

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION DECISION HEARING

Michael Gardner, Chairman
Robert C. Haas, Police Commissioner
Gerald Reardon, Fire Chief

STAFF:

Elizabeth Lint, Executive Officer

-- Held At --

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

Tuesday, January 3, 2012

10:10 a.m.

REPORTERS, INC.
CAPTURING THE OFFICIAL RECORD
617-786-7783 / FACSIMILE 617-639-0396
www.reportersinc.com

I N D E X**PAGE**

Application: ALL-Star Pizza Bar	4
Application: Bowery Cambridge, LLC	16

P R O C E E D I N G S

ELIZABETH LINT: Before we get started, if anyone has a cell phone on you, we would appreciate it if you would turn it off, please.

This is the License Commission Decision Making Hearing on Tuesday January 3, 2012, at 10:10 a.m. We are at the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Basement Conference Room.

Before you are the Commissioners Chairman Michael Gardner, Chief Gerald Reardon, and Commissioner Robert Haas.

We have two issues left from December 20th, one is the Pizza Bar --

MICHAEL GARDNER: Right, All-Star.

ELIZABETH LINT: -- and the other is the Sinclair. Which one do you want to take first?

MICHAEL GARDNER: Let's do All-Star.

ELIZABETH LINT: All-Star Pizza Bar.
(Audience members approaching.)

MICHAEL GARDNER: If you could,
please, just state and spell your names for
the record and identify your affiliation.

KOSTA DIAMANTOPOULOS: My name is
Kosta Diamantopoulos, K-O-S-T-A, the last name
Diamantopoulos, D-I-A-M-A-N-T-O-P-O-U-L-O-S,
co-owner of the restaurant.

JOHN DIAMANTOPOULOS: My name is John
Diamantopoulos, J-O-H-N, Diamantopoulos,
D-I-A-M-A-N-T-O-P-O-U-L-O-S, co-owner/chef of
the restaurant.

ANDREW UPTON: Andrew Upton, attorney
for the applicants.

MICHAEL GARDNER: Ms. Lint, will you
summarize again the question before us.

ELIZABETH LINT: There were several
questions that had been posed to the
applicants at the last hearing. One of them
was how they would be different and whether or

not they had exhausted their avenues of purchasing a license.

They do own the sandwich shop that is directly across the street.

MICHAEL GARDNER: I apologize for being unclear. What I meant was could you please just summarize the application for us.

ELIZABETH LINT: Oh, I'm sorry. It's an application for a new wine and malt beverages as a restaurant license at 1238 Cambridge Street. Operating hours are from 10:00 a.m. to 11:00 p.m., and it has a seating capacity of 20.

MICHAEL GARDNER: Mr. Upton, are there any more that you would like to add to the application? I see you submitted an affidavit.

ANDREW UPTON: Just to summarize, we believe we demonstrated the overwhelming public need and public support the last time through our letters of support and a petition

of over 500 people. The fact that the owners had canvassed abutting neighborhood businesses and the residents in the building above, and found no opposition whatsoever; in fact, considerable support, even from people who lived in the apartment building directly above the proposed establishment.

The qualifications and the character and fitness of the applicant, I think are demonstrated, first, by the fact that they have successfully been licensees for more than four years directly across the street; they are good citizens; active in the community; active in the neighborhood. They run a very popular and successful and compliant operation.

Questions that emerged from the hearing on December 20th were: In what way is this operation unique? Is it just another pizza place?

We submitted a lengthy letter

attempting to define the character and novelty and excitement of the All-Star concept and the expansion from the sandwich shop to the pizza shop.

The brothers, one is a business school graduate, the other is a culinary school graduate. They have had a successful run in business. Their interest is not in opening just another pizza shop, they want to expand the All-Star concept, the All-Star experience, the uniqueness of the food, the uniqueness of the atmosphere.

One of the advantages we have is that they have -- this is not a concept of paper, they have done this. And I think they can give you a little more detail on the concept and even not just the uniqueness of the atmosphere and the experience, but the recipes and the food itself.

KOSTA DIAMANTOPOULOS: The conception is and what we'd like to offer is an

all-encompassing experience that starts, of course, with the food, recipes, and combinations that are uncommon or even untried before.

And then we like to compliment that with the atmosphere. The atmosphere is a very warm, welcoming, friendly, loud, bright, bold, in-your-face experience. And we encourage our staff to actually get involved with the customers, sitting down, and joining in in their experience.

So when you add all of that together, we like to we call it the "All-Star experience"; it's a draw, it makes people come in and feel warm and feel like friends. In fact, that's our motto, a good sandwich is like an old friend.

That actual concept has drawn a lot of light from the Food Network. We've been featured on the Food Network in the recent past. And, furthermore, we are having

conversations with them again for our own reality show where they want to document and track us trying to open a new restaurant and trying to manage the two restaurants, as well as the daily matters that come with trying to run a few restaurants. Those conversations are happening. We are talking to Authentic Entertainment. At this current moment, they're in focus groups. So if the focus groups approve them, then it's up to them to decide whether or not they want to approve. If that happens, it's going to bring a whole new light to Inman Square.

ANDREW UPTON: So we have given some additional detail in our letter. We've also attached a number of press clips. And we understand that in this day and age just getting your name in the paper is not necessarily an automatic indicator of quality but, you know, if you flip through those you'll see a lot of very positive reviews from

a wide variety of sources.

And I believe Chad Ochocinco of the New England Patriots took a class of students and social media there for dinner just last month. Players from the Bruins have been there. Critics from all sorts of restaurants have the been there. And we believe that this is a net plus for the establishment of the All-Star Pizza Bar, but it also has been a plus for Inman Square.

Inman Square is a well-renowned dining destination, and we think the All-Star Sandwich Bar has added to that, and we think the All-Star Pizza Bar will do so in a bigger way. I think these two will be greater than the sum of their parts.

And as the dining experience pushes sort of out the edge of Inman Square, as it has been, this will be nothing but a plus for the community and for the restaurant business and for the reputation of the area.

The second question raised was: Had they looked for a license to purchase? We were not prepared to answer that at that time because their primary counsel and the restaurant consultants weren't here. We then went back and talked to them and they said, yes, they did do a canvassing of the area and found licenses to be in very short supply, and the one sort of preliminary negotiation they had with an establishment was a very difficult one and the proprietor had both an unrealistic expectation of what the price was and also what the time line was in order to get it done. In my experience, this is indicative of someone who really doesn't want to sell and was just sort of testing the market.

So instead they decided to put their time, effort, and resources into a fuller build-out of premises and apply for a non-transferable, no-value license.

MICHAEL GARDNER: In the letter of

December 28th, on the bottom of the fourth paragraph, there is a reference to a Google search of All-Star Sandwich Bar and a Google search of All-Star Pizza Bar, and with the references to the number of approximate hits.

And just so I understand what you are representing that to mean, that is, members the public go into the Google site and put in "All-Star Pizza" and it's coming up and they're opening up the website for these two establishments? Or does it mean something different than that?

ANDREW UPTON: I think it means something a little bit different. Typically, the amount of hits you get on a search is indicative of the popularity and the prevalence of what you are searching.

If I searched "City of Cambridge," you'd get a million hits because the words "City of Cambridge" appear in all sorts of social media.

There were 125,000 hits when I typed this into Google to see how well-renowned the All-Star Pizza Bar was, and to generate some of those clips.

MICHAEL GARDNER: So those reference different places on the web or the internet where this name appears?

ANDREW UPTON: Yes.

