked away.

ATTORNEY KAREN SIMAO: And then following this incident, do you remember your manager, Petra, asking you whether you served any -- whether there was a table of young high school students in your section?

I mean, you heard the questions and what Petra testified to.

JOAN GIORDANO: Correct.

ATTORNEY KAREN SIMAO: Do you recall

the interview, the post-incident interview?

JOAN GIORDANO: Correct. I would assume she went to all the servers. But I know she came to myself and another server, Catherine, she and I were working together in this kind of pub area that night.

So she talked to both of us to ask us if we had served her. If we recognized her. I knew who she was referring to because she was telling me that the chaperone came and retrieved her. So at that point I knew that it was this girl that I had seen at the service bar area.

But that was the first time I had seen her. I certainly didn't have any young men in my section that were being rounded up by anyone else.

And, again, all I can say is that if there were young men in that restaurant that were trying to drink alcohol, they certainly would not served anything.

MICHAEL GARDNER: So you never saw the young woman before you saw her at the bar area?

JOAN GIORDANO: Correct.

MICHAEL GARDNER: So you don't really see everyone who is in the bar -- in the restaurant at any particular time?

JOAN GIORDANO: That is accurate.

MICHAEL GARDNER: There really isn't any way for you to know for sure that there weren't young men in the bar with beer in front of them?

JOAN GIORDANO: Correct. All I know is that they certainly were not in my section.

MICHAEL GARDNER: Okay. Any questions?

(No response.)

MICHAEL GARDNER: Thank you. We're all done.

ATTORNEY KAREN SIMAO: Our next witness, please state your first and last name

for the record and spell it for us.

CATHERINE GRANWEHR: My name is Catherine Granwehr, C-A-T-H-E-R-I-N-E, G-R-A-N-W-E-H-R.

ATTORNEY KAREN SIMAO: And you were working at the restaurant on the night in question?

CATHERINE GRANWEHR: Yes.

ATTORNEY KAREN SIMAO: And how long have you worked at John Harvard's?

CATHERINE GRANWEHR: As a whole, roughly eight years.

ATTORNEY KAREN SIMAO: And how long in this location.

CATHERINE GRANWEHR: August 9th would be six years.

ATTORNEY KAREN SIMAO: And you and Joan were handling this pub section together, right?

CATHERINE GRANWEHR: Yes.

ATTORNEY KAREN SIMAO: And you had

heard Petra's testimony regarding in-house training and tips training certification. And you, for the record, acknowledge that that is the training?

CATHERINE GRANWEHR: Yes.

ATTORNEY KAREN SIMAO: And you have also been trained in this manner?

CATHERINE GRANWEHR: Yes.

ATTORNEY KAREN SIMAO: And there was a preshift meeting?

CATHERINE GRANWEHR: Yes. Twice a day every day.

ATTORNEY KAREN SIMAO: And at that preshift meeting, you also recall Petra informing all the staff about the high school student and to be on heightened awareness?

CATHERINE GRANWEHR: Yes. It was a weekend long event.

ATTORNEY KAREN SIMAO: And to that end, I'll try not to belabor the record or the Board's time here, but you heard Joan's

testimony what we were calling mixed-use tables, where you might have some chaperones and some younger folks at the table?

CATHERINE GRANWEHR: Yes. Every day.

ATTORNEY KAREN SIMAO: How do you handle that?

CATHERINE GRANWEHR: Just what she said. You card whoever asks for a drink. You give -- if they ordered a pitcher, we'd give them a glass per person. Anything on the table is removed. If it's a glass of water or soda, it's refilled immediately. We walk around with water pitchers to fill up the water glasses.

ATTORNEY KAREN SIMAO: So is it fair to say that there is extra monitoring that goes on with a mixed table?

CATHERINE GRANWEHR: Absolutely, yes.

ATTORNEY KAREN SIMAO: Do you believe it is possible that seven high school folks

were served alcohol in your section.

CATHERINE GRANWEHR: Absolutely not.

ATTORNEY KAREN SIMAO: Do you feel, based on the number of years you've been there, the training and knowing the staff on duty, that it is possible they were served anywhere else on the premises?

CATHERINE GRANWEHR: No.

ATTORNEY KAREN SIMAO: Do you recall anyone in any position of authority presenting themselves to you saying "There is this table in your section, they are underage, what are you doing?"

CATHERINE GRANWEHR: No.

ATTORNEY KAREN SIMAO: Again, you are in this section where you have regularly a view of the bar, of the service bar, do you recall at that point seeing anyone slumped over the bar?

CATHERINE GRANWEHR: No.

ATTORNEY KAREN SIMAO: Do you recall

seeing anyone slumped on the floor?

CATHERINE GRANWEHR: No.

ATTORNEY KAREN SIMAO: Did Petra conduct an interview with you as well after this incident that night?

CATHERINE GRANWEHR: Yes.

ATTORNEY KAREN SIMAO: And she asked these questions of you when it was all fresh in your head, everything had just happened?

CATHERINE GRANWEHR: Right.

MICHAEL GARDNER: So you sound quite certain that it is not possible to have served underage --

CATHERINE GRANWEHR: Yes, it is not possible.

MICHAEL GARDNER: And it has never happened in your experience?

CATHERINE GRANWEHR: Not so long as I've been there.

MICHAEL GARDNER: Do you acknowledge the possibility that someone is underage with

a good enough ID to pass?

CATHERINE GRANWEHR: No.

MICHAEL GARDNER: That's not possible?

CATHERINE GRANWEHR: No. We are very, very strict. We know exactly what a fake ID looks like; even a good fake. We card everyone that looks under the age of 30.

MICHAEL GARDNER: So to the extent that there is any underage drinking in the City of Cambridge, it doesn't happen at your place?

CATHERINE GRANWEHR: No.

MICHAEL GARDNER: And your level of certainty?

CATHERINE GRANWEHR: High.

MICHAEL GARDNER: Thank you.

Anything else?

SUPERINTENDENT WILLIAMS: No questions.

LESTER BOKUNIEWICZ: No questions.

MICHAEL GARDNER: Okay. That's all.

ATTORNEY KAREN SIMAO: Okay. Would you please come up here and I'll ask you to state your name for the record; first name, last name and spell it.

LAURA SPRAGUE: I'm Laura Sprague, S-P-R-A-G-U-E.

ATTORNEY KAREN SIMAO: And you were a staff person on the evening in question?

LAURA SPRAGUE: Yes, correct.

ATTORNEY KAREN SIMAO: And how long have you worked at John Harvard's?

LAURA SPRAGUE: Three years.

ATTORNEY KAREN SIMAO: And you heard Petra's testimony regarding in-house training and tips training and certification, and you agree with her statement?

LAURA SPRAGUE: Yes.

ATTORNEY KAREN SIMAO: And you yourself have been trained?

LAURA SPRAGUE: Yes.

ATTORNEY KAREN SIMAO: Do you recall the preshift meeting?

LAURA SPRAGUE: Yes.

ATTORNEY KAREN SIMAO: Do you Petra discussing the weekend long event and you remember her advising all staff to be on a heightened awareness for the high school contingency that would be coming in?

LAURA SPRAGUE: Yes.

ATTORNEY KAREN SIMAO: The section that you were working, which is in the dining room section, is it possible that in your section --

MICHAEL GARDNER: Could I have a visual on where the dining room is?

ATTORNEY KAREN SIMAO: Certainly. On the right-hand side it says "Laura Sprague," that's her. The lines aren't exactly defined but she was definitely in the dining room, not in this pub area (indicating) anything longer.

MICHAEL GARDNER: Okay.

ATTORNEY KAREN SIMAO: Is it possible that a table of six to seven young, youthful gentlemen were served by you in your section?

LAURA SPRAGUE: No.

ATTORNEY KAREN SIMAO: Now, when you Laura, you sort of regularly walk up to the pub area to get to the service bar, is that accurate?

LAURA SPRAGUE: Yes. I can go two ways; it depends on the flow.

ATTORNEY KAREN SIMAO: So on that evening, it wouldn't be unusual for you have gone through the pub area?

LAURA SPRAGUE: Correct.

ATTORNEY KAREN SIMAO: If you, in walking through the restaurant, if you view a table of six or seven youthful-looking boys at a table with any alcoholic beverage in front of them, what is it that you are trained to do and what is it that you are to do, in fact?

LAURA SPRAGUE: I would question the

server, make sure that they have an ID.

ATTORNEY KAREN SIMAO: And in your three years of working at this location, have you ever double-checked with a server to make sure that a table had been properly ID'd?

LAURA SPRAGUE: I don't think I have had to.

ATTORNEY KAREN SIMAO: And in the number of times that you walk back and forth and past this pub area, in terms of the -- whether at the bar area or anywhere else for that matter, but specifically the bar area, did you witness anyone slumped over the bar at any point in the evening?

LAURA SPRAGUE: No.

ATTORNEY KAREN SIMAO: Did you witness anyone on the floor that evening?

LAURA SPRAGUE: No.

ATTORNEY KAREN SIMAO: Did you experience any interaction with any person in any position of authority overseeing the

chaperoning of a group of younger people that said to you, either, "they are with me" or "they were served and how did they get served"? Did anybody identify themselves to you in that manner or was there any interaction like that at all?

LAURA SPRAGUE: No.

ATTORNEY KAREN SIMAO: And subsequent to this event, Petra also spoke with you when it was fresh in your mind to ask you some questions to make this determination?

LAURA SPRAGUE: Yes.

MICHAEL GARDNER: So did you notice a young woman acting strange at any time and any place in the establishment?

LAURA SPRAGUE: No.

MICHAEL GARDNER: I'd like to ask that question to the last witness as well.

The question was: Did you notice at any time that evening a young woman acting strange as you've heard Brian describe?

CATHERINE GRANWEHR: No. There was a woman standing at the service bar where we come in, where Joannie and I -- or anyone working that night would come in to get our drinks, and I simply said, "Excuse me," and grabbed my drinks and I turned around. And when I came back to grab my second round of drinks, she was already gone.

MICHAEL GARDNER: So you didn't see that person?

CATHERINE GRANWEHR: Just the back. Like I grabbed -- I just walked up, grabbed my drinks, and walked away.

ATTORNEY KAREN SIMAO: And, again, that is a service bar?

MICHAEL GARDNER: Okay. Thank you very much.

ATTORNEY KAREN SIMAO: Thank you. Julie, can you come up and state your name and spell it for the record.

JULIE AVALLONE: My name is Julie

Avallone, A-V-A-L-L-O-N-E.

ATTORNEY KAREN SIMAO: And how long have you worked for John Harvard's restaurant.

JULIE AVALLONE: A year and a half.

ATTORNEY KAREN SIMAO: And you were working on evening in question?

JULIE AVALLONE: I was.

ATTORNEY KAREN SIMAO: And for your point of reference, Julie was in Section 11, which was actually either closed or closing down around the time of the incident.

But in the interest of bringing all the staff to you, since we don't really know and we don't believe there was an incident, but we don't know allegedly when these folks were in there, and so we wanted to make sure the Board was privy to all of the staff.

Okay. Now, you've heard Petra's testimony on training, in-house and tips training?

JULIE AVALLONE: I have.

ATTORNEY KAREN SIMAO: And you have gone through that training on all accounts?

JULIE AVALLONE: I have.

ATTORNEY KAREN SIMAO: And you were present at the preshift meeting?

JULIE AVALLONE: I was.

ATTORNEY KAREN SIMAO: And you heard Petra's exchange to staff regarding the weekend and the high school event and that everyone is on sort of heightened alert to prevent these kinds of issues?

