

COMMONWEALTH OF MASSACHUSETTS
CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION GENERAL HEARINGS

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

STAFF:

ELLEN WATSON, Executive Director

-- Held At --

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

Tuesday, April 3, 2012

6:10 p.m.

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P R O C E E D I N G S

ELLEN WATSON: Okay. We are going to begin.

Today is Tuesday, April 3, 2012, and it's 6:10 p.m. We are in the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Cambridge, Basement Conference Room.

This is a meeting of the Cambridge License Commission. Sitting tonight is Chairman Michael Gardner, on his right is Police Commissioner Robert Haas, and on his left is Fire Chief Gerald Reardon.

Please silence all electronic devices.

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ELLEN WATSON: The first application is the President & Fellows of Harvard College, d/b/a Cambridge Queen's Head Pub, Craig Goldschmidt, Manager, holder of an all alcoholic beverages as an educational

institution at 45 Quincy Street has applied for a change of manager to Kim Smith.

MICHAEL GARDNER: Good evening. If you could both please state your full name and spell it for the record.

DAVID FRIEDRICH: David Friedrich, D-A-V-I-D, F-R-I-E-D-R-I-C-H, Assistant Dean of Harvard College for Student Life.

KIM SMITH: I'm Kim Smith, K-I-M, S-M-I-T-H, and I'm a general manager with Harvard University Dining Services.

MICHAEL GARDNER: Thank you for coming in. To both you and all the other members of the audience, our apologies for getting started late tonight, it ended up being unavoidable but we do recognize your time is valuable.

So it seems like we have been here, I thought, about this a number of times. Maybe you could just refresh my memory and enlighten us as to the details.

DAVID FRIEDRICH: Yes, this is our third time that we've been here. Our manager, Craig Goldschmidt, who is currently the person on the license, has resigned unfortunately.

And what we are doing is putting the license under the name of Kim Smith, who is on-site managing the club for us while we do a search to replace that position. It's not a situation we wanted to be in, clearly, but we are trying to deal with it.

MICHAEL GARDNER: Very briefly, your qualifications to do this, Ms. Smith.

KIM SMITH: I have held this license prior. I have been with the Harvard University Dining Services for nine years now. I have embedded myself into the culture of the community of the university and managing student operations and working with the students on campus. I am Tip Certified, I am Crowd Control Certified.

Prior to managing the Queen's Head

Pub the first time, I had more alcohol experience in managing with events and things like that.

MICHAEL GARDNER: And our understanding is that you expect this to be a temporary reassignment while you fill the job position?

DAVID FRIEDRICH: That's our understanding right now, yes. And, organizationally, Kim oversees this unit at an area level, but is based on-site there and is directly involved with the operation.

MICHAEL GARDNER: Any complaints, issues with this location?

ELLEN WATSON: No, none at all.

MICHAEL GARDNER: Any questions from the Commissioners?

ROBERT HAAS: Weren't you before us before with another establishment that you were a manager of?

KIM SMITH: Yes. I currently hold

the license for the Harvard Law School Pub.

ROBERT HAAS: So you're going to hold up both of them now?

KIM SMITH: Yes, I would like to.

ROBERT HAAS: And I'm just trying to figure here timewise in terms of between the two establishments.

KIM SMITH: The Harvard Law School Pub and the Cambridge Queen's Head Pub is about a five-minute walk from each other. The Harvard Law School Pub is currently open 15 hours a week, Wednesdays, Thursdays and Fridays. And the Queen's Head is open Wednesdays, Thursdays, Fridays and Saturdays.

And the Harvard Law School is a different community, a different venue, and it's more graduate driven versus undergraduate.

And my time between the two, I don't see as a problem. I start my evening off at the Harvard Law School, and then I end my

evening at the Cambridge Queen's Head Pub. And I am a phone call away and I am heavily involved in both of them.

ROBERT HAAS: I'm surprised that you are not 21 Proof certified as well.

KIM SMITH: I did, yes.

ROBERT HAAS: You didn't mention that.

KIM SMITH: I'm sorry, I did that.

ROBERT HAAS: So when you are not at either one of the establishments, is there like an assistant manager that is there to kind of like --

KIM SMITH: I have graduate student managers that are my assistant managers.

ROBERT HAAS: And their training is comparable to yours as far as --

KIM SMITH: Yes, exactly.