MICHAEL GARDNER: Not activity of people searching for --

KOSTA DIAMANTOPOULOS: A combination.

ANDREW UPTON: When you talk about search engine optimization, the return you get on a search is based on how many are out there, sometimes algorithms created by Google, on how many times it is mentioned and how many people are looking for it and some combination of its popularity.

MICHAEL GARDNER: I understand it, Chief, this was a meeting that you were not present at?

GERALD REARDON: That's correct.

MICHAEL GARDNER: Mr. Mahoney was here.

ROBERT HAAS: Mr. Upton, could you just clarify, in the Affidavit, in item No. 3 it talks about, "even a potential interest of selling a license." Can you give me a little bit more background as to why you didn't think that was a viable option for purchasing that particular license?

ANDREW UPTON: Well, according to Mr. Devlin, who spoke with the consultants, they did a canvass of establishments to see what's available and one individual popped up. But because of the unrealistic expectations of the price, the difficulty with assuming the lease, and the suspicion that there may be some tax obligations to either DOR, DUA, or liquor vendors on the license, that it just wasn't realistic to purchase that particular license.

MICHAEL GARDNER: There being two of us present, Commissioner, are you prepared to go forward on the application?

ROBERT HAAS: I am. In review of the petitions, I think the applicants did do due diligence in terms of canvassing the neighborhood and particularly it's interesting that the residents that are above the establishment that are supportive of it, and the fact that there doesn't seem to be a viable liquor license available to purchase, I'm inclined to vote in favor of the application.

So I make a motion to approve the application for a new wine and malt beverage license.

MICHAEL GARDNER: I'll second that motion, and subject, of course, to meeting all of the conditions with respect to training and the --

ELIZABETH LINT: They already have

been met.

MICHAEL GARDNER: Okay. Motion having been made and seconded, all those in favor please signify by saying "aye." Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: So the application is approved. And good luck with the establishment.

ANDREW UPTON: Thank you very much.

* * * * *

ELIZABETH LINT: The other matter that was left was the application of Bowery Cambridge, LLC, doing business as the Sinclair.

MICHAEL GARDNER: Mr. Rafferty, if you would come forward and, again, please state and spell your names for the record and your affiliation.

JAMES RAFFERTY: Mr. Chairman and members of the Commission, for the record, my name is James Rafferty, R-A-F-F-E-R-T-Y. I'm

an attorney with the law firm of Adams and Rafferty, located at 130 Bishop Allen Drive in Cambridge. I'm representing the applicant.

Seated to my left is James Glancy, G-L-A-N-C-Y. He is a principal of the LLC. And to Mr. Glancy's left is Joshua Bhatti, B-H-A-T-T-I. Mr. Bhatti is the proposed manager of the establishment.

MICHAEL GARDNER: Thank you.

And one of the reasons that we unfortunately got started a little late this morning was that we were presented today with a letter dated December 30th, signed by Shippen L. Page, in which he laid out some concerns.

And we did take some time this morning to review this and I think, for purposes of the record, I would like to go through some of the issues raised by Mr. Page and seek a reaction from the Commissioners, Mrs. Lint, and if necessary the applicant.

As I understand the letter,
Ms. Lint --

AUDIENCE MEMBER: Sir, could you speak up. We can't hear you too well in the back here.

MICHAEL GARDNER: As I understand the letter, Ms. Lint, there is on page 1 a concern that a mandatory required signing-off from a zoning specialist had not been completed by the time of our initial hearing on this matter which was November 15th.

There is a required zoning sign-off both attached to this letter and in the file, with, as I understand it, the signature of Rongene -- the Commissioner of Inspectional Services, Rongene Singanayam, dated December 20, 2011.

So, Ms. Lint, I think you've had an opportunity to look at this in terms of both the Commission's rules and the current procedures and practice. Do you have any

concerns with respect to the fact that the zoning sign-off is dated December 20th?

ELIZABETH LINT: I do not. It has not been uncommon in the practice of the License Commission to take applications that don't have all of their requirements. But, certainly, everything would have to be submitted either prior to a vote or subsequent to a vote, and the vote would then be subject to obtaining all of the requisite sign-offs. But we have done that before.

JAMES RAFFERTY: Mr. Chairman, might I be permitted a factual history on this issue since I have direct involvement in it?

MICHAEL GARDNER: Pleasure of the Commissioners? Go ahead.

JAMES RAFFERTY: I just want to assure the Commission that this had a full vetting. Prior to even preparing or filing the application, I met with Commissioner Singanayam to go over this matter. We,

similarly, had a meeting with the fire department, fire prevention, even before the filing of the application, in an effort to address this prophylactically.

I learned on the day of the vote that that -- and Mr. Singanayam signed the sign-off with me that day -- I learned it wasn't in the file. I'll take responsibility. My office must not have included it perhaps.

The Commissioner that day said, "I already did this" and I said, "Yes, but it's not in the file and I can't find it in my file." So he did sign it. But the suggestion that this was fully reviewed prior to even the preparation or submission of the application with the building department, Commissioner Singanayam.

MICHAEL GARDNER: Thank you.

With respect to --

AUDIENCE MEMBER: (Gifford)

Mr. Chairman, could you clarify how these

proceedings go? Because the applicant has had adequate time to speak to this issue. At the last hearing you held, he spoke 45 minutes. I was denied a chance to get up at that point and sort of rebut some of the things he said. This is our attempt to clarify what we see has happened in the application. (Inaudible)

Now, if he is going to be able to resubmit his case, this becomes a hearing, and we would have a chance to speak in response.

MICHAEL GARDNER: As I understand it, a member of the public has spoken and asked about the procedure for today. The procedure for today is that this is a Decision Hearing in which we do not intend to take further public testimony.

We are prepared, as has been our practice in the past, to ask questions of the applicant. If we have questions of the applicant.

I am, at this moment, attempting to

put into the public record the concerns expressed by a number of people, one of whom I believe by sight is represented by Mr. Page, and is the person who is choosing to speak today.

We are not planning public testimony today. I am going through this letter in detail to make sure that the concerns expressed by the people represented in this letter are in the record and are addressed.

AUDIENCE MEMBER: Thank you.

AUDIENCE MEMBER 2: I would --

MICHAEL GARDNER: We are not taking public testimony today, so I'm not in a position to have a debate or speak about any issues.

AUDIENCE MEMBER 2: This is not about that. I just wanted to let you know that Shippen Page is not here. I'm an attorney, my name is Julia Powell, and I also signed off on this letter. So I just wanted you to know

that I'm here.

MICHAEL GARDNER: Again, you know, I'm not going to take public testimony today. I will note that counsel, who spoke at the last hearing, who is an associate of Mr. Page, spoke to represent to us that Mr. Page is not here today. My memory is that he had represented that to us himself at our last hearing on, I think, December 20th.

And if any of the Commissioners feel they need to make any inquiry, that will be up to them.

For now, I am going to proceed as I've outlined. We are going to go through the letter and the Commissioners will, among themselves, discuss any issues that they have. And if the Commissioners feel a need to speak to the applicant, they will do so.

AUDIENCE MEMBER: I appreciate that. I would just suggest that Mr. Rafferty, if he would, to respond in writing to these claims

because he is making assertions that, for instance, don't need to be in the file, (inaudible) the sign-offs, and we are suggesting that it definitely does. Maybe if he could do it in writing also --

MICHAEL GARDNER: Again, I'm not going to take public testimony today. I think we have had ample opportunity for such testimony, including allowing the current speaker to speak at length at the initial hearing.