JULIE AVALLONE: I did.

ATTORNEY KAREN SIMAO: Is it possible that in your section, Julie, that you served a table with six or seven young men who were underage?

JULIE AVALLONE: Absolutely not.

ATTORNEY KAREN SIMAO: Do you recall seeing anyone -- and, again, I know that there are two ways to get to this service area, but

no matter what, you still end up at the service area -- do you recall seeing anyone in that service area or bar area slumped over the bar at any time during your shift?

JULIE AVALLONE: No.

MICHAEL GARDNER: Do you recall seeing anyone on the floor or with people around them?

JULIE AVALLONE: No.

ATTORNEY KAREN SIMAO: Did anyone in a position of authority, claiming to be a chaperone or a counselor or a guide, present themselves to you and say, "These kids are in this section and we need to get them out"?

JULIE AVALLONE: No.

MICHAEL GARDNER: You heard the testimony of Katie and Laura regarding the mixed use of the tables when there is an adult.

Is it your testimony that that is the company procedure and you follow that same

procedure?

JULIE AVALLONE: Absolutely.

ATTORNEY KAREN SIMAO: Limiting the number of empty glasses, removing glasses, refilling glasses.

Is it also the company policy and your practice that when you have a mixed-use table, you are on a heightened sense of alertness watching that table?

JULIE AVALLONE: Yes. In the dining room, we inform anyone that is waiting who the people are that are underage.

ATTORNEY KAREN SIMAO: So you were communicating with the other wait staff?

JULIE AVALLONE: Yes.

MICHAEL GARDNER: Did you see a young woman acting strange that evening?

JULIE AVALLONE: I did not.

MICHAEL GARDNER: Thank you. That's all I have.

ATTORNEY KAREN SIMAO: The next

witness, Wendell, can you come up. Will you state your name and spell it for us.

WENDELL SPARKS: My name is Wendell Sparks, S-P-A-R-K-S.

ATTORNEY KAREN SIMAO: How long have you worked for John Harvard's?

WENDELL SPARKS: Roughly nine months.

ATTORNEY KAREN SIMAO: And you were working on the evening in question?

WENDELL SPARKS: Yes.

ATTORNEY KAREN SIMAO: And you heard Petra's testimony regarding the in-house training and the tips certification training?

WENDELL SPARKS: Yes.

ATTORNEY KAREN SIMAO: And as one of the probably more junior people on that evening, you also received both in-house training and the tips certification training?

WENDELL SPARKS: Yes.

MICHAEL GARDNER: And you were present at the preshift meeting?

WENDELL SPARKS: Yes.

MICHAEL GARDNER: And you recall Petra discussing the weekend events and the high school students being in the area, and that staff should be at a heightened sense of awareness?

WENDELL SPARKS: Yes.

ATTORNEY KAREN SIMAO: And you have also heard testimony about mixed-use tables where there are some people of age who produce adequate IDs, and some people who are not. And that is something that you also deal with mixed use tables in the dining room pretty regularly?

WENDELL SPARKS: Yes.

ATTORNEY KAREN SIMAO: And is it your testimony that it's the company policy, and you enforce that policy limiting the number of glasses with alcoholic beverages and removing empty glasses?

WENDELL SPARKS: Yes.

ATTORNEY KAREN SIMAO: And refilling water pitchers?

WENDELL SPARKS: Yes.

ATTORNEY KAREN SIMAO: Refilling sodas?

WENDELL SPARKS: Yes.

ATTORNEY KAREN SIMAO: And on the evening in question, again, where you are, you work pretty close to the service bar area, is that accurate?

WENDELL SPARKS: Yes.

ATTORNEY KAREN SIMAO: And did you witness anyone slumped over on the bar?

WENDELL SPARKS: No.

ATTORNEY KAREN SIMAO: Did you witness anyone on the floor?

SUPERINTENDENT WILLIAMS: No.

ATTORNEY KAREN SIMAO: In your section, is it possible that there was a group of seven underage gentlemen that would have been served?

WENDELL SPARKS: No.

ATTORNEY KAREN SIMAO: Did anyone present themselves to you in a position of authority, as a chaperone or otherwise, and stating that they had a table that had been served alcoholic beverages?

WENDELL SPARKS: No.

ATTORNEY KAREN SIMAO: I'll leave the last question for you.

MICHAEL GARDNER: There's been a lot of comments about seven underage students. I think the documentary evidence that has been read into the record is not that there were seven underage students, but a group of four and a group of two. I'm not sure why the questions have been asked the way they were.

But do you recall a group of four or a group of two young men?

WENDELL SPARKS: No, I do not.

MICHAEL GARDNER: Did you see a woman acting strange?

WENDELL WILLIAMS: No.

ATTORNEY KAREN SIMAO: And if you'd like, we can have the other staff member testify, if you want the questions separated?

MICHAEL GARDNER: You asked the questions the way you asked the questions. I'm fine.

ATTORNEY KAREN SIMAO: Okay. Next. And would you state your full name for the record and spell your last name, please.

DANIEL SMALL: My name is Daniel Small, D-A-N-I-E-L, S-M-A-L-L.

ATTORNEY KAREN SIMAO: And how long have you worked for John Harvard's?

DANIEL SMALL: A little over two years.

ATTORNEY KAREN SIMAO: And you were working on the evening in question?

DANIEL SMALL: Yes.

ATTORNEY KAREN SIMAO: And you were present on -- you were here, you heard Petra's

testimony regarding in-house training and tips training?

DANIEL SMALL: Yes.

ATTORNEY KAREN SIMAO: And is it your testimony that you had received that training?

DANIEL SMALL: Yes.

ATTORNEY KAREN SIMAO: And do you recall the preshift meeting?

DANIEL SMALL: I do.

ATTORNEY KAREN SIMAO: And Petra referencing the high school's week-long events?

DANIEL SMALL: Yes.

ATTORNEY KAREN SIMAO: And that the staff was to be on heightened awareness?

DANIEL SMALL: Yes.

ATTORNEY KAREN SIMAO: And you, again, were in the dining room section on that evening. Do you recall any tables of -- is it possible that there were any tables of underage students, whether it was four and

two, or six, in any way, shape, or form having been served? Is it possible at all that that would have happened?

DANIEL SMALL: No.

ATTORNEY KAREN SIMAO: And do you recall, again, in your trips to the service bar, seeing anyone slumped over the bar or on the floor?

DANIEL SMALL: No.

ATTORNEY KAREN SIMAO: Did anyone present themselves as a chaperone, stating that they are taking their kids out?

DANIEL SMALL: No.

ATTORNEY KAREN SIMAO: And you heard the testimony regarding mixed-use tables, and again, in the dining room, that is pretty common to have some older folks and younger folks at a table?

DANIEL SMALL: Yes. Absolutely.

ATTORNEY KAREN SIMAO: And is it your testimony that you monitor that situation?

DANIEL SMALL: Absolutely.

ATTORNEY KAREN SIMAO: And follow the procedures that have already been put into the record regarding the number of glasses, the removal of glasses, et cetera?

DANIEL SMALL: Yes.

MICHAEL GARDNER: Do you recall seeing a young woman at this bar service area?

DANIEL SMALL: No, sir.

MICHAEL GARDNER: Thank you very much.

ATTORNEY KAREN SIMAO: That concludes our witnesses of our staff that was working on that evening.

MICHAEL GARDNER: Any other testimony or evidence to offer?

ATTORNEY STEPHEN MILLER: We don't have any testimony.

We do have, just for the record, we have to present copies of several cases that we think are on-point as far as the due

process issue and those types of issues, which I think, as far as ability to cross-examine. But, more importantly, the last two cases, the Merizma (ph.) case and the Delphino (ph.) case that talk about the substantial evidence rule and uncorroborated hearsay statements from the Merizma case on the police report does not constitute substantial evidence in an administrative proceeding.

And the Delphino case, which is even more on-point, it says, "Total hearsay analogous to non-eyewitness reports in the Merizma case, do not constitute substantial evidence in both second level hearsay and non-eyewitness reports were not held to constitute substantial evidence to the administrative hearing.

The reason we did want to bring in all the staff in front of you to talk about their level of training. But in this case we are somewhat trying to prove a negative,

because there is no evidence by anybody that saw any sale or delivery service. We don't know this woman's intoxication level or whether intoxication was due to drugs. We don't know if she had any emotional issues and was taking drugs.

So there is no evidence whatsoever in front of you. In fact, the only evidence we have, as far as service, is Sean Barney testifying that he refused her service and was about to notify the manager and ask her to be taken from the premises.

MICHAEL GARDNER: Do you have anything else to add?

ATTORNEY STEPHEN MILLER: No, Mr. Chairman.

MICHAEL GARDNER: So what I'm struggling with here is, since you are trying to prove a negative, and I understand the difficulty with that. And I am at least as disappointed as you are, or perhaps

substantially more disappointed than you might be, that the people from New Jersey chose not to come here and give testimony.

But what I don't understand is why two chaperones who, at least in one version of the events, haven't done a very good job with their own responsibilities, would make up a story that makes them look worse; that has this detail of a group of four and two, with one empty pitcher and one partially full pitcher. And then a report of a disciplinary action taken against these students by their high school.

If this is all just made up, and, you know, if it happened, it seems like it happened in your place, that it wasn't a misidentification of a licensed premises. And I don't get it that they would cast themselves in such a negative light by telling a story that wasn't true. And, you know, I'd be happy to hear your theory about that.

I guess the other thing that I would say is that I am really concerned that you think your procedures are so foolproof that it is impossible for underage kids to get drinks in your place. Because that sure doesn't comport with any view of the world that I know of; except one where people are so overconfident about their procedures that they turn a blind eye to the occasional failure.

You know, we don't know if she was on anything before she got there. We don't know what happened while she was there. It appears from all of your staff that she just kind of appeared magically at the service bar. Nobody saw her before then. You don't have any evidence about how she got in, if anybody saw what she was like when she came in, if anybody ever saw her sitting anywhere trying to get any food, trying to get anything besides at the service bar. Only one person saw her before the events of the chaperone coming.

So that, to hear you say, Well, nobody saw these males -- well, nobody saw her until the service was refused and the chaperone came.

If we are to understand anything about the time line, at least somebody thought she was highly intoxicated well before Sean ran around the table to get the manager, because the chaperones weren't on-scene.

I don't know what all the conversations about mixed use tables are.

The chaperones were at the Charles Hotel, at least according to their accounts. So whatever time it took the chaperones to get from the Charles Hotel to her, was a time when she was already presumably intoxicated but nobody saw her.

I'm really very troubled that it seems like no substantial evidence here, the Brew House is completely clean, even though seven students from New Jersey had been

disciplined and their chaperones have given reasonably incriminating accounts of their own carrying out of their responsibilities.

I guess I understand your theory of the case, but I don't get how it meshes with what happened in New Jersey and what was reported to have happened in your establishment.

ATTORNEY STEPHEN MILLER: First of all, we don't know what the discipline was. We don't know what the discipline was for. We don't know what evidence was provided in New Jersey because there is no cooperation.

What we do know is that we've been in business for 18 years at Harvard Square, and we've never had a violation for serving an underage patron. That's what we know for sure.

And we know that we have very good procedures. And we know that our staff is very confident and that they work as a team.

So if one possibly dropped the ball, somebody else was going to pick it up. So we feel pretty good about our staff thinking that they are not going to serve and that their procedures are good.

And clearly just these allegations, uncorroborated, they have more holes in them -- this e-mail, he didn't even say -- they admitted they drank, he doesn't even say they drink in our place.