DAVID FRIEDRICH: They are tip certified. That's been our practice in the five years that the Pub has been open, that in

the absence of a general manager, a graduate student manager is in charge.

ROBERT HAAS: But 21 Proof is what we recognize here in Cambridge, so I'm just making sure that there's someone there that's 21 Proof.

DAVID FRIEDRICH: Yes, there is.

GERALD REARDON: So you believe that she will be there in the interim until you get a permanent person to fill that position?

DAVID FRIEDRICH: Correct.

MICHAEL GARDNER: Have we had experiences of a person holding the license in more than one location at any other times?

ELLEN WATSON: We have with restaurants.

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

Seeing none. The pleasure of the Commission?

ROBERT HAAS: Make a motion to approve the application for a change of manager.

GERALD REARDON: Seconded.

MICHAEL GARDNER: Motion having been made and seconded to approve the application to change the manager to Kim Smith. All those in favor, signify by saying aye.

GERALD MAHONEY: Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: None opposed.

So subject to all of our requirements being met, good luck with your business.

DAVID FRIEDRICH: Thank you very much.

KIM SMITH: Thank you. Have a good evening.

* * * *

ELLEN WATSON: The next application is Bourbon Coffee North America, Inc., Matthew Hodges, Manager, holder of an all alcoholic

beverages as a restaurant license at 2473 Massachusetts Avenue (closed) has applied to transfer said license to Wheelings Brattle, LLC, d/b/a, the Liberal Servings, Jack Bardy, Manager. The transferee is applying for a change of location from 2473 Mass. Avenue to 13 Brattle Street, a change in manager from Matthew Hodges to Jack Bardy, and a pledge of license. The proposed hours of operation are 8:00 a.m. to 1:00 a.m. Sunday through Wednesday, and 8:00 a.m. to 2:00 a.m. Thursday through Saturday and the night before a legal holiday. The proposed capacity is 328 seats inside, 8 seasonal patio seats on private property, and standing for 32. Wheelings Brattle, LLC, has also applied for an entertainment license to include: dancing by patrons; reading of poetry or other works; live musical instruments and/or vocalists with amplification; floor shows; 2 audiotape machines/CD playing music below, at, or above

conversation level; and 4 TVs or video screens.

MICHAEL GARDNER: Good evening. If you could all please come forward and state and spell your names for the record and identify your affiliation.

JAMES RAFFERTY: Sure. Good evening, 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.

Seated to my immediate left is Jack Bardy, B-A-R-D-Y. Mr. Bardy is the manager of Wheelings Brattle, LLC, the proposed licensee, and he is also the principal owner and the proposed manager of the premises.

And to Mr. Bardy's left is Bertil Jean-Chronberg. And Bertil is spelled B-E-R-T-I-L, Jean-Chronberg is spelled J-E-A-N - C-H-R-O-N-B-E-R-G. Mr. Jean-Chronberg will

be the chief operating officer at the proposed establishment.

MICHAEL GARDNER: Could you tell us something of the history of the license and how long it's been inactive or not being used, and your understanding of what the terms of that license are, and then something of a plan for this establishment.

JAMES RAFFERTY: Certainly.

With regard to the history, the license was the license of the Marino's Restaurant in North Cambridge for many years. When Marino's ceased operating, they sold the building and the license was transferred at that time to an entity -- whose corporate name escapes me -- but it was -- the principal was Mr. Strock, Gary Strock, of Central Kitchen. And he was going to operate an Italian concept called Bombatchi. Bombatchi never got off the drawing board, so a successor tenant was identified, Bourbon Coffee.

Bourbon Coffee is a coffee cafe, somewhat unique, had identified that location, had somewhat of an ambition plan to turn it into a restaurant. They were primarily a -- they only had one or two, perhaps just one other outlet at the time.

To make a long story short, Bourbon Coffee also never opened at that location. But Bourbon Coffee, as you may be aware, did open in Cambridge and they've opened in the Porter Exchange Building, it's the former Sears, Roebuck Building.

But they reached a business decision that that location and trying to be a restaurant wouldn't work for them. So they have opened under a more traditional coffee shop model, and have had this license for, inactive now, my memory is it's probably about two years.

The premises is currently close to completion or already completed as a daycare

center, I believe.

MICHAEL GARDNER: This is the 2473 Massachusetts Avenue?

JAMES RAFFERTY: Yes. It was the former Marino's location.