The second component of this, of Mr. Page's letter, I think raises a procedural question, Ms. Lint, of whether or not, given the structure on the premises and the proposed operation plan, if one license for the restaurant and bar is sufficient, or whether that should be broken into two separate licenses? And I wonder if you've had an opportunity to review this section and if you do have any opinion with respect to this

claim?

ELIZABETH LINT: Well, I reviewed it briefly this morning since that's when we first received it. I don't see how you could possibly have two separate licenses at that location.

First of all, the ABCC would not grant two licenses at the same location. It is one lease, it's for one specific space. It's not -- the spaces are not completely separated. It isn't as if the restaurant is closed off and is not part of the entire premise; it's operating under the same name.

MICHAEL GARDNER: Thank you.

The third issue raised in Mr. Page's letter points out that the premises are in a CAP area and that the Commission's rules require a legal searching and detailed examination with respect to actions in granting exceptions under the CAP.

I'll note that for the record, and

ask either of the Commissioners or Ms. Lint if they have any comments or concerns with respect to this provision?

ELIZABETH LINT: I think that particular provision applies to new licenses. In 2006 there was an amendment in the CAP policy, Page 19 of rules and regs, that says, "Increases in capacity within a CAP area are allowed in accordance with the rules and regulations already in place."

MICHAEL GARDNER: And if you will remind us, Ms. Lint, there is a current license in the total of 304 seats?

ELIZABETH LINT: I don't remember the number but it is somewhere around there.

MICHAEL GARDNER: Thank you.

The fourth concern expressed in the letter on Page 4 is that the Cambridge License Commission has "failed to address the requirements of General Laws Chapter 138, Section 12, relating to the "serve the public

need and protect the common good."

And there is a reference on Page 5 of this letter to a -- what is characterized here as a "huge fight which broke out at the Middle East nightclub in Central Square on November 30, 2011."

And I'm wondering, Commissioner Haas, whether you have any information about that or any views with respect to the applicability of any history of the Middle East or other large venues here in Cambridge, or any research you've done with respect to the Bowery operation in other locations that might inform us on this issue?

ROBERT HAAS: I guess to go back to your initial question, Mr. Chairman. The Middle East is an entirely different operation than what is being proposed before us. And so it's a little difficult to draw a direct correlation between what may have taken place in one establishment to what potentially could

happen with this establishment.

As I understand it, the applicant is looking to operate an entertainment venue with specified hours with a single performance; unlike the Middle East which operates an ongoing opportunity where people come and go during the course of the evening and things like that.

So I'm having a hard time trying to accept that correlation as being a valid way to draw a comparison between this applicant and what takes place a limited establishment.

In terms of other operations, we did look at some of the other operations that had been either managed by the proponent or applicant or run by the applicant, and have seen in one case a significant difference in terms of the establishments and their service and we had a history of serious events that took place. And since they've taken over that operation, I have not seen the same kinds of

patterns that had taken place under their management.

So those are two issues that we kind of looked at during the course of this interim period.

MICHAEL GARDNER: There were a lot of pronouns in your sentences. The "they" you are talking about are the Bowery --

ROBERT HAAS: The Bowery operation.

MICHAEL GARDNER: -- taking over something for somebody else, and there be an improvement in --

ROBERT HAAS: In the history.

MICHAEL GARDNER: -- after they took it over.

ROBERT HAAS: Yes.

MICHAEL GARDNER: Is this the Boston location?

ROBERT HAAS: Yes.

MICHAEL GARDNER: The fifth paragraph of Mr. Page's letter addresses economic

viability of the interested parties as being irrelevant to Commission deliberations.

There essentially isn't any dispute about that as a proposition with respect to what we need to be concerned about, other than I would hold, I think, that the Commission rightly can be concerned if it thinks an applicant is making a proposal for which they don't have the appropriate resources or backing available.

It seems like in terms of the common good, granting a license might not be prudent here.

The next I believe, Commissioner, when we last met on this matter, you had asked that we delay consideration until the next meeting, which was scheduled for today, based as I recall it, at least in part, on some of your concerns with respect to the egress from the facility at the end of the night and the crowd control issues that might result

therefrom.

ROBERT HAAS: I still have some concerns about just the number of people that potentially could be coming onto Church Street from not only this one applicant, but also the other businesses that are actually operating in the area.

I've long held and still maintain that it's the business owners' responsibility to not only maintain a proper operation but also to have some responsibility in terms of seeing that their guests do leave the area without creating disturbances or concerns for us in terms of any kind of safety issues.

We've had some representations that the Bowery is going to have staff out on Church Street at the time when the entertainment is over to help people get to other locations and destinations away from, I assume, Church Street, since there is only a few operations along Church Street that people

would want to take advantage of, and either direct them to transportation or parking or other businesses in the Harvard Square area.

My big concern, and I've had some experience with this, is just the choreographing of how people leave the businesses along the area.

We've had one experience with one establishment where we've been able to modify some of the disturbances by changing the times when people are let out of the different establishments.

But now you are compounding that with another establishment that has a relatively high volume of people coming out onto the street. So I still have some concerns about how to effectively manage that.

I did in fact get an e-mail from Mr. Rafferty with respect to suggested operations -- hours of operation. I'm still a little bit concerned about the closeness of

proximity, especially the weekend hours, with respect to the closing times of other establishments along Church Street.

MICHAEL GARDNER: And I understand, Ms. Lint, that you do have a relevant document in the record from Mr. Rafferty?

ELIZABETH LINT: I do.

MICHAEL GARDNER: Would you share that publicly, please.

ELIZABETH LINT: Sure. The amended hours that the applicant is proposing would be: Between Sunday and Wednesday, the entertainment license would be complete by midnight; and then Thursday, Friday and Saturday, it would complete by 12:30. There would be a 25-night per year limit that the license can be extended to 1:00 a.m. with notice of the extension being given to the License Commission two weeks prior to the planned event.

MICHAEL GARDNER: And I wonder,

Mr. Rafferty, if you could speak to this amendment, to this proposed amendment to the entertainment license, its rationale, what you hope to achieve by it, and let us understand more of the plan for the 25 -- up to 25 nights 1:00 a.m. license adjustments.

JAMES RAFFERTY: Well, the genesis of this came from the last hearing where there was an extensive commentary by the Commission about the requested operating hours on the entertainment, particularly in light of Mr. Glancy's comments at the initial hearing regarding when the normal or likely closing hours or time works.

So, as we said that day, the applicant stands by that characterization, but there were some exceptions that they wanted to make you aware of.

So I'd say the first part of this is to say midnight on the applicant is -- even 1:00 a.m. licenses stay in operation until

1:00 a.m. -- this would be a midnight conclusion of the entertainment license from Sunday through Wednesday.

It also -- I think my memo also contained additional information about MBTA service and the like, and I conceded that there was some relevance to that issue.

The Thursday, Friday and Saturday proponent is 12:30 on the entertainment license. It is merely a reflection of the fact that on those evenings when the City allows alcohol and license entertainments to go to 2:00 a.m., there is an acknowledgment that shows sometimes start a bit later on the weekends, so there is a request of a one-half hour extension of 30 minutes to 12:30.

Mr. Glancy proposed and suggested to me that in some of the venues they know well in advance who is coming, and, as has been explained to me, a particular act that might have two warm-up acts as opposed to one, given

the size and scope and appeal of the act, is the one where it could go a little bit longer.