MICHAEL GARDNER: Well, I --

ATTORNEY STEPHEN MILLER: If I might finish? And this girl could have walked right in and walked right up to the service bar without having any contact with anybody.

And it is possible that the other four, when he said, "pay their tab," they might have had a burger, all six of them. All six of them might have had burgers. He doesn't say that they drink.

MICHAEL GARDNER: It isn't really

possible, is it, for her to have just walked up to the service bar?

ATTORNEY STEPHEN MILLER: Sure it is.

MICHAEL GARDNER: If you are to believe that the counselors had to be called to come, and the counselors were at the Charles Hotel --

ATTORNEY STEPHEN MILLER: Well, he said he turned her down twice. He noticed her being manic. And she made some calls that she -- you don't even know if she has severe emotional issues and she has severe problems. We don't know anything.

So when you said you are troubled, we are troubled in that we cannot get to the bottom of this, because if there is a hole in our procedures, we certainly want to plug it. We certainly have been successful for 18 years, Mr. Chairman.

And there is no evidence whatsoever -- you have no evidence other than

some chaperone, some debate guide, trying to cover their keisters on this. That's all they're trying to do.

MICHAEL GARDNER: So in your 18 years, have you ever had another incidence where a patron in your premises had to be removed by ambulance, and then a medical personnel advised the police department that the person was highly intoxicated?

ATTORNEY STEPHEN MILLER: I'm not aware of it, but you would have the records. Because they would have notified the police and the Board would have them. And I don't believe you have any of those records in 18 years.

MICHAEL GARDNER: So I guess the import of my question was: Do you not see anything serious about this incident?

A young woman was taken from your premises, removed by ambulance to a hospital, and the medical staff told the police

department she was intoxicated? Is that not a problem for you?

ATTORNEY STEPHEN MILLER: I can't tell you, Mr. Chairman, how serious we think this is.

Keith King, who is the general counsel, came in from North Carolina for this hearing because he considers this so serious.

The regional general manager is here. The former general manager that started with John Harvard's is here.

We've retrained everybody. We have gone through all our staff. We think this is extremely serious, and we would have loved to have been able to find out what really happened.

But you don't know what happened and we don't know what happened. And that's why we brought in the entire staff to tell you what we do. It's all we can do.

It is mind boggling to me.

Absolutely beyond believe that if you are a chaperone and your kids are in a restaurant drinking, that you would not go up to the manager or staff and say, "What the heck are you doing here? I have four kids here that are drinking."

Instead, it's, "Out of door," nothing. Is that believable? That can't be believable. Six kids plus one kid taken to the hospital. It's absurd.

So when you say it's a credible story, it's the least story I have -- it has more holes in it than anything I've ever seen. And we'd like to get to the bottom if it. And at some point we've talked about filing a John Doe suit to get to the bottom of it because this is a major issue.

MICHAEL GARDNER: I find it much more improbable that a high school chaperone would make up a story that presents him or herself in a bad light, than I would necessarily think

that the chaperone saw as his or her first responsibility to confront the management of the premises, as opposed to the first responsibility, to take care of the kids.

ATTORNEY KAREN SIMAO: According to their testimony, Mr. Chairman, there were multiple chaperones there.

So if you take their testimony, the one woman is with the one young lady in the ambulance. So why did Greg allegedly round everybody up and scoot them out. He didn't wait for Officer Hogan to show up. He didn't point it out to management. That is puzzling to us.

MICHAEL GARDNER: It could be because Greg didn't see it as his first priority to cooperate with the Cambridge Police Department about enforcing the City of Cambridge's alcohol rules.

If Greg were a chaperone and Greg were primarily responsible for the kids, that

doesn't sound implausible to me at all.

What sounds much more implausible to me is that he would say that kids under his supervision had an empty and a half-full or a partially-full pitcher in front of them, when that wasn't true.

ATTORNEY KAREN SIMAO: Respectfully, Mr. Chairman, at that point, he hustles the children out of there. His job is the well-being of those children.

If, in fact, his story is accurate, he would have, at a minimum, give management a piece of his mind, if not, wait for Officer Hogan, and, moreover, I don't know that they had an option.

They had a child, a child, that was under the influence of something, we don't know what. If they could avoided reporting this at all, I believe they would have. The ambulance showed up, they had no choice. They needed to report something at that point.

MICHAEL GARDNER: And you're feeling is that the boys weren't even there?

ATTORNEY KAREN SIMAO: I don't know.

ATTORNEY STEPHEN MILLER: And if they were there -- no, what we've said is, they were not drinking alcohol. They were not on our premises drinking alcohol.

MICHAEL GARDNER: I am happy to parade everybody back up here again to tell me, and the other members, whether they saw a group of four and two, with or without alcohol. I'll do it or you can make the representation --

ATTORNEY STEPHEN MILLER: I think their testimony is that high school students were on the premises and they were not drinking alcohol, whether it was four, two, six or eight, they were not drinking alcohol. That is the testimony of every person there.

So they could have been on the premises. We have said that they were not

drinking alcohol in our premises. There is no evidence that they were drinking alcohol on our premises. There is no evidence that there was a sale and delivery of alcohol on our premises, absolutely not.

MICHAEL GARDNER: I'm a little confused because I thought the point of the chaperone not speaking to anybody and about nobody seeing a second chaperone come in, and about nobody seeing a group of young people pay their tab and leave around the time of this commotion. I thought the whole point of that testimony was that you didn't think those kids were there?

ATTORNEY STEPHEN MILLER: We don't know if they were there; but we know that they were not drinking alcohol. That's what we know.

And we think we would have seen -- we think this staff -- you heard the staff say, if some guy came in and started hustling

things around and there was a commotion, we think the staff would have noticed it. But regardless --

MICHAEL GARDNER: What is the seating capacity?

ATTORNEY STEPHEN MILLER: Seating capacity is 350.

MICHAEL GARDNER: 350. So the question of whether or not six people left --

ATTORNEY STEPHEN MILLER: At that particular time, the dining rooms were closed we did not have anywhere near that type of capacity.

MICHAEL GARDNER: At 9:00?

ATTORNEY STEPHEN MILLER: Yes. They were closing down on a Sunday night.

ATTORNEY KAREN SIMAO: If I may for the record, Mr. Chairman, I don't know that it was emphasized, but I know that Ms. Boyer does an amazing job here for the Cambridge Board, and her own memorandum indicates, as did her

testimony, that she did reach out to the female debate guide with no response back. She reached out to the female student, no response back. Okay. Understandable.

She reaches out to Greg. Eventually he calls her. He's not cooperative initially. He says I don't know if I want to do this.

And after Ms. Boyer being persistent, eventually comes up with this e-mail; which, if you look at this statement that was submitted, there is always different facts sort of in there.

So we have the same questions that you have. It doesn't make sense. But we can't speculate as to why they may have come up with this version of what they came up with and we would have loved for them to have been here; which was the point of our last appearance before you, so we could cross-examine them and get to the bottom of it.

ATTORNEY STEPHEN MILLER: One last thing, Mr. Chairman. This e-mail says she was slumped over the bar. You've heard firsthand testimony from Sean Barney and from another waitress that she was not slumped over the bar; in fact, she was somewhat active.

And then his female says, "I found the girl sitting on the floor."

You've heard from every staff manager, et cetera, she was not on the floor. She was walked out of the premises. What credibility can you give through that. Where he wasn't cooperative -- I don't think that you can give any credibility and I think this guy was trying to cover himself somehow, and hoping that if he gives the investigator something that you guys will go away.

And it is certainly clear by the fact that they are not hear and not willing to cooperate that they want you to go away.

MICHAEL GARDNER: Any other members

of the public who would like to be heard on this matter?

SUPERINTENDENT WILLIAMS: If I could, I would like to ask a few more questions of Petra.

MICHAEL GARDNER: Okay.

SUPERINTENDENT WILLIAMS: Petra, just procedural, when somebody orders a pitcher of beer, how is that recorded?

PETRA UVIROVA: Of course, before we even bring the drinks to the table, it has to be carded. One single person cannot order a picture of beer like for the person himself; it has to be a minimum of two people. All the people drinking have to be carded.

Also, it is one glass per person. And, you know, it is -- of course, as we were talking, if they happen to be sitting with other people, they are not sharing the pitcher, they have to be constantly monitored.

SUPERINTENDENT WILLIAMS: There is a

tab. How is it recorded that there is a pitcher of beer ordered?

PETRA UVIROVA: We have a computer system.

SUPERINTENDENT WILLIAMS: A computer? It went into the computer?

PETRA UVIROVA: Exactly.

SUPERINTENDENT WILLIAMS: So if alcohol was served that night, or any night alcohol was served, you do a tally at the end to see if there is a reconciliation?

PETRA UVIROVA: Yes.

SUPERINTENDENT WILLIAMS: Did you do it that night?

PETRA UVIROVA: Yes.

SUPERINTENDENT WILLIAMS: Did you have the records of it?

ATTORNEY STEPHEN MILLER: We can do it. We haven't been asked for them. I'm sure there would be pitchers of beer.

PETRA UVIROVA: There will be lots of

pitchers of beer.

SUPERINTENDENT WILLIAMS: But we've got testimony from the chaperones that they saw them, there was six students, two and four or whatever, with pitchers of beer in front of them. And we've got testimony that nobody saw the two and four and that nobody accepted a payment of a tab.

So if it's not reconciled with your system -- in other words, if two pitchers of beer were served to the underage kids from New Jersey and entered into your system, and then there was no payment received from that, there would have been no reconciliation that night?

ATTORNE KAREN SIMAO: But if they were never served --

SUPERINTENDENT WILLIAMS: That's correct. So it is in your benefit.

ATTORNEY STEPHEN MILLER: We can certainly provide those records.

SUPERINTENDENT WILLIAMS: The other

question I have is that Sean said that while it's not necessary to notify you when they don't serve somebody because of an ID issue.

If there is an intoxication issue or another issue, then you are notified and then there is an entry made into a log?

PETRA UVIROVA: Yes. In case of intoxication, I always call the manager --

SUPERINTENDENT WILLIAMS: Or something of this nature. Did you enter this incident into the log that night?

PETRA UVIROVA: Well, I would -- I'm sorry?

ATTORNEY KAREN SIMAO: In your logbook did you enter in your logbook this incident on that night?

PETRA UVIROVA: Yes.

SUPERINTENDENT WILLIAMS: You did?

PETRA UVIROVA: And on the record. I also immediately notified our general manager. I called, of course, and I

communicated with our bosses.

MICHAEL GARDNER: I guess I'm not completely clear about whether the receipts for the evening would particularly show anything.

I take it what I would be looking to see is if in the area that you circled -- and we called it the area of the alleged location of the students -- and with all the caveats about that was your estimation, I take it you don't think the students were there -- whether in that area, in the particular time frame within a half-hour before or so the police incident occurred, whether you could identify whether there were sales of pitchers of beer to any of those tables.

Is that the kind of thing that you could generate?

ATTORNEY STEPHEN MILLER: I would suggest that we could go through and do that. I don't know if there would be a correlation,

but we are happy to present to you all the records. And from what you're seeing, we are not trying to hide anything. And we take this extremely seriously, and we'd like to get to the bottom of this, too, Mr. Chairman.

MICHAEL GARDNER: With great, great trepidation, but with a sense that this is at least one of the most serious incidents that I've had to struggle with in my short time here on the Board, I think that I would like to entertain a motion that we continue the matter generally to the meeting on the 9th.