So the license has been inactive and has been listed with a restaurant broker, and this transaction came about. So the application is, as the notice indicates, is a petition by the existing licensee, Bourbon Coffee, which actually never operated under the license, but has been the holder of the license now for a couple of years. And they are seeking to transfer to this applicant at the location of 13 Brattle Street.

MICHAEL GARDNER: And your client is the new applicant? Is anybody here representing Bourbon?

JAMES RAFFERTY: No. I have represented Bourbon, I have represented Bombarchi, I have represented Marino's, but I

have a limit of no more than four sides of any transaction. So there is no one else here.

Bourbon did have its own counsel negotiate the purchase and sale agreement, which is often the case. So Bourbon's role here is somewhat limited. They have executed the transfer application. They have had this license inactive and have been eager to sell it.

There was an arms-lengths negotiation on the price. The price is set forth in the application documents. I believe it's a \$175,000 purchase price payable upon approval at the closing.

MICHAEL GARDNER: In terms of the license, is it pledged as part of the some of the financing or not?

JAMES RAFFERTY: Yes. The source of the financing for the funds to acquire the license, there is a loan from the landlord of the new premises, and there is a pledge

application, the application seeks a pledge to that entity. The full purchase price is contained in a note, a promissory note, for the full amount of the acquisition costs.

MICHAEL GARDNER: And would you be so kind as to give the Commission, but more particularly me, some background on your understanding of the history of pledges and what the entity which is loaning the money actually expects, should there be a failure to comply with the terms of the loan.

I'd like some more -- some basic education about how a pledge operates.

JAMES RAFFERTY: A pledge is a security instrument, and it's only recognized by the ABCC to secure the payment of a note. It can't be used to secure lease payments; it can't be used for other purposes.

And then the note that it secured, those funds must be used to either acquire, improve, or operate a licensed premises. They

can't be to purchase a vacation home on Cape Cod. You have to have a relationship to the premises.

So in this case there is a note, and the note runs from the licensee, the proposed licensee, to the landlord. It's a term note that requires a monthly payment.

If there were to be a default under the note, the pledge holder, like the holder of the security interest, could proceed under the conditional assignment language of the pledge and seek an involuntary transfer of the license. They would have to come before the Commission to do so, they can't act unilaterally.

It provides a lender with a secured position in the event of a bankruptcy of a licensee; unfortunately, it does happen. I'm sure that they are not looking at that situation here, but it does give a priority to the pledge holder.

So in this case, the elements of the pledge -- I know the Commission here has taken the position on no-value licenses, that they have not been recognizing pledges because there is no inherent value in a no-value license. So there have been some pledges that have been rejected.

The requirements of a pledge are disclosure, who is the pledge holder. And the pledge holder is required to provide information, background information, which is included in the application, and is also subject to examination by the Commissioner and the ABCC.

MICHAEL GARDNER: In this instance, my understanding is that you are seeking 328 seats inside, 8 patio seats, and 32 standing, but that the license, which is in existence for the Mass. Avenue address, is for only 210; is that right?

ELLEN WATSON: That's what the

previous one had.

MICHAEL GARDNER: So I think we have had the conversation before about whether or not the Commission would bifurcate a license in terms of a transfer only of what had been created before, what the value of the prior license was, and if there is an interest in extending it, that it, to a greater number, that that be a no-value no-transfer.

We've had some colloquy about that in the past and I'd appreciate hearing from you on that, Mr. Rafferty.

JAMES RAFFERTY: Hearing my views on the appropriateness of the Commission's position?

Well, the Commission's practice, the more short-term practice, as you described it, I don't think historically that that had always been the case. There are a number of amendments to the CAP policy that changed this, the transfers. So the two significant

amendments that are in play here are the fact that when the City's -- when the License Commission amended the CAP policy, licenses from other CAP districts can be transferred into different CAP districts; and that is certainly the case here with the license coming from the North Cambridge CAP District to CAP District 1.

Secondly, the modification to the CAP policy also allowed for increases in capacity, so without having to break the CAP of the approved standards that were established under the CAP.

So I do recall, I believe, some discussion in a prior transfer case as to how the Commission should treat licenses that have increases in capacity. Obviously, I defer to the Commission's thinking on that.

It's often the case that when a license transfers to a different location or premises, the physical layout of the premises

is largely what dictates the capacity.

In the case of the Marino's space, it was a two-level space, there was a private function room downstairs, there was a bar and a dining room upstairs. And the numbers in the capacity pretty much reflected the premises.