So their suggestion is that we can plan for that, we know when that is coming, we would like to be able to identify that and let the City and the License Commission know and we could keep a log of it, the License Commission could, and if there was a determination that, say, a police detail was warranted or something of that effect, there would be advanced planning on that.

So it really is an attempt to create a mechanism that is consistent with the representation, which is largely to midnight, a little bit later on the weekends, and then there are these occasions in the course of the year.

And 25 wasn't a magical number. We thought about what seemed likely. Frankly, Mr. Glancy thought that was an adequate number, and we'll, obviously, defer to the

judgment of the Commission on that. But it was an attempt to create a two-tier closing time with some flexibility on the entertainment side. It also, we felt, responded to Commissioner Haas' concern that the license downstairs is a 2:00 a.m. license on the weekends and --

MICHAEL GARDNER: By Downstairs, do you mean Fire and Ice?

JAMES RAFFERTY: Yes. Fire and Ice, the licensee that is located in the adjoining premises or at the lower level.

So with the 12:00 -- I mean, their 1:00 a.m. on the dates that we'd be closing at midnight; on their 2:00 a.m. on the dates we'd be closing at 12:30. And we felt it also had the benefit of addressing some staggering of egress by limiting those, by having those hours different.

MICHAEL GARDNER: So 25 nights potentially up to 1:00 a.m., is it your sense

that, depending on the act, that that might be a Friday and Saturday, so two nights for a particular act, or that you would be looking to think about Saturday nights, I don't know, every other Saturday night?

If you could just give us some more sense about how you would envision using the 25 nights?

JAMES RAFFERTY: Could Mr. Glancy respond to that?

MICHAEL GARDNER: Yes, please.

JAMES GLANCY: In terms of the -- what would give us would be the flexibility for in artist, for whatever reason -- it could be a commitment earlier in the day, or a number of supporting acts, opening acts, before the headliner came on -- we wouldn't look to fulfill that 25 number. If the business ran along and we used seven of them in a year, that's the number it would be, there would be no rush to use the 25 number.

It just allows us the flexibility when we are booking the artist and running the concert hall to run the business the way it needs to be run.

In other places where we've had stipulations, we never once came close to maxing out on the number of stipulations. It was something that was there just to give a little bit of leeway.

MICHAEL GARDNER: And these hours address, from what I remember, some concerns being addressed the last time about, if, in the moment, there is a demand for an encore or, essentially, I think what you wanted to say, the band in the room didn't want to stop playing, you'll deal with that with respect to these hours, it will be done by these posted hours?

JAMES RAFFERTY: I think it's a hard stop. I think the 12:30 is more reflective of that on the weekends. The 12:30 probably

means that the Thursday, Friday, Saturday nights that the entertainment could spill after midnight. But none of these hours would suggest any tolerance beyond the stated closing, the conclusion of the entertainment license, it would be midnight, 12:30.

And they stated that because they control the venue, they control the equipment, they control the sound, they can't point the finger at a third-party and say that it was the band's sound operator that let it go long. They are fully understanding that they will be controlling the output of the music and they have the ability to terminate it.

ROBERT HAAS: Thank you.

MICHAEL GARDNER: Ms. Lint, do we have any experience with these open-ended variables as proposed here?

ELIZABETH LINT: I don't think so.

MICHAEL GARDNER: Is there anything in our rules or the ABCC rules or statutes

which you think limit our capacity to deal with this in this flexible way?

ELIZABETH LINT: No, I think you can do that. The ABCC doesn't control hours.

JAMES RAFFERTY: Of entertainment.

MICHAEL GARDNER: For anybody who didn't hear what Ms. Lint said, it was that the ABCC does not control hours of operation.

MS. LINT: For entertainment.

MICHAEL GARDNER: For entertainment.

So for our purposes, I did, in the time period since our last meeting, consider some possible requirements or restrictions that we might put on a license or operational issues that we might request or insist on with respect to mitigating impacts.

The first of those that I had discussed was the relationship between the T and the closing time for the entertainment license. And I was wondering whether or not -- whether 12:00 and 12:30 for Sunday through

Wednesday, and Thursday through Saturday would be appropriate.

I also wondered whether there might be any special requirements that we could put on the license to have the operator seek permits from the Public Works Department and wherever else might be required for sidewalk control.

For example, stanchions for separate -- to create a separate line for passersby to deal with any concerns about long lines that might show up for people to enter prior to the show.

ELIZABETH LINT: We actually have done that before.

MICHAEL GARDNER: And then I did just speculate about what other post-show crowd control measures would make sense. I think initially we heard from the applicant that there would be one means of -- one planned means of egress. And then the second

possibility of down the ramp near the elevators would not be anything other than an emergency exit. I think we had some indication in the record that that was being considered.

I wondered if, Mr. Rafferty, you care to address any updates on that issue, and also any other thoughts with respect to post-show crowd control as you've heard the Commissioners' continued concerns.

JAMES RAFFERTY: Again, I might defer to Mr. Glancy on the operational question. I know that the initial thinking had been that an established control point, a single point of entry and exit, was ideal.

And I think, as we looked at the physical nature of the space and everything else the last time we met, there was also discussion that certainly that would be the case for ingress through the ticket counter, but at the end of the evening there might be

an advantage to having two points of egress.
And I don't know where we are --

JAMES GLANCY: We would very much like to stay with the one point of egress. The goal -- and, again, there is a flow as the show starts to wind down. So some people will start to leave during the encore, some people will leave prior to that if they are not happy about the show, and the majority of the crowd will start to leave as the music ends. And sometimes they want to use the restroom, sometimes they want to get their coat, sometimes they want to find their friends.

But with the one egress, it's a way of slowing down the egress so suddenly everyone isn't deposited on the street. It actually helps us to get a good flow going so that our staff at the door can head out on the street and, as people need help, can help direct them towards the T or towards parking lots or things like that, and can deal with

people in an orderly manner. So we would still suggest that we stay with the one point of egress.

MICHAEL GARDNER: Any other thoughts on crowd control post-show?

JAMES GLANCY: Historically, what we've done in other venues is work with the local police department and find out what they want done. And it can be as much as or as little as the police request or require. And that's something that our team and our staff would work with the police department and find out what they want from us.

JAMES RAFFERTY: I think at a minimum, and as we submitted and as you recall included in the records of the last meeting, there was a submittal about a policy regarding a staffing post closing. And I note some of the minimum elements of that include staffing on the sidewalk.

JOSHUA BHATTI: Two on the sidewalk

and two at the exit doors.

MICHAEL GARDNER: And what, if anything, can be done by your staff with respect to a group of ten or more large males and/or females who insist on whooping it up or yelling loudly, either about how wonderful the show was or how awful it was or whatever they might be yelling?

What do you understand -- what is your experience with that kind of behavior and what's your understanding of what, if anything, you can do about it?

JAMES GLANCY: I think it's a couple things. One, I think a large part of it is the nature of the artist that we are booking and the types of crowds that are attracted to the those artists. I also think that a significant way to minimize or eliminate those problems is some of things we talked about how we serve alcohol, monitor the sale of alcohol, people who may be arriving at the venue

intoxicated won't even be let into the venue, limiting the number of drinks, cutting people off and things like that.

So I think, historically, our crowds haven't caused those kinds of problems outside the venue, and we would see no reason why it would be any different here.

MICHAEL GARDNER: Any thoughts or comments, anything further on that aspect of the matter?

ROBERT HAAS: I'm thinking.

MICHAEL GARDNER: The Commissioner said he is thinking.