And I guess, with the request of the establishment that if there are any sales records that would focus on this area, for whatever they might be worth, see if you could provide them. And if you can provide them in advance, that is fine; if you are unable to provide them, we understand that.

ATTORNEY STEPHEN MILLER: Both Attorney Simao and I have a conflict on the

9th. Is it possible to move it forward to the next date?

MICHAEL GARDNER: The 6th of September? And I only have one hearing date in August.

ELIZABETH LINT: Right. We always just meet once in August.

MICHAEL GARDNER: Is September 6th a day that you both can be here?

ATTORNEY STEPHEN MILLER: Yes. And we will provide you with those records at that time.

ATTORNEY KAREN SIMAO: Mr. Chairman, to the extent that there are any follow-up questions, we have the whole staff here. Obviously, if we knew ahead of time who you might want additional questions from --

ATTORNEY STEPHEN MILLER: Or if you have a question, we can have them answer it and give it to you in writing under oath.

MICHAEL GARDNER: I'm sort of

interested in if anyone who saw this strange-acting woman before she appeared at Sean Barney's bar. I believe I referred you to once as Brian, and I apologize.

SEAN BARNEY: That is my brother's name.

MICHAEL GARDNER: Also, for all the witnesses who testified today, we so appreciate you being here. Testifying in proceedings is among the most uncomfortable things that people are asked to do.

We appreciate all of your corporation and willingness in helping us deliberate in what is clearly a very important matter. So thank you for that.

ATTORNEY STEPHEN MILLER: Thank you. Mr. Chairman.

MICHAEL GARDNER: I entertained a motion, I haven't gotten it yet.

LESTER BOKUNIEWICZ: I make the motion.

SUPERINTENDENT WILLIAMS: Seconded.

MICHAEL GARDNER: A motion having been made and seconded, I'll continue this matter generally to the meeting of September 6th for the gathering or submission of any additional evidence and consideration by the Board.

And having been seconded, all those in favor, signify by saying "aye."

LESTER BOKUNIEWICZ: Aye.

SUPERINTENDENT WILLIAMS: Aye.

MICHAEL GARDNER: Aye. None opposed.
Thank you.

ATTORNEY STEPHEN MILLER: Thank you.

ATTORNEY KAREN SIMAO: Thank you.

* * * * *

ELIZABETH LINT: If anyone is here in the matter of Whitney's Cafe, that's been continued to August 4th.

MICHAEL GARDNER: We just a colloquy about the fact that Deputy Bokuniewicz is not

going to be available on August 4th, so we are discussing who is going to be here.

* * * * *

ELIZABETH LINT: Application for Lesley University has applied for a lodging house license at 6 St. Johns Road, for eight rooms and 13 occupants. The applicant is also applying for exemption from the requirement for having a resident manager.

MICHAEL GARDNER: Good evening. If you would be so kind, sir, as to state and spell your name for the record and identify your affiliation.

KEVIN MURPHY: My name is Kevin Murphy, M-U-R-P-H-Y, director of facilities and operations at Lesley University.

MICHAEL GARDNER: Could you tell us about the application.

KEVIN MURPHY: Yes. The building in question is at 6 St. Johns Road, a building that Lesley purchased from the Episcopal

Devinity School along with several other buildings in the last few years.

And I believe we wish to -- the building has previously been used for housing for EDS students and we wish to continue this use but for Lesley University students.

MICHAEL GARDNER: What does EDS stand for?

KEVIN MURPHY: Episcopal Divinity School.

MICHAEL GARDNER: And thought that was right. And what are the approximate ages of the students who will be living there?

KEVIN MURPHY: They are undergrad students, so 18 to 22.

There will be one resident assistant who reports to the resident director on that campus who is part of the professional staff.

MICHAEL GARDNER: So the resident assistant, will that person live there?

KEVIN MURPHY: They will live there.

They are an responsible upper class person.

This is the fourth of four residential buildings that we have on that campus. The other three have 86, 80 and 26 beds. So we have a 192 beds on campus now and we are adding 13.

MICHAEL GARDNER: And this is the smallest?

KEVIN MURPHY: By far.

MICHAEL GARDNER: Have you had any difficulty with the others?

KEVIN MURPHY: No.

MICHAEL GARDNER: And how long have they been in operation?

KEVIN MURPHY: The oldest to newest, Lawrence Hall -- we actually acquired Lawrence Hall and Winthrop Hall, two years ago. However, we were leasing Lawrence Hall for three years prior to that. So we've been at the 86 beds for five to six years. Winthrop Hall, 80 beds for two years. And Kitter

House, 26 beds for one year.

MICHAEL GARDNER: And under a similar sort of management arrangement, that is a resident assistant?

KEVIN MURPHY: Yes.

MICHAEL GARDNER: Any complaints about any of this?

ELIZABETH LINT: None at all.

MICHAEL GARDNER: Any questions?

LESTER BOKUNIEWICZ: I'm wondering about the fire alarm system in the building.

KEVIN MURPHY: Well, actually, we are just finishing up a new sprinkler system, and installing an electrical system and fire alarm system.

MICHAEL GARDNER: And do you need a certificate of occupancy before you can occupy?

KEVIN MURPHY: Yes.

MICHAEL GARDNER: Are there any members of the public who would like to be

heard on this matter?

Okay. Seeing none, motion from the Commission?

LESTER BOKUNIEWICZ: I'll make a motion.

SUPERINTENDENT WILLIAMS: Seconded

MICHAEL GARDNER: Motion having been been made and seconded to approve the application for the lodging house license with the exemption for the resident manager.

All those in favor signify by saying "aye."

LESTER BOKUNIEWICZ: Aye.

SUPERINTENDENT WILLIAMS: Aye.

MICHAEL GARDNER: Aye. None opposed.

The aye's have it.

We wish you well.

KEVIN MURPHY: Thank you.

* * * *

ELIZABETH LINT: Application
continued from June 14th, Wagamama Boston One,

LLC, Meredith Clancy, manager, holder of an all alcoholic beverages as a restaurant license at 57 JFK Street has applied for a change of manager from Meredith Clancy to Victoria H. Oellers.

MICHAEL GARDNER: Good evening. Would you please state your name and spell it for us.

ATTORNEY BERNARD GOLDBERG: My name is Attorney Bernard Goldberg, G-O-L-D-B-E-R-G, and I represent Wagamama Boston One, LLC.

And on my right is Victoria Oellers, and she is going to give her name and address and other important information concerning herself.

And in my opinion, she has all of the qualities necessary and is aware of all the laws dealing with regard to alcoholic beverages.

VICTORIA OELLERS: My name is Victoria Oellers, O-E-L-L-E-R-S. I'm the

general manager at Wagamama in Harvard Square in Cambridge.

MICHAEL GARDNER: Tell us about your experience.

VICTORIA OELLERS: Sure. I've been working for Wagamama for two and a half years. We are selling beer and wine. We just got a full liquor license. I've been certified to in tips courses as well as serve safe. I also have a bartender, cocktail waitress, an a server in a couple of different establishments. One with Houlligan's in Old Orchard Beach, Maine, and I work for Bay State Cruises in Boston as a bartender. And for a store on Boylston I worked selling beer and wine.

I have worked at many patrons and I've never had any instances. I'm well aware of all the laws and tip requirements for servers and I helped train my staff and help them make correct decisions.

MICHAEL GARDNER: Do you have an opinion as to whether or not it is possible to create a foolproof system in dealing with the service of underage people?

VICTORIA OELLERS: I don't believe anything is foolproof. But I know that I can do my best to ensure a system that will work to the best of my ability. But nothing is foolproof.

MICHAEL GARDNER: How many staff would typically be --

VICTORIA OELLERS: On Friday and Saturday is our busiest time, the most front of the house staff I will have will be 11. I also am a general manager and I manage the back of the house as well. So about 11.

MICHAEL GARDNER: And have you been serving as a manager for some time now?

VICTORIA OELLERS: I've been a general manager for a couple of months now. But I've been a manager at that one location,

I started out as a front of the house manager, and then became an assistant general manager and then general manager.

MICHAEL GARDNER: And that was about two months ago.

VICTORIA OELLERS: A few months ago.

MICHAEL GARDNER: So this is catching up in terms of the paperwork, you are actually functioning as the general manager now?

VICTORIA OELLERS: Yes. Meredith Clancy has been in the restaurant and she is currently there. But she is also our training coordinator as well. She works for the staff in the restaurant and she trained all of them. She has been very hands-on in that restaurant even though I am the general manager.

MICHAEL GARDNER: Any particular complaint history?

ELIZABETH LINT: None at all.

MICHAEL GARDNER: Anything else you'd like to say? Mr. Goldberg anything else

you'd like to say?

BERNARD GOLDBERG: No.

MICHAEL GARDNER: Any comments from any member of the public on this matter? Seeing none.

SUPERINTENDENT WILLIAMS: Motion to approve change in manager. E.

LESTER BOKUNIEWICZ: Seconded.

MICHAEL GARDNER: Motion having been made and seconded to approve the change in manager, all those in favor signify by saying "aye."

SUPERINTENDENT WILLIAMS: Aye.

LESTER BOKUNIEWICA: Aye.

MICHAEL GARDNER: Aye. None opposed.

ELIZABETH LINT: 21 Proof.

MICHAEL GARDNER: 21 Proof. Have you had 21 Proof?

VICTORIA OELLERS: I have not.

MICHAEL GARDNER: We take it all

back.

I think what the Superintendent meant to do was to make his motion to approve you subject to the condition of you taking the 21 Proof; is that right?

SUPERINTENDENT WILLIAMS: Yes.

MICHAEL GARDNER: If we could have that the record reflect that change. You have no problem with that?

VICTORIA OELLERS: No.

MICHAEL GARDNER: Okay. What I would be concerned about is -- you know this kind of establishment has been around in Cambridge for a long time. You said you've been the general manager for I think a few months; you should have gotten the 21 Proof before now. Please. And I think that probably every one agrees with that.

So, all those in favor of approving the transfer of the general manager designation as conditionally amended by

Superintendent Williams, signify by saying "aye."

SUPERINTENDENT WILLIAMS: Aye.

LESTER BOKUNIEWICA: Aye.

MICHAEL GARDNER: Aye. None opposed.

Okay. We wish you well. Please get the training.

And Mr. Goldberg, if you're advising clients in the future coming in, please get their paperwork corrected. It would be good if they could all do that and get that training.

VICTORIA OELLERS: 21 Proof is not included in the tips?

ELIZABETH LINT: It is Cambridge-based. It is run by Cambridge Prevention Coalition. We'll send you the information that you need.

VICTORIA OELLERS: Thank you.

MICHAEL GARDNER: Given the lateness

hour, let's take a five-minute break.

(Brief recess.)

ELIZABETH LINT: Back on the record.

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ELIZABETH LINT: Enterprise Rent-A-Car Company of Boston, LLC, at 25 River Street, due to a Disciplinary Hearing held on March 29, 2011.

MICHAEL GARDNER: Good evening. Thank you for coming back. I would ask you first to state and spell your names for the record and you're affiliations and give us an update on what has happened since our March hearing.

SETH ROY: My name is Seth Roy, R-O-Y. I'm the area manager that oversees the Central Square office.

GREG RUSNAK: I'm Greg Rusnak, R-U-S-N-A-K. I'm the regional vice president and corporate office for Enterprise Holdings.

MICHAEL GARDNER: And would you

briefly summarize what you understand the complaints about your operation to have been in the past, the physical or structural changes, the managerial staff procedure changes, that you've taken in response to those complaints, and your assessment of where you stand now.