I can't recall where that license came from, something is telling me that it probably was one of those North Cambridge licenses that was up there, but I couldn't swear to it.

I'm going to bet that whatever capacity was arrived at for the Marino's license, it was different than the predecessor license that he had.

So I don't know that there is anything sacrosanct about the numbers that were attached to the license other than it reflected the premises at the time.

I seem to recall, anecdotally, that

the initial Marino's license was increased because the lower level function space, I don't think, was part of the original licensed premises; I seem to recall there was an extension that was allowed for that.

So what all of that has in terms of value or no value, again, I'll defer to the Commission. But I think the history of this particular license and the history of the policy, is that the capacities seem to be reflective of the premises in most cases, and that is certainly the case here.

And, admittedly, it's a significant capacity, but if you examine the floor plan, it's a series of tables, with the average between the dining room of four patrons at nearly every table, a series of banquets. So the premises lays itself out this way. There is some private dining. There is some -- there are two bars in the -- if you'd like me to get into the operation of the premises

itself and how the operation has led to the decision-making around capacity, I'll be --

MICHAEL GARDNER: I think that's a reasonable flow, sure.

GERALD REARDON: Just kind of a history of where it was previously, and if you are adding to the space or changing the space --

Do you have an extra couple of floor plans there?

JAMES RAFFERTY: Sure.

So the premises is currently a retail establishment known as The Tannery. And it has been there for a considerable period of time, I'm going to guess, a couple of decades. The landlord is present and he can give us some more specifics.

So it's at 13 Brattle Street. It's just in from the corner of Palmer Street. And I guess you'd call it somewhat of a lower level space; you step down by about five or

six steps to it.

Mr. Bardy is an experienced restaurateur, and this does represent an exciting opportunity for him to return to Cambridge.

He began his career in the restaurant industry actually here in Cambridge, or at least the ownership. Because in 1998 he opened a successful restaurant in Central Square called Foe Republica. Unfortunately, within a year of its opening it sustained a fire; and as a result of the fire, the premises never reopened. But Mr. Bardy took his concept to Boston where he successfully operated on Washington Street in Boston.

And then for the past five years, Mr. Bardy has been the successful operator of an exciting venue in the South End of Boston known as the Beehive. And if you've seen any of the materials we've submitted with the application, in many ways the operation of the

Beehive will be informing or leading to certain decisions about this space.

And I should probably let Mr. Bardy tell you a little bit about his concept here because it's really exciting and it's unique for Harvard Square. And it's intended to be a full service brasserie with breakfast, lunch and dinner, with entertainment; but the entertain is somewhat complementary to the dining experience.

And Mr. Jean-Chronberg is going to be principally responsible for the operation. He is a nearby resident, he lives on Hawthorne Street, and has a great sensibility to neighborhood-related issues.

And the file, as you may have seen, contains numerous letters of support from area residents and others attesting to both Mr. Jean-Chronberg's ability as well as to Mr. Bardy's operations in the South End.

There are many parallels, I would

suggest, to the operation in the South End in terms of a close, proximate, residential neighborhood, which requires attention to detail, everything from patron conduct to deliveries to hours of operation and the like.

So as experienced operators, Mr. Bardy has a high level of confidence that he can execute this plan here successfully.

And I might ask, with the Commissioner's indulgence, if Mr. Bardy could give you a minute or two to answer your questions about what he envisions there at Liberal Servings.

JOHN BARDY: Good evening. So the basic idea I would envision in the plan for Brattle Street, as Jim said, it's a brasserie; open all day for breakfast, lunch, dinner and into the late night, serving casual fare.

First and foremost, we are a restaurant. We are taking the model that we use at the Beehive regarding the live

entertainment, and that is a, more or less, an enhancement to the dining experience. And the focus on the entertainment is primarily jazz music, and some different kinds of music, but it's all adult oriented.

Our market, people that we cater to, are the older crowd, people in their 30's, 40's, 50's and on up. We don't focus on a younger crowd.

But there is always that potential if you have live music that's playing, the bands that are playing, it raises red flags. But to be sure, there is nothing in our history that we've ever strayed beyond that. The music is, again, designated at times to enhance the dining experience. People come to us to have a full dinner or to have a snack.

We think the location in Harvard Square is ideal and the opportunity is right to serve breakfast, and the same goes for lunch, and all day, so we are a bustling

enterprise.