ROBERT HAAS: Yes, I'm thinking.

MICHAEL GARDNER: Mr. Rafferty?

JAMES RAFFERTY: On that subject, I do get asked regularly by clients, I'm not sure why that is, the decisions around the use of a detailed officer at the scene, my experience is that there are some venues that warrant it; that it's a determination best

made between the applicant and the police department at some point once they are getting close to opening. I know the applicant would be very amenable to taking guidance on that question.

MICHAEL GARDNER: Thank you.

ROBERT HAAS: I have mixed emotions about detail officers.

JAMES RAFFERTY: That's why I raised it, because I know in some cases it's not seen as the right response.

MICHAEL GARDNER: Well, I think that, in general, the position of the police department and the License Commission, if I'm stating it fairly, Commissioner, is that if there is a police presence, it's on a paid detail arrangement, it's not for so much crowd control within the premises, but externally?

ROBERT HAAS: Externally.

JAMES RAFFERTY: Of course the flip side on that question, and it comes up

historically and regularly is, at what point is it the prudent course to contact the police, that you don't deputize staff to do things that they don't lawfully have the right to do on public property.

And then, in some cases, and I think we've moved away from it in the past few years, I would tell you that I thought there was a reluctance on the part of some licensees to contact the police because, in doing so, they invariably found themselves at a disciplinary hearing.

And so some of the initial -- and this is many years ago -- some of the initial reactions of "let's try to fix this ourselves, because when the police get involved, we wind up at a disciplinary hearing." And I think we have moved far away from that. I think the message to licensees through class and other means is, you know, "this is a partnership, and just by contacting the police doesn't mean

you'll find yourselves in hot water." And which, I have to tell you, I think there was some kind of thinking on the part of licensees years ago to that effect.

ROBERT HAAS: And I think the earlier interventions are a more prudent thing to do, and I think we've had a number of hearings where we've actually brought applicants and/or licensees in for failing to call the police in a timely fashion. And I think that is more our view than anything else. Obviously, there is a point where you have concern about constantly being called, but --

JAMES RAFFERTY: No, I was very mindful of your policy. But I can tell from you dealing with licensees that there was a certain reluctance some years ago that, "If I call the police, I could be making matters worse for myself."

ROBERT HAAS: And I'll also tell you that hiring a detailed officer doesn't

mitigate, in my view, the responsibility of the licensee to manage and maintain the operation and the crowd. There is a tendency that to think because there's a police officer there that they become the pseudo bouncer and that's not the role of the police in those kinds of situations.

And I don't want to see that happen, and we've seen this happen on Winthrop Street using officers to manage the street control and making sure that the people move about orderly and safely as opposed to management that takes place inside an establishment.

MICHAEL GARDNER: So as one of the other conditions I thought that might be appropriate to place on the license, was to require periodic noise monitoring by licensed commissioned staff.

I think that we have heard that there is a lot of attention being paid to internal soundproofing with respect to other tenants in

the building, other occupants, but there is, of course, substantial concern from the neighborhood about noise.

And I just wonder, Ms. Lint, if you could describe a little bit about what a noise monitoring effort on the part of the Commission would likely entail, describe what would happen and how we could arrange for that.

ELIZABETH LINT: Well, as you know, we have one and a half investigators. They go out pretty much every night but especially Thursday, Friday and Saturday nights, and check all the so-called hot spots, the busier areas in the city to make sure that things are flowing along as they should flow along, and they do spot checks on IDs and things like that and they monitor all the one-day licenses on given nights.

So it would just be in the ordinary course that they would be going out there.

And we could certainly highlight any particular location for a particular time.

MICHAEL GARDNER: With respect to the noise, we have the capacity to send out the sound equipment --

ELIZABETH LINT: It's a non-measured noise disturbance.

MICHAEL GARDNER: So there is nothing that we can do about this?

ELIZABETH LINT: The sound can't be plainly audible from 50 feet.

MICHAEL GARDNER: So our people can go and stand 50 feet away from the premises and if they can hear the music or make out the noise or the notes or the words, that's a violation?

ELIZABETH LINT: It's a violation.

MICHAEL GARDNER: So it doesn't require or it's not appropriate that given all the other ambient noises to come around to and use the equipment, but our test is audible by

ear?

ELIZABETH LINT: That would be correct.

MICHAEL GARDNER: I wonder if the applicant could address their level of confidence that both the sound being generated within and the soundproofing within are going to protect the neighborhood to that standard.

JAMES GLANCY: We are confident -- we think actually the landlord will hold us to a higher and stricter level of scrutiny than even what you just talked about. We are very confident there.

MICHAEL GARDNER: And so we could place, if we were so inclined to grant the license, a condition that it be regularly monitored for noise according to our standard practices?

ELIZABETH LINT: Sure.

MICHAEL GARDNER: I also did wonder, given the proposed size of the operation and

the concerns expressed within the community, whether it would make sense as a condition of any license we might grant to require three-month, six-month and 12-month reviews of the initial operations, which would include having the matter on the agenda, having had inspections at timely periods, and having the then licensee in to address any operational concerns or complaints that might arise, including from the public.

Is that a condition, Ms. Lint, that you feel could be placed on the licensee?

ELIZABETH LINT: Absolutely. We do it all the time.

MICHAEL GARDNER: I'm also wondering about whether we have done this before or we could do it here as sort of a Fenway Park model of actually closing the bars that directly serve the entertainment area some time period before the scheduled end of the show, say, 15 or 20 minutes. And I am

wondering whether we have had any experience with that or if we have the authority to do that. And I would also like to hear from the applicant as to whether they see any value in that in terms of their own control operations or whether and what difficulties such a requirement, if it were placed, might provide.

And this is in the framework, as I understand the representations, that the bars which serve the entertainment venue would close at the time the entertainment license closes. That there will be -- this is not a place to get drinks after the show, even though there are other bars in the premises where one can get drinks, and under your business model hopefully the applicant feels that they might get at least some business that way.

So I'm wondering, Ms. Lint, first, if we have any history with that?

ELIZABETH LINT: Not that I'm aware

of, but there is nothing that would prohibit you from doing that.

MICHAEL GARDNER: I would be happy to hear from the applicant as to your thoughts about whether there are any advantages to that and the disadvantages and any operational concerns you would have. So essentially you shut off the bar some time before the show closes.

JAMES RAFFERTY: I would say from a legal perspective, the most obvious concern or challenge to that is then the ability to accurately predict when the show will end. So I would suggest that the license, the entertainment license itself, has a specific time --

MICHAEL GARDNER: I'm sorry, that is what I meant. Not a projection of when the last song or the last encore was.

JAMES RAFFERTY: Well, you --

MICHAEL GARDNER: I mean 15 minutes

before the stated end of the entertainment, before the hard stop on the entertainment license, whatever time period -- or I think when the act ends, which is if earlier.

JAMES RAFFERTY: And that is the -- and I'll let Mr. Glancy speak, but we have talked about that. The policy as described was on -- that the musical venue, when the performance concludes, patrons begin to leave, and their desire is not for patrons to remain beyond the entertainment.

And Mr. Glancy pointed out to me, well, sometimes they have a CD signing, so there is some activity going on but the entertainment is concluded.

And his proposal was to have the alcohol service concurrent with the entertainment license in those three bars that serve in the music room, if you will.

And is that what I'm hearing being proposed from you?

MICHAEL GARDNER: What --

JAMES RAFFERTY: So on nights when the entertainment closes at midnight, the alcohol in that room would stop at 11:45?