GREG RUSNAK: The actions that we've taken since the last meeting were really just a direct compliance from Wayne Graham, who is the town traffic engineer.

Essentially, we want to resolve the complaint issues over parking on the lot. So Wayne came out, met with me personally, created a drawing, a traffic flow pattern on the lot, and requested that we strike the lot and provide some way signage for customers to return and exit and enter and exit the property, and also create a temporary, for the time being, raised curb to limit access for potential conflicts with pedestrian traffic.

Since our last meeting, really the only thing we are waiting on for repaving and striping was the whether; that has since been completed.

We have also installed -- Wayne actually installed for us signs that River Street exit to inform the drivers to make a U-turn at the next traffic light and enter from the Western Avenue access point.

He also installed a sign at the Western Avenue entrance directing the traffic for renters to be returned.

Since our last meeting we have not been made aware of any further complaints. And I've done everything we can -- we've made some internal operations changes limiting the amount of reservations we accept at that location, putting reservation systems in place that essentially cut us off once we reach a certain amount of vehicles that will meet those reservations.

MICHAEL GARDNER: My memory is that, at least on particular evenings, perhaps Sunday nights, but otherwise you had made arrangements for alternative lot space for overflow.

Can you confirm if you have followed through and have that arrangement, and describe how frequently, if ever, you have to use it?

GREG RUSNAK: We did have an arrangement with Pilgrim Parking that has not been needed. We actually instead chose to bring in personnel on Sunday evenings and include a member of management as well as what we call a drive team, which is essentially a load passenger van, six to eight porters, which come in, the manager processes returns and Sunday evenings, and then porters then move these vehicles to alternative locations that have greater parking.

MICHAEL GARDNER: Have you found a

need to do that?

GREG RUSNAK: Every Sunday we have a heavier volume than others, but our intent is to never have more than 13 cars on the lot at any given time.

MICHAEL GARDNER: Ms. Lint, have there been any inspections or reviews or any complaints?

ELIZABETH LINT: No complaints. I've been informed by Wayne Amoral that they are in compliance with the plan. And now that Western Air Project is starting that the next phase will happen. So they have absolutely complied with all the requests.

GREG RUSNAK: We do have temporary posts in place where the curb cuts will go. So there is a safety system in place. Pedestrians don't always abide by them, but people driving do.

ELIZABETH LINT: Ms. Boyer also has been by several times. I drive by it and

check it out also. I noticed immediately when it was restriped and the arrows put in. It's a big change.

MICHAEL GARDNER: Any questions?

SUPERINTENDENT WILLIAMS: No questions.

MICHAEL GARDNER: Are there any members of the public who would like to be heard on this matter?

(No response.)

MICHAEL GARDNER: Anything else you'd like to add?

GREG RUSNAK: No. My plan is to continue to abide by the rules and be a good standing business partner. And I think I we provide a valuable service to the residents of Cambridge, and certainly we recognize that we need to make some corrections and feel like we've done that.

MICHAEL GARDNER: Then a motion just to continue the matter generally will be

appropriate.

SUPERINTENDENT WILLIAMS: I make that motion.

LESTER BOKUNIEWICZ: Seconded.

MICHAEL GARDNER: Motion having been made and seconded, all those in favor please signify by saying "aye."

SUPERINTENDENT WILLIAMS: Aye.

LESTER BOKUNIEWICA: Aye.

MICHAEL GARDNER: Aye. None opposed.

MICHAEL GARDNER: On behalf of the Commission, I want to thank you for your cooperation. And this was a thorny problem for the City for an extended period of time, we are very happy that you and the traffic department were able to work out a resolution and put the commitment into it for additional resources of the porters to help deal with the high frequency problems.

Thank you very much.

GREG RUSNAK: . Can I ask for a classification on what "continuing" means?

MICHAEL GARDNER: What I meant by it is we have no active issues. If we have complaints, then we'll notify you and bring you in to hear the complaints.

GREG RUSNAK: Thank you very much.

SETH ROY: Thank you.

* * * *

ELIZABETH LINT: Application continued from July 7th, 2010, Girma Feleke, d/b/ NEK Limo Service at 101 Washington Street has applied for a livery license.

We did sent notice to be here today, and no one has appeared.

MICHAEL GARDNER: So then we have to do something with that.

ELIZABETH LINT: I would -- I can have Chris call them tomorrow and find out what the situation is. He may have changed his mind.

MICHAEL GARDNER: It would be good to have the record settled, either withdrawing the application or come forward.

ELIZABETH LINT: We'll take care of that.

* * * * *

ELIZABETH LINT: Appeal continued from July 7th, Ricardo Bousalah is appealing the decision of Elizabeth Lint, Executive Officer, to not renew his hackney license.

This was a situation where Commissioner Haas wanted to see the police report from Watertown. I believe we did get that. Would you like to see it?

LESTER BOKUNIEWICZ: Yes.

MICHAEL GARDNER: I believe this is a case, sir, where we had to ask you to come back at our late June meeting because we didn't quite have the people available who could vote on the matter again, and I apologize for that inconvenience to you.

Deputy Chief Lester Bokuniewicz was here for the first proceeding with me and Commission Haas -- and he couldn't be here tonight -- but we do have a Deputy Chief Bokuniewicz and I.

And I think when you were here on June 28th, we indicated to you that we found some troubling information in the police report that we received from Watertown that we did not think necessarily completely complied with your accounting of the events.

We asked you to if you wanted to give us any additional information about the circumstances of the arrest, and I understood that you said you would stand by the statements you gave in the prior meeting.

And I wonder whether now there is anything you want to add?

And I'll read into the record the pleasure of the Board.

"To the Board Members, thank you for

listening to my appeal on June 14, 2011, to request consideration to renew my hackney license. I was very nervous during the interview. After thinking about what I said, I realized that I might have misspoken when describing what happened. Specifically, I may have said that the keys to the car were in my hand at the time of arrest. However, I cannot recall if the keys were actually in my hand or if they were in my car at the time of the arrest. I was outside of the car. I wanted to clarify that point with you. Thank you for for your time?

Thank you for that clarification, that will be part of the record.

Well, I remain very concerned about the seriousness of the incident and the circumstances surrounding your arrest. I don't know if, Deputy, you have any additional questions?

LESTER BOKUNIEWICZ: No.

MICHAEL GARDNER: Superintendent Williams, I think prudence dictates we should probably ask you not to vote on the matter, but I don't know if you have any questions?

SUPERINTENDENT WILLIAMS: No.

MICHAEL GARDNER: Are there any members of the public who would like to be heard on this matter?

(No response.)

MICHAEL GARDNER: Is there anything else you would like to say, sir?

RICARDO BOUSALAH: No.

MICHAEL GARDNER: The matter before us is whether or not to uphold or overturn the denial of the hackney license as on the decision of denial issued by Ms. Lint.

MICHAEL GARDNER: Deputy Bokuniewicz?

LESTER BOKUNIEWICA: I would make the motion to uphold it.

MICHAEL GARDNER: There's been a motion made to uphold the denial of the

hackney license. Given the seriousness of the incident, I'm going to second that motion.

All those in favor please signify by saying "aye."

LESTER BOKUNIEWICZ: Aye.

MICHAEL GARDNER: The aye's have it. With deputy Bokuniewicz and myself voting to uphold the denial of the license. So we are approving Ms. Lint's decision to deny the renewal of your hackney license.

Do you understand that is what we've done?

RICARDO BOUSALAH: By "deny," you mean I'm not going to get it?

MICHAEL GARDNER: Deny meaning you are not going to get it. You have certain rights of appeal to superior court.

ELIZABETH LINT: We'll send him a letter telling him about that..

MICHAEL GARDNER: We wish you well. And sorry we couldn't have it turn out

differently.

RICARD BOUSALAH: Thank you.

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ELIZABETH LINT: Application continued from June 28, 2011, L'Impasto, LLC, Riccardo Passini, manager, has applied for a common victualer license to be exercised at 2263 Mass. Avenue. Said license, if granted, would allow food and non-alcoholic beverages so be sold, consumed on said premises with a seating capacity of 30 (24 inside seats and 6 seats on a seasonal outdoor patio on public property). The hours of operation will be 11:00 a.m. to 10:00 p.m. seven days a week.

MICHAEL GARDNER: Again, if you would all please identify yourselves and spell your names.

ATTORNEY ANNALISA AVOLA: A-N-N-A, L-I-S-A, A-V-O-L-A. Attorney for Riccardo Passini, P-A-S-S-I-N-I,.

RICCARDO PASSINI: I am Riccardo

Passini, P-A-S-S-I-N-I. .

RICCARDO PASSINI:

DEAN PAPADEMETRIOU: My name is Dean Papademetriou, P-A-P-A-D-E-M-E-T-R-I-O-U. I'm an attorney in Boston and I'm representing the property owner.

MICHAEL GARDNER: So if you would be so kind as to summarize for us the events that occurred on June 28th and the steps that you've taken since then.

ATTORNEY ANNALISA AVOLA: We were here last on June 24th, there were some loose end regarding the abutters, which I have confirmed with Ms. Lint, and I proper notice and do have certified mailings for you.

And I also wrote the abutters a letter, because there was only one publication, I included the tear sheet from the previous publication.

And I also explained in the letter, with some other issues that had occurred in

the past with pests and use of the common driveway, trash disposal, and the like. So that was some issues from the last meeting.

Since then, Mr. Passini has contracted Yankee Pest Control. They did kind of a survey of the property. He is obviously not open yet, but they did arrange for inspections right now twice a month -- sorry, twice a week to occur at least in the beginning. And they did notice some pests, but I don't want to point fingers but they notice they were coming from another property.

But they did take care of that pest problem. They put traps in front of his restaurant and the other restaurant and in the basement. And so we have that.

And I don't know if you want that for the record, the service contract. And also what they observed as far as the rats coming from the other side. So I have that documentation if you would like it for the

record.

MICHAEL GARDNER: Well, if you have it, I think it would be fine to submit it.

ATTORNEY ANNALISA AVOLA: I have those two.

Regarding the food delivery or deliveries, I guess there has been a problem in the past with the common driveway and deliveries. So Cisco Food System, which is where he is going to get the food from, has agreed to do deliveries from Mass. Avenue as opposed to the common driveway just so not to disturb the residents behind.

Mr. Passini has reached out to a resident behind him and has explained, you know, he doesn't want issues. So he is trying if make everybody happy in an effort to run his business. So I do have a letter from Cisco indicating those deliveries also, for the record.

Similarly, the trash removal, I have

a letter from BP Trucking, Incorporated, which is solid waste management company. They have two 96 gallon (inaudible) that they are going to place in the back and trash removal be four times per week.

Mr. Passini has witnessed some currently, that they are the next door owner removes it once a week. So we actually raised the issue with the landlord and they are trying to resolve that issue.

So he is going to do everything he can so not to have complaints. I think the two tenants will work together to try to minimize pests and the smell and all that, especially in the summer.

I also have that letter from the solid waste management company indicating that they are going to pick up four times a week; Monday, Wednesday, Friday and Saturday.

One of the abutters did contact me, it is Mr. Hayes, and he owns the property, I

guess, where the convenience store is located. And he just wanted some clarification from me. Because in my letter, as I said, there is a reference to that common driveway. So he just wanted clarification that we do not share a common driveway with him. And I just wrote him a letter that confirms that, so I have that also.