And our focus are the locals, the people in the neighborhood, that is who we try to cater our restaurant to.

The Beehive has a similar capacity with the 315 capacity. We've operated for five years with no incidents. We've been a positive influence in that part of the community in the South End.

JAMES RAFFERTY: Can you just conclude by talking about the venue itself and the focus you place on art and other types of artistic expression.

JOHN BARDY: That's part of it. We display artworks from local artists in the community; we give opportunities for local artists to get exposure.

At this location, we are going to be set up to have a stage for the music, but it can be converted for community activities, poetry readings, you know, all kinds of

charitable events, there's opportunities there as well. As well as private events, the University or for businesses, private functions, weddings. And we do all of these types of activities at the Beehive, which you can -- which we can extend to Cambridge.

JAMES RAFFERTY: And if I might, Mr. Jean-Chronberg, just because you're going to be regularly on duty here and a neighbor, perhaps you could just briefly tell the Commission a little bit about your experience.

Now, Mr. Bardy is the manager of record, but Mr. Jean-Chronberg will be involved closely in the operation also.

BERTIL JEAN-CHRONBERG: Good evening. I have more than 35 years of experience. I started with -- I have a master's degree. I operate and own a restaurant for 35 years. I was 35, 25 years in Montreal, with previous success teaching at different universities and schools.

I've operated the Beehive from day one. I will operate our location in Cambridge in the same manner as I do in Boston with full respect of the customers, and be very careful to have the right people and be sure everybody feels very comfortable.

And it will be a space where it's pleasant to be at and to enjoy dinner all the time with quite a good service. And I will be very careful and involved with the community in Harvard Square of Cambridge.

MICHAEL GARDNER: So will you continue to have responsibilities at the Beehive, or will you be moving from there to do this full time?

BERTIL JEAN-CHRONBERG: I will be there to oversee certain operations at the Beehive, but my main time will be always in Cambridge.

JOHN BARDY: May I had that Bertil only lives steps away at Harvard Square as

well.

MICHAEL GARDNER: And the entertainment license mentions dancing. Is there, in fact, plans for dancing someplace? Is that set around the stage or --

BERTIL JEAN-CHRONBERG: It's only in case of private events, for weddings, but we don't expect -- it's as of the Beehive today there is no dancing.

MICHAEL GARDNER: So the dancing would be private events only?

BERTIL JEAN-CHRONBERG: Yes.

GERALD REARDON: What would be used for the dance area? Would those tables that are assembled around the stage be --

BERTIL JEAN-CHRONBERG: Exactly, yes.

GERALD REARDON: What about the other group that is between the stage and the bar?

BARTIL JEAN-CHRONBERG: They would stay.

JOHN BARDY: That area also may be

reconfigured as well.

MICHAEL GARDNER: So this is a tentative plan?

BERTIL JEAN-CHRONBERG: No --

JAMES RAFFERTY: Obviously, if we were to pursue dancing, if they were to pursue dancing, they would need to have the Commission consider an alternative floor plan. We haven't done that yet. It's only envisioned in the case of a private event that patrons may want to dance and some chairs and tables might be pushed aside. But when the public is in there, the ordinary patrons on weeknights or weekend nights, there isn't going to be any.

GERALD REARDON: Sounds familiar. And you know what I'm getting at in terms of the tables and stuff. If you have to move the tables, you have to move them elsewhere. You have a small footprint and that causes some obstruction issues.

JAMES RAFFERTY: Right.

ROBERT HAAS: I think you know where I'm going with it.

JAMES RAFFERTY: Right. Dancing is not a feature of the establishment. The license -- we discussed the fact that if they had a private event, a small affair, and they had a combo and someone wanted to dance, they should technically have a dancing by patrons license, but it would be exercised sparingly.

GERALD REARDON: So this will be basically a (inaudible) --

JAMES RAFFERTY: Yes, correct. And we have met early and often with the building's landlord, with the project architects and engineers to identify egress, adequate -- and the three points of egress out of the building has been identified at the building meeting with the building department to flag any -- or to identify any red flags. And the preliminary review indicated that the

approach being taken was correct.

GERALD REARDON: So this will be a full uplift to the present code for both the sprinkler and fire alarm?

JAMES RAFFERTY: Most definitely.

GERALD REARDON: The same with the cooking, there will be no cooking --

JAMES RAFFERTY: Right. No cooking. Everything would be to code and would have to be approved as part of the review with the fire department and the building department.