MICHAEL GARDNER: I'm raising that as to whether that makes any sense or what kind of difficulty it causes.

JAMES RAFFERTY: It would cause difficulty.

JAMES GLANCY: So, specifically, that if we estimate that a show will come down at 10 minutes after 11:00, are you suggesting we would stop serving at 10:55? Or are you suggesting in that case --

JAMES RAFFERTY: I don't think he is suggesting, he's just putting an idea out there.

GERALD REARDON: For example, if you are closing at midnight, would it make sense to stop alcohol service at 11:30? If it got out early and it ran past 11:30, so be it.

But let's say the hard stop deadline is midnight, would it make sense to, say, 30 minutes before the actual leaving that the alcohol service stops, so people could finish their drinks and so forth and wouldn't have a need to hang around because they didn't get to drink at 11:55 and so forth.

That's kind of what the Fenway model is, is the 7th inning things will stop. So it has no specifics in terms of when the game is getting over, it's a period of time, and I am just suggesting that for the purposes of discussion here.

JAMES GLANCY: It's something that I haven't seen at a venue of this size. And I'm talking about at amphitheaters (inaudible) where it's within X amount of closing, but it's not something I've seen in a venue of this size.

I don't think it would work for the patron experience. And I think if patrons

know when the show is about to end, they are pretty savvy in that regard, and I think if, on those nights, if the music was heading towards being done by midnight, you aren't going to see patrons running up to the bar at twelve minutes of or seven minutes of.

MICHAEL GARDNER: As I understood Mr. Glancy, because I did notice in the back of the room some people indicating that they could not hear what you said, but as I understand what you said, you have some experience with essentially early shut-offs at amphitheater type operations, you don't have any experience with it at a venue of this size, and you believe that it would not be a positive thing with respect to either your operations or the patron experience.

JAMES GLANCY: Exactly.

JAMES RAFFERTY: And I might add, Mr. Chairman, in thinking about the application, we did introduce this concept of

concluding alcohol concurrent with the entertainment for that reason. And that would represent, on certain evenings, that that could have the effect of alcohol service on a 1:00 a.m. license stopping as early as 11:00, 11:15 or 11:30; which I would suggest is the exception for licensees that have hours of operation that late.

So there has been some thought. To extend that concept to prior to the conclusion of the entertainment, I think raises a host of concerns. And if we are going to be having the review as a likely condition, I would like to suggest that that is something that we could evaluate.

MICHAEL GARDNER: So, to clarify the public record on this, completely apart from this idea that I floated, just what the applicant is proposing, is that despite the fact that there may be on a given Thursday night a 12:30 hard stop end to the

entertainment, if the music is over, the show is over by 11:50, the bar shuts down at 11:50. And if the band is there signing CDs, the people getting the CDs are not able to get a drink after 11:50 as well as get their CD. Do I have that right?

JAMES GLANCY: That is correct.

MICHAEL GARDNER: And I believe my numbers are that you are seeking a total of 700 seats. There is a license now for 304. So in the Commission's way of thinking, the request is for 296 additional no-value, nontransferable -- I can't say "seats" but slots?

JAMES RAFFERTY: Capacity.

MICHAEL GARDNER: Do I have my math right?

AUDIENCE MEMBER: No. 396.

MICHAEL GARDNER: So it would be 396?

Okay. And how do the outside seats relate to that, the patio seats, is it 700 or

725?

ELIZABETH LINT: 752. The 52 are on a seasonable private outdoor patio.

MICHAEL GARDNER: So how many additional seats or capacity from the existing license is the applicant seeking?

ELIZABETH LINT: Well, it is really 396 because we don't count the seasonal outdoor --

JAMES RAFFERTY: I'm sorry, have we established that that is the capacity --

ELIZABETH LINT: I believe it is.

MICHAEL GARDNER: That is a sort of memory issue for me.

GERALD REARDON: I have a memory that it's in the 300's but --

MICHAEL GARDNER: Chief Reardon said he had 304 also.

GERALD REARDON: The big difference is the -- the expansion of the premises is really only the second floor portion of the

dining room. It's the conversion of the occupants from the standing to the seating that leads to the increase.

JAMES RAFFERTY: And there is no one -- just so the record is clear, the number in the music room is limited to 525, and that's the number we reviewed with the Fire Department, it's well below the permitted egress. And because it's a ticketed venue, we are not going to be relying upon a bouncer with a clicker. There is going to be a way to regulate the number. And 525 is the large room capacity. And the 700 -- it doesn't ever go above the 525.

MICHAEL GARDNER: So if I have it right in my mind, there are 525 for the music premises, there is internal seating for the restaurant of 175, and then there is an additional 52 potential for the outdoor patio. So in high summer, at the most popular band, we are talking about 752 potential occupants?

JAMES RAFFERTY: Potential, right. Assuming that the popular band also attracts diners. The popular band might not necessarily mean that there are 175 people choosing to have dinner that night.

GERALD REARDON: And the balcony seats in the concert hall area, in the mezzanine, that was included in the 525?

JAMES GLANCY: It is.

GERALD REARDON: And how many seats are up there?

JAMES RAFFERTY: Not many. I think it is 16 to 20 is my memory. There are tables of two's rimming that area.

By way of comparison, there was a recent increase at Zero Arrow Street. Their capacity, if you think of our room, their room, I believe, is now up to -- with a 2:00 a.m. license -- up to 425 with 370 standing is the information I learned from a review of the records. So it's not as though there is some

precedent for order of magnitude of this size. And that's abutted by a number of residential uses on all sides.

AUDIENCE MEMBER 3 (man): Has the Commissioner seen the plans for loading and unloading the equipment? We haven't talked about that.

MICHAEL GARDNER: In the interest of being polite and civil, I will say that we have had an inquiry -- unsolicited and unrecognized from the audience because we are not taking public testimony -- asking about matters of loading and unloading and whether the Commission has considered that.

My memory is that the Commission and the applicant had an extensive conversation about that matter at an earlier public hearing.

And in the interest of fairness, I will ask the applicant to very, very briefly describe the loading and the unloading

arrangements.

JOSHUA BHATTI: The sound and lights are all in-house operated, they don't come in and out per show. So those are all in there. The bands will be coming in in the afternoon, and that tends to be nothing more than guitars, amps, things of that matter. So it's not, you know, semi's, tractor-trailers unloading into the venue, it is band gear out of a trailer or a van.

MICHAEL GARDNER: And the supplies, food, alcohol, all the rest of what goes into running a business like this, how is that operation handled?

JOSHUA BHATTI: Those are normal deliveries as with other restaurants as well as other licenses in this premises, you know, will be scheduled as previously managed. Again, the capacity isn't necessarily a function of the amount of deliveries coming in and out of the premises.

MICHAEL GARDNER: Thank you.

AUDIENCE MEMBER: Mr. Chairman --
(Inaudible).

THE COURT REPORTER: I can't hear
you.

MICHAEL GARDNER: I'm not going to
recognize the question. We are going to go
proceed. All of this matter was covered at a
prior hearing and which I believe the current
speaker was present.

AUDIENCE MEMBER: (Inaudible)

JAMES RAFFERTY: Mr. Chairman, at the
risk of interrupting the proceeding, there is
a history of a 300 plus seat restaurant in
this location that was served and operated,
and I am unaware of any history at the
Commission where that service into that
restaurant proved problematic or ever rose to
the level of complaints.

So it is not as though the space, the
venue, hasn't demonstrated a capacity to

accept deliveries and operate a restaurant.