And also Mr. Passini has submitted an application to the Department of Public Works for an outdoor seating area. They told him to come back, to get the application with the date. So we are anticipating that August 1st will be the hearing that he will attend. And I think he did that maybe a week and a half ago or two weeks ago. So he will go hopefully tomorrow and pick it up. When he went earlier this week, it wasn't ready.

ELIZABETH LINT: That has been heard by City Council?

MICHAEL GARDNER: August 1st is the

City Council. I think the procedure is that public works goes out, does the measurements, makes their assessment, and then the city council votes on it, and then we finally get it. Is that right?

ELIZABETH LINT: Yes. But I did also speak with public works, they did also call me to find out what the status was.

MICHAEL GARDNER: So the city council meets once typically in the summer at the August 1st meeting. So that's when it will be heard.

ATTORNEY ANNALISA AVOLA: Okay.

MICHAEL GARDNER: And as I recall, the trash and the use of the driveway and the rodents were big, big issues. And you have dumpsters with lids, closed lids?

ATTORNEY ANNALISA AVOLA: Yes. And also, they are going to attempt to do the trash removal, again, through Mass. Avenue, to try to avoid that common driveway; even though

he does have a legal right to use it, he is trying to make everyone happy so there are no complaints. And because Mrs. Lint indicated at the last meeting that there had been some complaints, so he wanted to avoid that completely.

MICHAEL GARDNER: And what's the projected date of opening?

ATTORNEY ANNALISA AVOLA: As soon as we can open. So we are projecting maybe August 1st. Obviously, we wouldn't do it with outdoor seating at that time until we get approved for it.

MICHAEL GARDNER: But all the construction is done?

ATTORNEY ANNALISA AVOLA: It's tapering off. There were some issues with some codes that -- the pizza oven that he has wasn't up to code, so they came in and took it out and moved a wall and made it bigger. So that's all been resolved.

MICHAEL GARDNER: Any questions?

SUPERINTENDENT WILLIAMS: You referred twice to food deliveries and the solid waste removal onto Massachusetts Avenue. If I'm not mistaken, there's meters -- there is no loading zone or anything on Mass. Avenue in that section.

ATTORNEY ANNALISA AVOLA: The problem is -- I guess they scoped it out and said that it was possible to do that. I guess it's a double-edged sword. Because we are trying not to upset the abutters and residents there, and at the same time we don't want to cause traffic on Mass. Avenue and obviously there's cars out there.

So I think that he has arranged for that sort of delivery and pickup of trash when it's not a busy time, so either early morning or late in the evening.

ELIZABETH LINT: I don't have any diagram of the patio?

ATTORNEY ANNALISA AVOLA: I think that what's going to happen; and he can supplement that, the outdoor seating, I don't know if you are familiar, but it's a sidewalk, so it would be just basically two tables up against the windows. There is really -- it's not enough area for a patio, per se. It is just going to be two tables right in front of the windows. But if you need me to supplement --

MICHAEL GARDNER: Two tables, six seats?

ATTORNEY ANNALISA AVOLA: Yes. I think three, right? Yes.

So if you need me to supplement or do a drawing, we can definitely do that.

MICHAEL GARDNER: Anything else to add?

DEAN PAPADENTRIOU: I would just like to speak in support of Mr. Passini and his restaurant license. My family has owned that

building for close to 30 years. There has always been a restaurant in that space and all the previous tenants in there have received licenses. And Mr. Passini is very professional, and he has made had a lot of significant improvements to the property already. And he we feel that he has the ability and the professionalism to run a good restaurant and that's something that will benefit the neighborhood.

We have always had good relations with the City and we would like to continue to do that in the future.

MICHAEL GARDNER: Questions? Are there any members of the public who would like to be heard on this matter?

(No response.)

MICHAEL GARDNER: Pleasure of the Commission? I take it if we were to deal with the outdoor seating, it would be conditional on both the approval of the City Council and

the submission of the appropriate drawings?

ELIZABETH LINT: Yes.

SUPERINTENDENT WILLIAMS: Motion to approve based on those conditions.

LESTER BOKUNIEWICZ: Seconded.

MICHAEL GARDNER: There has been a motion made and seconded to approve the granting of a common victualer license at the premises with the seating as stated in the agenda and with conditional approval of seasonal outdoor seating for two tables with up to six chairs, conditional on appropriate approval by the City Council and submission of appropriate drawings.

All those in favor, signify by saying "aye."

SUPERINTENDENT WILLIAMS: Aye.

LESTER BOKUNIEWICZ: Aye.

MICHAEL GARDNER: None opposed.

Thank you for all the hard work you've done to address the very naughty issues

that are present in that area and we wish you well with your new operation.

ATTORNEY ANNALISA AVOLA: Thank you.

RICCARDO PASSINI: Thank you.

DEAN PAPADENTRIOU: Thank you.

* * * * *

ELIZABETH LINT: Application for Cafe Dilara, LLP, Ragip Osman, manager, has applied for a common victualer license to be exercised at 645 Cambridge Street. Said license, if granted, would allow food and non-alcoholic beverages to be sold, served and consumed on said premises with a seating capacity of 19. The hours of operation will be Sunday through Wednesday from 11:00 a.m. to 12:00 a.m. and 11:00 a.m. to 2:00 a.m. on Thursday through Saturday.

And the Commissioner is requesting information as to why all abutters weren't notified.

This had been heard -- and I gather

there is no one here? This had been heard and approved and abutter notification submitted. And then we received a letter complaining -- a complaint from an abutter that they had not been notified.

MICHAEL GARDNER: It is so hot in this room there have been people out in the hall. I wonder if somebody could inquire if there is anyone here for Cafe Dilara.

AUDIENCE MEMBER: No, there's no one.

ELIZABETH LINT: Okay. No, they are not here.

MICHAEL GARDNER: So their not being here, Ms. Lint, what would you suggest the action be? Notify them?

ELIZABETH LINT: We have not as yet issued that license and we won't issue it.

MICHAEL GARDNER: So we'll send them a notice?

ELIZABETH LINT: I will send them another notice.

SUPERINTENDENT WILLIAMS: They are not open, right?

ELIZABETH LINT: They are? I will have Mr. Hetley (ph.) on it. I can issue a cease and desist.

MICHAEL GARDNER: On that matter, we will ask Ms. Lint to take appropriate administrative action.

ELIZABETH LINT: Will do.

* * * * *

ELIZABETH LINT: Application continued from June 28, 2011, Barismo, Incorporated, doing business as Dwelltime. Jaime Van Schyndel, Manager, has applied for a common victualer license to be exercised at 364 Broadway. Said license, if granted, would allow food and non-alcoholic beverages to be sold, served, and consumed on said premises with a seating capacity of 20. The hours of operation will be 7:00 a.m. to 7:00 p.m. seven

days per week.

MICHAEL GARDNER: Again, could you please state your name and spell it for us and tell us your affiliation.

JOHN SHETTERLY: My name is John Shetterly, S-H-E-T-T-E-R-L-Y. I'm a lawyer in Cambridge and I represent the applicant.

JAIME VAN SCHYNDEL: My name is Jaime Van Schynde1, J-A-I-M-E, V-A-N, S-C-H-Y-N-D-E-L. I am president of Barismo and general manager.

ISRAEL FRIEMAN: I am Israel Fridman, I-S-R-A-E-L, F-R-I-D-M-A-N, secretary of Barismo.

MICHAEL GARDNER: I believe you were hear previously on June 28th and there were a number of issues raised. I think you were asked to -- you were asked to do some work on data gathering or information sharing within the neighborhood and come back to us. We'd like you to report on your activities.

JAIME VAN SCHYNDEL: So after that, we went door to door over the last weekend and tried to talk to as many people as we could. We put out some sign-up sheets and hosted an open house where we would try to talk to as many of the neighbors and people within the neighborhood. I think we canvassed upwards of 120, 125 people who actually answered the doors, so I feel we did a pretty good job on that.

We got signatures. I think, we got in terms of support, let's see, about 300, a little over 300.

ATTORNEY JOHN SHETTERLY: This petition describes briefly what's been done and asks for support, and there's some people largely from Cambridge.

May I submit this for -- thank you.

JAIME VAN SCHYNDEL: There's two of letters that came in the mail today, we can add those to whatever else.

MICHAEL GARDNER: A few more cards.

ATTORNEY JOHN SHETTERLY: These are actually the second notification of abutters. First one round, which was successful, apparently, although Mr. Winters has been very helpful, and apparently didn't get one. You say there was another round of notifying abutters.

MICHAEL GARDNER: So describe to us the process whereby you get 300 signatures.

JAIME VAN SCHYNDEL: We do have a lot of supporters that are shops. We also put up a couple sheets at Simonds and Tusconini's, which are places that we have relationships with. So people get an idea of the kind of community spaces that we are looking for.

So we chose not to try and get signatures from the people we were talking to in terms of we wanted to invite them to talk with us and either show up at the open house or send us e-mails. We got plenty of e-mails.

And we tried to to do the best we could, I know there are some people we missed out on canvassing. There are some houses we missed, and some people came back and said they did not hear from us. But, again, in a short period of time, I think we got some volunteers together and spread out did everything I think we could do.

MICHAEL GARDNER: As I recall, some of the questions in the past had to do with air conditioning, open windows, use of a narrow way.

Would you talk, again, about what your plans are, particularly with respect to those things, or anything else that you think is relevant to help the Board understand your plan.

JAIME VAN SCHYNDEL: Sure. We do have some things prepared because we talked with people and these things come up over and over. And several of these things will be

addressed -- or at least we think they will be -- we don't feel there will be problems once we get into the space and hopefully Jake can articulate some of the things that we are addressing.

ATTORNEY JOHN SHETTERLY: Let me mention some of the things it seems to us to be a highrise.

First, the size. There has been some questions about having a large operation. The application is for seating of 20 only, so it's a small place.

JAIME VAN SCHYNDEL: But we'll come back at some point and we are going to apply to expand it to 40. And we'll try to make that clear to the abutters. There will be initially 20 seating and at some point we want to expand that. We are trying to be as clear as we can with everybody.

Circumstances can change, but as of right now, it is an application for 20.

Deliveries. Some issues were raised by different people about deliveries on Broadway Terrace, which is a fairly narrow street on the side and residential building in two or three different positions around there. And deliveries will not be on the sides, it will be on the front.

There is going to be a loading hatch in the front of the building itself opening onto a ramp, so the deliveries will go down through the ramp into the basement for storage.

The trash, similarly will be picked up by Waste Management out in the front; it will be separated into recycling materials, compost materials, domestic trash, and placed in sealed bins and picked up by Waste Management. They won't be stored at any time on the side. There is no parking on the side. There is no deliveries, no storage of trash on the side.

And as far as the placement of the air conditioning and HVAC -- the technical part of that can be addressed by the landlord who lives here and can answer questions if need be.

Mr. Winters has made some great points about that. And the two of them have met. And as I understand, and the mutual understanding on the placement of the HVAC, is a super high tech, state of the art, very quiet. Beyond that I'm told I don't know what I'm talking about.

So the other issue is raised was music, whether there would be music. At the outset, there wouldn't be any music live or recorded.

After things are sort of settled in place, and the owners can have time to do this, they'll use sound meters to see what the ambient levels are.

The street is fairly noisy during

most of the day. I know, my kids both play at the Longfellow School. There's a but stop, there a lot of traffic, and so they'll see whether noise (A) could be heard inside, and it will be a good adjunct to the atmosphere. If not, they won't; and if need be, we'll be back to talk about that.

And I think that, as Jaime said, contacts were made with substantially all the homes that are within several blocks on Broadway, Lee, and Tremfair, Maple, West Street, Harvard, and Lee -- I think I can say that.