There hasn't been a restaurant there in a couple of years, but there was a 300 seat restaurant there for many years.

MICHAEL GARDNER: Thank you.

Ms. Lint, can you confirm if you have any memory about the prior operations at this space as to whether or not we had any delivery or loading or unloading issues there?

ELIZABETH LINT: Not that I'm aware of.

MICHAEL GARDNER: Another question I had was, given the size of the increase of seats or spaces, whether we should treat this by the Commission essentially as a policy matter to think of it as a new application and then limit all operations to 1:00 a.m. for the first six months, or to treat it as a transfer, which under, as I understand it, the practices or procedures we followed in the past of a 2:00 a.m. closing, is something we

have allowed.

And I just wonder whether Ms. Lint has a view on that, or if either of the other Commissioners have any concerns or questions in that regard? And then I would hear from Mr. Rafferty.

ELIZABETH LINT: Well, it's my understanding when it's a transfer that what the person is purchasing, part and parcel, is the license with the 2:00 a.m. attached to it.

This one is a little unique because the entertainment is earlier.

MICHAEL GARDNER: Did the last restaurant have an entertainment license?

JAMES RAFFERTY: Not for live entertainment.

ELIZABETH LINT: Not for live, but I think they did.

JAMES RAFFERTY: I don't recall any live.

ELIZABETH LINT: Oh, no, they had

live musical instruments. Yes, they did.

MICHAEL GARDNER: And then I just would like to have sort of a general conversation about parking problems. And part of my sense of it is that parking helps regulate itself; if you can't find a space, you can't park.

But, of course, there are issues of spilling into neighborhoods and double parking and the like.

I'm wondering, Commissioner, whether you have any thoughts about trying to pay any particular attention to parking violations in and around the Square as in anticipation of any potential problems that might come from having a venue of this size?

ROBERT HAAS: Typically, during most operational nights, you have both police and traffic and parking control personnel in the Harvard Square area. The only time it is problematic is during holidays when the PCOs

aren't working.

But, for the most part, parking around that area is pretty well regulated either through the meters and, in the neighborhood, it is regulated by virtue of the resident parking stickers, depending on where you park outside of the confines of Harvard Square.

Plus you have a parking garage located in Harvard Square and, as I understand it, it's not being used to full capacity at this point in time.

JAMES RAFFERTY: Mr. Chairman, there are three -- there are four commercial parking facilities within a few blocks of this. Immediately across the street is a parking lot, the Charles Hotel has a parking garage for which public parking is permitted and is operating at below capacity. The church at the corner of Elliot Street and JFK Street is a garage, which is two or three blocks from

the venue. And at Holyoak Center there is a parking garage.

I don't think there is a licensed establishment -- and the Commission could perhaps take note of this -- there isn't a license established in Harvard Square that I'm aware of that provides on-site accessory parking.

It is the nature of dining and entertainment in Harvard Square that patrons arriving in Harvard Square use a pooled parking system in one of those four lots or they rely upon alternative modes of transportation.

MICHAEL GARDNER: Thank you.

I've talked a lot. Do any of the other Commissioners have anything you'd like to add or questions to raise, concerns to be addressed?

ROBERT HAAS: We talked earlier about the notion of crowd control managers as

applies to this venue as well. And I guess my question to the Fire Chief.

GERALD REARDON: There is a new law that went into effect on crowd control managers. Every establishment has to have on the premises someone who is designated as a crowd control manager for the facility. That person's job is to make sure that the crowd is under the legal limit of capacity of any particular venue and that would be totality.

So if the restaurant has so many seats that might be listed as 225, using a number, the same way with the atrium, the atrium area is only allowed to have no more than 20 people, that would be the maximum capacity or the totality of the entire license.

So the idea is that someone has to be there. And they have to take an online course and be certified, have a certificate of competency in hand. At any time, either the

police or the fire department or the fire inspection crew comes by or licensing, someone has to be there. And they are going to ask to see the crowd control manager and that person has to be there and they have to have proof of their credentials and have the information that the inspectors may ask of them.

JOSHUA BHATTI: That's with the Commonwealth, correct?

GERALD REARDON: Yes.

MICHAEL GARDNER: It's a relatively new statute?

GERALD REARDON: It was required as of January 1st.

MICHAEL GARDNER: Of 2012?

JAMES RAFFERTY: So that obligation could be imposed on the manager of record, I presume, to satisfy whether the --

GERALD REARDON: Well, a crowd control manager has to be present. So unless the manager of record is going to be there

24/7, there has to be more than one.

JAMES RAFFERTY: Every night someone has to have that responsibility?

GERALD REARDON: Every night, correct.

JAMES RAFFERTY: Well, in a business like this, I'm going to assume that every night someone is responsible for the entire operation. It would seem to me that whoever that person is should take on those duties.

JOSHUA BHATTI: Our current production manager in our office has that certification as well.

GERALD REARDON: And for the purposes of being very clear about that, if that person was sick that night, you have to have crowd control, so you need to have several people trained in this so you have the bases covered.

He may choose to have several and one is just responsible for the restaurant area, even though it's a total license, so long as

we can get all three of those together, if you break it up into two or one, it has to be there with the license on the total capacity.

ROBERT HAAS: I have no other questions.

MICHAEL GARDNER: Any others?

GERALD REARDON: None at this time.

MICHAEL GARDNER: Well, at this point, I'm prepared to offer the motion that the application as amended with the representations made here as to the closing, actual closing times of the bars that serve the entertainment venue, that they close when the entertainment ends, and with the further requirements to seek permits from the Public Works Department and wherever else may be required for adequate sidewalk control, for the staff on the street to help with the crowd control at the close of the show, with periodic noise and other compliance monitoring by licensed commissioned staff with a

three-month, six-month, and 12-month review hearing scheduled to monitor operations and complaints and concerns, the approval of 396 no-value, nontransferable slots in addition to the approval of the transfer of the 304 existing seats, plus the 52 seasonal seats, with a 2:00 a.m. closing for the bar and restaurant on Thursday, Friday, and Saturday, and the 1:00 a.m. hour for Sundays through Wednesday.

JAMES RAFFERTY: Right.

MICHAEL GARDNER: And that that application with those conditions be approved.

ROBERT HAAS: Mr. Chairman, could you clarify the operation of the restaurant portion again. It's 2:00 a.m. Thursday, Friday, Saturday?

ELIZABETH LINT: And the night before a legal holiday.

ROBERT HAAS: And the normal closing time for Sunday through Wednesday would be

1:00 a.m.

ELIZABETH LINT: 1:00 a.m.

MICHAEL GARDNER: As was applied for in the original application.

GERALD REARDON: I'll second that motion. I also just want to make clear that the final build-out in plans have to be done to meet all the credible review that the fire department has done was conceptual based upon the number of square feet, based upon the number of square footage that's allowed in the building code is far higher than what the applicant is asking for. Again, final build-out is subject to all the conditions.

My real concern, obviously, is the total package, but specifically inside in terms of egress and safety, lighting, the fire alarm system, the sprinkler system. And just to reiterate, that this will be done as a common package for that building and that includes Fire and Ice. We want to make sure

that it's a unified alarm system that tells us exactly what's going on in all aspects of the building along with the sprinkler system so that we are not looking at piecemeal when we do a retrofit. Sometimes when we do a retrofit, we get an alarm for a certain section of the building, but it doesn't give you the whole picture of the entire building. So assuming that all those criteria are met, and those are subject to further review.