Of the people contacted, about a -- of the 100 we've spoken to directly, about 98 were in favor, two were opposed. The concerns that they have have been discussed and we think we have worked out things pretty well.

Mr. Winters has been very helpful. He has got a lot of suggestions. In addition to that, there have been two meetings with the

Cambridge Neighborhood Association. Joan picket sort of solicited comments and delivered those. And those I think I've dealt with.

We've spoken to City Counselor Sidel, Davis, and Kelly, they added suggestions, more about procedure. And we think we've dealt with those.

And, generally, it seems to be all you'll hear from other people, it seems to be a feeling that this will be a nice addition to the neighborhood.

The use that was in the shell before was an auction business of furniture, it hasn't been active for many years. This will be a move that will revitalize that area that was gradually on a natural decline into dust I suppose. So this will be a move that will revitalize that area and seems to be a very constructive thing to do.

So, in short, we ask you to approve

this application tonight. And I'm sure you have some questions and you might as well ask them.

MICHAEL GARDNER: Okay any questions?

SUPERINTENDENT WILLIAMS: I'd like to reserve them.

LESTER BOKUNIEWICZ: No.

JAIME VAN SCHYNDEL: Sorry to interrupt. The one issue I think that was the main issue for, particularly Robert, and people and -- I guess the other tenant who can't represent himself because he is in a nursing home, and future tenants -- is opening the windows. And this was a point of sort of contention and we think after talking with several different people and having a good long discussion with Robert yesterday, that we think we have a plan of limited usage that we can approach.

And I think in opening that, I think

Robert and Joan also have something to say about that.

MICHAEL GARDNER: All right. Before we hear generally from members of the public, is there anything else you care to add to this at this point?

JAIME VAN SCHYNDEL: We have plenty of information, if there are any specific questions --

MICHAEL GARDNER: We may come back to you after we've heard from members of the public.

ATTORNEY JOHN SHETTERLY: Just one tiny thing. There have been a number of letters and e-mail messages, and so forth, that I believe have already been submitted to Ms. Lint.

WENDELL SPARKS: There were a number of pieces of correspondence in there.

MICHAEL GARDNER: Yes, sir. Correct.

MICHAEL GARDNER: Anything else you want to add?

ELIZABETH LINT: I was going to get there. I have a rather large stack of e-mails. I believe most of them were forwarded to me.

I also have a letter from Counselor Sidel who thinks this will be a good reuse of the building, and a coffee shop will be a good benefit to the neighborhood.

MICHAEL GARDNER: Are there any members of the public who would like to be heard on this matter?

ROBERT WINTERS: Yes.

MICHAEL GARDNER: Mr. Winters, as I recall, you took a lead in some of the questions the last time.

ROBERT WINTERS: Thank you.

MICHAEL GARDNER: And I believe we will go contrary to the alphabet and bring you up first.

Please identify yourself for the record, and spell your name.

ROBERT WINTERS: My name is Robert Winters, 366 Broadway, R-O-B-E-R-T, W-I-N-T-E-R-S.

And as least you know, I was here last month at the meeting. And primarily more of a sort of a precautional stance, just to sort of express my concerns about what I feel should happen and what I was sort of fearful of.

And by and large the only thing that was sort of extra problematic for me was sort of the revelation about the open or operable front windows, and that sort of made things head in a bad direction for me personally.

So I'm going to summarize briefly a few things that I have written down, which Jaime has already seen this as well.

Having not been informed about the windows prior to that, that became kind of my

main issue.

Since then I've actually spoken to people within the economic development division stress sort of a little business of displeasure with them about how we could have gotten to the point where the first time you heard about it is when you show up in front of the License Commission.

And they have assured me that that -- that they are going to change that in the future from now on. In the future, there will be better procedures in place to make sure everybody kind of learns about this stuff and has a chance to participate well in advance.

The type of windows that we are talking about here, these -- I don't know whether -- somebody called them accordion windows -- I've just been referring to them as operable front windows. They primarily exist in the major squares in Cambridge, you know, Harvard Square, Central Square, Inman Square

or whatever.

But personal concerns I may have, too. There is something of an issue of a precedent of these somewhat more smaller scale neighborhood style of windowsaaaaa. And considering the fact that I think ten years ago they were nowhere, I could be wrong, but I know there was an issue here about whether precedents would be set and how they should be set correctly for the future use, not only for me but for others as well.

So with that in mind, I can certainly talk to the people in the neighborhood association and share my view about this.

I also then met with Steve and Sylvia, the property owners, who gave me a lot of reassurance about the nature of the equipment on the roof, and I'm very impressed with the effort that is going into that.

Of course, there is always an element of faith to see whether the reality turns out

to be what is proposed in theory, but I'm willing to take it on faith that, in fact, the engineering of that will be okay.

I met with Jaime really seriously for the first time yesterday. But he had actually proposed a period, sort of a period where the windows wouldn't be operable. So we could kind of get to the know each other a little bit first. Vso what I tried to do was to simply put a lot of, what has basically been said from Steve and Sylvia as well as Jaime -- into sort of an understanding that we can put together. And I put together some words like this, which we talked at length about yesterday.

And we basically said, I'm all right with the windows, but the conditions would simply be that there would be some sort of a warming-up period where we all get to know each other. And we have this little chance to make sure that all these other assurances turn

out to be true.

Jaime suggested sort of like to be open maybe six months. Some appropriate period. But I figured that it is in the wintertime so you probably wouldn't have them open anyway.

And then it seemed agreeable, and I just suggested the hours of 10:00 a.m. to 4:00 p.m., sort of midday, so there would be no chance of having our peaceful mornings disturbed, or at the end of the day as well.

But the one conditional, if you will, about that, was that should the problem be -- should they become problematic, which I'm starting to believe they may not be, having seen a similar operation yesterday. But basically that we sort of make official sort of what good neighborly relations would be.

In other words, if it gets problematic, I could say, "Jaime, could you shut them down" and they'll shut them down.

So there would just be that understanding. That should it be problematic, that they would be responsible.

MICHAEL GARDNER: I might just interrupt you there. I'm trying to understand the concern. Are the issues about open windows primarily related to noise?

ROBERT WINTERS: Yes, pretty much. Thank God we have a smoking ban in public places, or it could be that, too. But primarily just because of the noise projecting -- see, the nature of this particular block is that sound sort of the bounces off the Longfellow School building and you sort of hear everything anyway.

In the middle of the day it probably wouldn't be too much of an issue.

MICHAEL GARDNER: To what extent does or does not the noise ordinance not satisfactorily address that issue? Whether the windows are open or not. If the windows

are closed and it's too loud, it's too loud.
If the windows are open and it's too loud,
it's too loud

ROBERT WINTERS: You know, part of it -- it's not -- if you have to resort to the noise ordinance and sort of have officials from the license Commission coming down with monitors and that, you have already sort of gone way past it.

And I simply thought that it would be a much better arrangement to simply have -- you know, where we all sort of agree to it, that we never have to get to that point, that it is basically a good cordial relationship between neighbors and that that would outweigh the rest.

MICHAEL GARDNER: I'm sort of just talking as I think here. But from one point of view, if you all come to some common understanding yourselves, that sounds fine.

I don't think that I understand that

the License Commission's got particular authority to tell somebody to open or close their windows, except in the context of the noise ordinance.

ROBERT WINTERS: Well, it was for that reason that I sort of wanted to submit this, this is a part of understanding so when the license is granted, that this is sort of part of the understanding that we had since day one. So that should there be a problem, there would be something on record that basically says --

MICHAEL GARDNER: Again, I'm talking out loud here. But I sort of think we'd be happy to have something in the record as an understanding between the parties.

I'm not sure I would feel comfortable that that is a condition of the license. But if we need to confer about that legally or informally, we will.

ROBERT WINTERS: And basically that

is the core right there.

The other understanding would be that this would be a weekday operation. But that if it was suggested at a later date and also be on weekends, we could talk about it. But the default option would be weekdays.

JAIME VAN SCHYNDEL: We are willing to self moderate, and we choose six months because we want to see the Cafe at a point where-it-is-at capacity and busy and customers in there, and we can evaluate it and say "Is this reasonable to have these open during this time? Is this pleasant or a burden?"

MICHAEL GARDNER: Again, I sort of appreciate your congenial attempt to deal with this matter, but I think -- and I can be corrected -- we expect if a license is granted for a seven-day operation, it is open for seven days. That doesn't preclude us from granting a five-day license with the -- maybe doesn't preclude a five-day license with the

option to extend, either with notice or with process.

But I think I'm right that, if've you got an application for a seven-day license now, we would be concerned that you weren't operating on two of those days.

ELIZABETH LINT: Unless he wants to amend his application.

MICHAEL GARDNER: No, just the --

ATTORNEY JOHN SHETTERLY: I think that Mr. Winters meant just the opening of the windows?

MICHAEL GARDNER: Oh, I'm sorry, it completely passed me over. I thought you were talking about the operation.

ROBERT WINTERS: No, this is --

MICHAEL GARDNER: I apologize for taking up the time with my apology. You can move on.

ATTORNEY JOHN SHETTERLY: I thought it would be something that if we came back and

didn't live up to our end of the bargain, if we didn't behave, that this is something of value to Robert as a neighbor.

ROBERT WINTERS: And I think, if you're going in the same spirit as when other projects happen, and you have a memorandum of understanding, that pretty much sort of lays out what of our understanding is.

MICHAEL GARDNER: It would definitely be of value to the License Commission to have in the records these conversations and your understandings.

So long as you understand that we are not granting the license conditional on anything that what we vote.

ROBERT WINTERS: Right. I understand that.

Another aspect of it, though, is that I sort of would hope that if another place in some sort of a quiet little stretch on Cambridge Street comes out, that the License

Commission, in its infinite wisdom, might look and say, well, you know, there was an understanding that seemed to work out here, have you considered working out some, some agreeable arrangement like this, and maybe you could set a precedent.

MICHAEL GARDNER: In my limited experience with the Commission, it doesn't appear as if we are a precedent driven organization.

ELIZABETH LINT: If I could address that. We did have a situation similar to this at an establishment that isn't there anymore on Mass. Avenue, and certain conditions were placed on the license. And the abutter believed that no matter what, those conditions stayed with the license even after a transfer. So I would be reluctant to say to you that it is okay to put conditions on it and then, say, for whatever reason somebody else went in, that there is belief that the same conditions

stay on it.

JAIME VAN SCHYNDEL: Well, I think what's been expressed to us by the people we've met through the neighborhood association and Robert is that, we don't want the conditions to follow it, if it's a different usage or a different process.

ELIZABETH LINT: But perceptions --

MICHAEL GARDNER: Other issues?

ROBERT WINTERS: It would be reassuring to know that if a subsequent person were to move in -- and hopefully these guys would be here for the next 40 years -- but if there was something you could pull out of the folder and say: Well, there is something over here and you might consider this.

MICHAEL GARDNER: It's certainly could be part of the record for consideration.

ROBERT WINTERS: And for me, that's enough. It's more in the way of an understanding, not so much as something rigid.

But since -- I know Jaime mentioned last month that at some point they might come back for a capacity for some sort of amplified use or whatever, and similarly stating that "unless we agree otherwise, that is a closed window" kind of affair, so we don't have the music projecting out.

MICHAEL GARDNER: I think that would come to us as an entertainment --

ELIZABETH LINT: An entertainment license and governed by the noise ordinance.

MICHAEL GARDNER: You would have a shot at that. If you want to come back for an entertainment license, you could talk to us about your concerns.