And I do want to say that the -- my rough math here -- the people are investing well over \$3 million and probably higher than that, and that obviously you have a right to lose. And that the license is a privilege; and the fact that you get a license doesn't mean you can maintain or keep a license, I mean, there's a lot that has been presented to us in terms of type of venue and the type of operation that is run.

We don't want to go back to the days

of Father's Four and the Oxford Ale and Cronin's and all the others, and we know what that was.

And I believe that the venue and the music that is in all of these locations really sets the tone for the crowd control and how they behave.

The South Shore Music Circus has been serving alcohol (inaudible) but again, it's a venue that can do that. And think that would be the key challenge for the operators is to make sure that the venue draws a crowd that is well-behaved.

MICHAEL GARDNER: Okay. Motion having been made and seconded -- or is there any further discussion? None.

I would like to thank the Chief for his remarks and reiterate the importance of the responsibility on the license holder to run their operation to the highest standards to meet the concerns of the Commission.

And it's obvious that there has been some substantial concern expressed in the neighborhood around noise and the effect on the quality of life in the Square and residential areas around the Square, we take those concerns seriously, and we hope and expect that the license holder will do so as well and will do adequate planning to minimize such problems and will have a flexible response to deal with problems as they may arise, in particular with close coordination with the police department.

ROBERT HAAS: The only thing I'd add, is that if you hadn't had an established track record, I'd really have some serious trepidations about the application. I think you've had a number of establishments and you've demonstrated that you do have some experience in terms of maintaining properly run operations. Otherwise, if this was a new venture on your part, I think it would be a

whole different scenario for me. But I have had an opportunity to look at your New York operations and your Boston operations and have been satisfied that you are responsible for properly maintaining the business.

Also, knowing that, as the Fire Chief suggested, the investment being made both by the property owner and the assurances by the landlord in a prior hearing that he takes equal responsibility in making sure the operation is run to its highest standard. It's indeed a lot of money.

And I do still maintain that how you manage the exit of the crowds around the neighboring businesses, and I encourage you to stay in front of that from the very start. The first thing you can't afford is to have a misstep at the very beginning. So you need to be cognizant of how your patrons leave in an orderly fashion and do not create disturbances around the neighborhood.

MICHAEL GARDNER: And before I call for the vote, I'd just ask one question of the applicant and that is: If this is approved, what is your current projected opening time?

JAMES GLANCY: The fall of 2012.

MICHAEL GARDNER: The fall of 2012?

JAMES GLANCY: Yes.

MICHAEL GARDNER: So sometime after September 21st of 2012?

JAMES GLANCY: Yes, correct.

MICHAEL GARDNER: About nine months from now.

JAMES GLANCY: Yes.

MICHAEL GARDNER: Motion having been made and seconded, all those in favor, signify by saying "aye." Aye.

ROBERT HAAS: Aye.

GERALD REARDON: Aye.

MICHAEL GARDNER: None opposed.

Motion carries.

JAMES RAFFERTY: Mr. Chairman, just

to be clear, so the motion was a vote to approve the transfer, allow for the increase, permit the change of premises, and allow for an entertainment license as amended?

MICHAEL GARDNER: Right.

ELIZABETH LINT: Yes. That was the first thing he said, the application as amended.

JAMES RAFFERTY: All right. Thank you.

MICHAEL GARDNER: And just so we understand, you are responsible business people who are making a large investment. And as both the Chief and the Commissioner said, your track record is an important component of our confidence in going along with this, but it is up to you to execute and to do it well.

And as Mr. Page pointed out in the last component of his letter, that economic viability of an operation or investment loss on this is really not a matter for the

Commission, so it is really up to you to protect the investment by doing it right.

JAMES GLANCY: Absolutely.

JOSHUA BHATTI: Yes.

JAMES RAFFERTY: Thank you.

JOSHUA BHATTI: Thank you.

MICHAEL GARDNER: Ms. Lint, are we all done?

(Discussion off the record.)

MICHAEL GARDNER: Back on the record.

I do have one item to talk about. So the other issue which I touched upon briefly at the December 20th hearing had to do with scheduling an Executive Session with the law department to talk about the letter that we received from the Hotel Association from early November of this year, I think.

And I have spoken to the law department about whether they could schedule that themselves if we were prepared to go into Executive Session at the conclusion of today's

hearing, and for a variety of reasons that didn't work.

As I understand it, our schedule for January 10th at 6:00 p.m. is quite full and I'm feeling with potentially very time consuming matters. And so I am wondering about the possibility of, if everyone is here, we could schedule a 10:00 meeting for the 10th for the purpose of going into Executive Session to discuss that matter?

ELIZABETH LINT: We can't. We have a meeting.

MICHAEL GARDNER: So how about, as an alternative, the 12th?

ROBERT HAAS: I can't do it at 10:00.

MICHAEL GARDNER: Is there a time on the 12th that you could do it?

ROBERT HAAS: Any time after 2:00 on the 12th.

ELIZABETH LINT: I'm good any time.

GERALD REARDON: 10:00?

MICHAEL GARDNER: He can't do 10:00, it has to be after 2:00 p.m.

GERALD REARDON: So what time?

ROBERT HAAS: I can do 2:00.

GERALD REARDON: Okay, 2:00 will work for me.

MICHAEL GARDNER: This is an authorization to speak to the law department to see if we could schedule it with them at 2:00 because I don't know if it is convenient for them.

ROBERT HAAS: Do you want to do it here?

MICHAEL GARDNER: In my one experience with an Executive Session we convened here and then retired to upstairs. You know, I think that worked out okay.

ELIZABETH LINT: I would need to know right away so we can post.

MICHAEL GARDNER: And minutes, subject to approval, can we just deal with

those on the 10th?

ELIZABETH LINT: Yes. I've got to make a list.

ROBERT HAAS: Can you do the same thing in terms --

ELIZABETH LINT: Because we just finished renewals. Chris has to go in and see who is who and what's what. So hopefully we'll get them up this week. It was a crazy month of December.

MICHAEL GARDNER: I'll entertain a motion to adjourn.

And then I'll be prepared to have a conversation with Ms. Gifford about her concerns and, if it is necessary to put that on the record at our next meeting, I'll do so.

GERALD REARDON: Motion to adjourn.

MICHAEL GARDNER: Motion to adjourn has been made. Seconded?

ROBERT HAAS: Seconded.

MICHAEL GARDNER: All those in favor

signify by saying "aye." Aye.

ROBERT HAAS: Aye.

GERALD REARDON: Aye.

MICHAEL GARDNER: So are adjourned
now at approximately 11:50 in the morning of
January 3, 2012.

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 9th day of January, 2012.

Evelyn M. Slicius
Notary Public
Certified Shorthand Reporter
License No. 127193
My Commission Expires:
May 15, 2013

**THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT
DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME
BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL
AND/OR DIRECTION OF THE CERTIFYING REPORTER.**

E R R A T A S H E E T

In accordance with the rules of procedure governing depositions, you are entitled to read and correct your deposition. Please carefully read your deposition and, on this errata sheet, make any changes or corrections in form or substance to your deposition that you feel should be made. You may use additional sheets if necessary. You are to identify these changes/corrections by page and line number, give the correction or change desired, and state the reason therefore. PLEASE DO NOT MARK THE TRANSCRIPT.

After completing this procedure, sign at the conclusion of such changes/corrections (if any) and return it in accordance with your instructions.

<u>Page</u>	<u>Line</u>	<u>Change/Correction</u>	<u>Reason</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Date

Deponent's Signature