ROBERT WINTERS: So long as we have an understanding that I'm come back here supporting him in everything he wants do.

The other thing about the rooftop mechanics is that appears to be largely addressed. Unless there is some sort of

unusual circumstances, just that they be not operating through the night. So, in other words, when the business is closed, we sort of the go back to our quiet little Kansas prairie here.

MICHAEL GARDNER: Is there any need for the mechanical to operate?

JAIME VAN SCHYNDEL: There are some concerns about energy efficiency. But in terms of lighting and noise, especially overnight, we are a 7 to 7, that's what we are applying for, and we respect our neighbors and that we are not going to -- we are going to try not to have a noise, we are going to try to minimize the lighting in the space and keep it just to what is reasonable and respectable and to keep people from breaking in, of course.

ROBERT WINTERS: I'll stop them if they try.

JAIME VAN SCHYNDEL: So we had a very

good discussion and we are on the same page. We are willing to self-moderate as much as we can.

MICHAEL GARDNER: Is there anything else you would like to add?

ROBERT WINTERS: The very last one I have on here was I thought at some point that we might come in asking for outdoor seating, which immediately becomes a projected sound waive back, but apparently they are not going to be asking for that.

I actually suggested, I said listen, the deal was, if you don't ask for that, I'll come up here with pom-poms on giving you all the extra indoor seating you want, so long as you don't put it outside.

JAIME VAN SCHYNDEL: I'm not interested in outdoor seating. Maybe a bike rack.

ROBERT WINTERS: I think we've had a pretty good meeting of the minds with both

property owners, cafe operators, at least one abutter, and I did my best to try and represent the possible needs for a future abutter that may occupying the currently empty space on the other side, too. But that's basically it.

MICHAEL GARDNER: Any other members of the public who would like to be heard?

JOAN PICKETT: My name is Joan Pickett, P-I-C-K-E-T-T, I live at 59 Ellery Street. I'm the presiding officer of the Mid Cambridge Neighborhood Association. And I'm pleased to be here this evening.

I have a letter that I would like to leave with you. And in the interest of the time, I would summarize that you know we are delighted that something is going to be into the Hubbly space and we're delighted that it's something that would be a neighborhood amenity.

And the issue that we had as we

discussed it among ourselves, again, came back down to the windows that we had spoken about. And I think, without reading this word by word, but there is this issue of the precedent being set, particularly on the Broadway side, for these type of windows in a neighborhood that is largely residential and not commercial in nature. And it does set a precedent for what may happen in the future.

And as you've correctly pointed out, one of our primary concerns was not necessarily against this particular applicant, but the fact that someone subsequently coming into that space may not have that the same understanding and agreement around how those windows might be operated if they were creating a nuisance. That is one of the concerns and it sounds as though there is nothing we can do about that. Other than to continue to monitor who is in that space when they apply for the licensing going forward.

And, again, the issue with the windows, plus the music, what does that do for the neighborhood, particularly on weekends?

And we did have an opportunity to meet with Steve and with Sylvia and with Jaime over the weekend to really understand the project in much more detail, which we did. And we believe there is a sincere interest in trying to be good neighbors and to represent the fact that they live in the neighborhood, at least Sylvia and Steve do, and they know that they are going to take the brunt of any complaints that would come from that.

And we also had conversations with Robert Winters about the agreements that he was reaching as it related to the operation of the windows.

And we have to do this: Weigh of the benefits versus the risk. And we think in this particular case for this particular licensee, given their representation and

warranties as to how they are going to be operating in this space and the agreement that they are going to be operating with Robert, that the risk of them creating a nuisance from a noise perspective, at least it's their intent to minimize that as a much as possible.

And, therefore, from a neighborhood perspective, we thought the risk of this taking place versus the benefit is one where we were willing to make sure that, from Robert's perspective and the neighborhood's perspective, that there would be some sort of enforcement, particularly in the noise ordinance if this was something that became, you know, untenable to the neighbors.

The other area of concern was just the hours of operation, particularly on Sundays when, believe it or not, it is quite quiet, and we wanted some consideration from them as to starting on Sunday in particular at a later hour.

We received some assurances that they will allow the neighbors to have the quiet enjoyment, believe it or not, on Broadway on a Sunday morning.

And so I think in the end, the Neighborhood Association, through the conversations, have come to the point where, again, the benefits of having the Cafe outweigh the concerns and risks that we have.

We are very thankful for the opportunity to have a chance to speak with the potential operators. We believe they are going to be operating in the best interests of the neighborhood.

And with that, we will end our remarks and I'll submit this for the record. Thank you very much.

MICHAEL GARDNER: Anyone else who like to be heard, please step forward and spell your name for the record.

SARAMAE BERMAN: My name is Saramae Berman, S-A-R-A-M-A-E, B-E-R-M-A-N. I live at 23 Fayette Street and I've lived there since 1958.

And I saw the operation of Hubbly, and I've seen the building empty, and it is nicer if it is full.

I'm willing to support this and I came here to support Robert because I knew he was very concerned. And he has talked to all the people involved and I'm satisfied.

I have a question, though, about the deliveries of goods and the pick-up of trash.

Now, is there going to be a delivery parking space available on Broadway, is that what's going to happen?

ATTORNEY JOHN SHETTERLY: Yes.

SARAMAE BERMAN: There won't be double parking?

ROBERT WINTERS: A limited time.

MICHAEL GARDNER: Is it currently

resident or metered parking?

JOAN PICKETT: Metered parking.

SARAMAE BERMAN: Even though the Longfellow won't be operating this year, the following year apparently it will be. And there will be kids being picked up and let off by parents and a school bus in that area.

MICHAEL GARDNER: Will you be in sufficient control of your delivery schedule to avoid these kinds of --

JAIME VAN SCHYNDEL: I believe we can get most of our deliveries to happen before 10:00, and we have a good relationship with our vendor.

ATTORNEY JOHN SHETTERLY: You can get a lot of coffee from one sack of beans.

SARAMAE BERMAN: I'm not opposing this, I just want to see --

MICHAEL GARDNER: I understand.
Thank you very much.

Any other members of the public who

would like to be heard. Please step forward.

STAN ROME: I'm Stan Rome, R-O-M-E. I own the property at 315 Broadway. I also own garages on Broadway Terrace. I just want to state that so long as the deliveries and the trash is done from the front of the building, I'll have no concern.

But I run a school for adults, and the loss of parking spaces is not something I would favor because we do have students.

So how is it that you're going to do this? You're going to have parking meters that are not available on certain hours? Or are you asking that those parking meters be removed and they be put into a commercial zone?

JAIME VAN SCHYNDEL: My understanding is that you can apply for limited hours where it could be a parking meter for the rest of the day, and that's what our plan is to approach.

STAN ROME: I think I would not -- I would prefer that if the deliveries were done in the early afternoon when kids are not getting dropped off or picked up at Longfellow, that would not affect us. So that would be one.

I think all the rest of it has been talked about. I would say -- not -- because I am supporting this, from what I have heard tonight -- but I have not done anything. I run a school. We are not open on the weekends.

So as a former college professor, I will say the next time you do something like this or someone else does, that would be a consideration. But I heard enough tonight so I'm not opposing it.

MICHAEL GARDNER: Any other members please step forward.

STEVEN AUSTERER: My name is Steven Austerer, A-U-S-T-E-R-E-R. I don't live in

Cambridge, I live in Arlington; although my money tends to visit Cambridge frequently. I also lived about a block and a half from Barismo on Mass. Ave.

And the reason I'm here -- I actually raced up from West Warwick, Rhode Island -- and I wanted you to be aware of that, that is how strongly I feel about this.

I appreciate the comments that all the abutters have made, but I will also tell you that when Jaime and his partners moved into the store front on Mass. Ave, and we seen what's been done there, it has been a most welcome addition to the community. Not only as a viable business, but also as a place for people who live along Mass. Ave. and East Arlington to gather in the morning or in the afternoons.

The other thing I would ask the Commission to consider, needless to say, we are in a very severe financial situation in

this country. The fact that they took a calculated risk when they did and came to Arlington, started a business in a very bad situation -- I'm not sure how many employees are there, I can think of seven off the top of my head and there may be more.

Keep in mind that not only will this be a welcome addition to the community and a place where people will truly enjoy in gathering conversation and just relaxing, but it will also provide employment. And I think that is also something that should be taken into account as well.

MICHAEL GARDNER: Thank you very much. Are there any other members of the public who would like to be heard on this matter?

(No response.)

MICHAEL GARDNER: Any summarizing comments from the applicant? Not required, just asking.

ATTORNEY JOHN SHETTERLY: No, sir, not really. I do have one question.

Why do you use the Elizabethan way of saying "victualers" --

MICHAEL GARDNER: Because I went to dictionary.com and that's what they told me to do.

Jay Jay: Either you're a Shakespearian scholar --

MICHAEL GARDNER: I couldn't figure out how to pronounce it, so I checked and that's what it told me.

MICHAEL GARDNER: Mr. Winters, we'd like to have that as a copy --

ELIZABETH LINT: I'll take it.

MICHAEL GARDNER: I hope all of you here will come back if this is granted. And if there is ever an extension request to extend to a larger number, that you hold Mr. Winters to his promise to bring pom-poms.

ROBERT WINTERS: I was bringing them

for you Michael.

MICHAEL GARDNER: Pleasure of the Commission?

You were not here for the first meeting, Mr. Bokuniewicz, so just in terms of at the high school event for now, we are operating on the point of view that we want to have the people who heard all the evidence vote. So there being a sufficient quorum for this, Superintendent Williams, do you have a motion?

SUPERINTENDENT WILLIAMS: I'd like to make a motion that we approve the application as submitted.

MICHAEL GARDNER: And if there are agreements, it is outside of the approval process.

MICHAEL GARDNER: There's been a motion to approve the application as submitted, and I will join in seconding that motion and make an editorial comment that we

have heard a number of representations both by the applicant and members of the community this evening that sounds like some informal arrangements have been made to both improve the likelihood of acceptance of the establishment in the neighborhood and the chance that it could actually contribute to or what the last week people from Arlington spoke of, which, I take it, is it is essentially a community-building kind of environment.

And so with those remarks, all those in favor signify by saying "aye."

LESTER BOKUNIEWICZ: Aye.

SUPERINTENDENT WILLIAMS: Aye.

MICHAEL GARDNER: None opposed.

Again, it's approved. We wish you well with it.

And I'd like to, I think, speak on behalf of the Commission to all of the members of the public and the applicants who participated here in what seems like in my

limited time a model of neighborhood cooperation and collaboration.

Thank you all for that. Thank you.

MICHAEL GARDNER: With the pleasure of the Commission, the motion to adjoin is always in order.

SUPERINTENDENT WILLIAMS: Motion to adjourn.

MICHAEL GARDNER: It having been seconded and completed, we are adjourned at approximately 9:58 on the evening of July 19, 2011.

(Whereupon, the Hearing was adjourned at 10:00 p.m.)

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS.

I, Evelyn M. Slicius, a Certified Shorthand Reporter and Registered Professional Reporter, the undersigned Notary Public, certify that:

I am not related to any of the parties in this matter by blood or marriage and that I am in no way interested in the outcome of this matter.

I further certify that the testimony hereinbefore set forth is a true and accurate transcription of my stenographic notes to the best of my knowledge, skills and ability.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of July, 2011.

Evelyn M. Slicius
Notary Public
Certified Shorthand Reporter
License No. 127193
My Commission Expires:
May 15, 2013

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