MICHAEL GARDNER: So I think that the current license was just a 1:00 license, and I see you are asking for 2:00 right from the start for the weekends. How important is 2:00 to the concept?

JAMES RAFFERTY: We discussed that, and I think it's fair to say that it is important. The kitchen is intended to remain open until 1:00 a.m. Late night dining is one of the staples of the Beehive.

There are a number of 2:00 a.m. establishments. Directly across the street is the -- diagonally across the street is the Russell House Tavern that is open until 2:00; they seem to be able to fill a need there. There are several other 2:00 a.m. licensees in the general area there, including the Fire and Ice. And it's fairly critical to be part of that restaurant community to be able to compete for late night dining and late night decision-making that others make. So it is being sought as part of this, with an emphasis on the kitchen remaining open until -- midnight?

JOHN BARDY: With a 2:00 a.m. closing, we'll keep it open until 1:00.

MICHAEL GARDNER: The kitchen would be open until 1:00?

JAMES RAFFERTY: On nights that the premises is open until 2:00.

MICHAEL GARDNER: And what about the

entertainment, when would the jazz combos, or whoever else that might come in, when would they be playing until?

JAMES RAFFERTY: As is generally the case, it would run concurrent with the operating hours.

GERALD REARDON: So are you suggesting that the kitchen will remain open within one hour of closing?

JAMES RAFFERTY: Yes.

MICHAEL GARDNER: And so what does that mean -- if I understand it -- a 2:00 a.m. closing means people stay until 2:30, or can?

When do the musicians stop playing?

JAMES RAFFERTY: Entertainment licenses go to 2:00 a.m. and then it must end at 2:00 a.m.; the performances must end at 2:00 a.m.

I would say that, in my experience, I would say that nearly every license establishment that I'm aware of that has a

2:00 a.m. alcohol license also has an entertainment license. That entertainment license runs concurrent on those 2:00 a.m. nights.

MICHAEL GARDNER: So in what ways are we potentially adding 350 people pouring out of this establishment at 2:00 a.m. causing whatever noise or raucous in the neighborhood?

JAMES RAFFERTY: Well, I don't think they are likely to pour out. I don't think it's as concentrated a departure as, say, a place that might have a performance-based venue, which I'm not as familiar with in the vicinity.

But I think that the patrons here, given the fact that the entrance to the premises is on Brattle Street, the orientation is on Brattle Street. There are a number of licensed establishments in the general vicinity that have similar capacities and similar hours of operation. I think the

operator will be mindful of ensuring that there will be orderly conduct by patrons.

I think it's relevant that the number of testimonial letters that are contained in the file, many of them come from South End residents, neighborhood organizations, and others, attesting to the fact that this operator has a proven ability to manage patrons and not have disruptions.

MICHAEL GARDNER: And I believe I saw in the file no cover charges, ever?

JOHN BARDY: We never do in the Boston location, and we don't have any plans to here in Cambridge. I don't know if that is an issue to say "never," I mean, depending upon -- there might be a performance that might warrant it, but generally that is not our concept, to charge a cover.

MICHAEL GARDNER: Yes, I guess, that was what I was trying to get at. A cover is, in some ways, a surrogate for "this is a

performance evening," we're bringing in a band, we're bringing in somebody with enough power that people will come to pay and then, presumably, it isn't necessarily a "casual" addition to the dining experience. And then you potentially have the issue of everybody staying and leaving when the performance is over.

JOHN BARDY: That's a problem; that's why we don't do it. We want the ebb and flow of a restaurant.

JAMES RAFFERTY: If you pay a cover, you expect to stay and they want to turn the tables.

JOHN BARDY: Yes.

JAMES RAFFERTY: So I think Mr. Bardy, being a seasoned businessman, is appropriately cautious in his use of the term "never." But I think we recognize that there's a transcript here, and I think the practice he intends to apply, he doesn't have

any intention to use it that way, to have a cover charge.

And in the five years that he has operated the Beehive, they have never applied a cover, and his intention is to operate this restaurant consistent with his experience before.

MICHAEL GARDNER: Other questions?

ROBERT HAAS: Just clarify for me, the access. I am aware of the site and I know there is a step down. But it says that there is a mechanical lift, so I'm trying to figure out how that works. So how does that work with egress or access to the restaurant off the street?

JAMES RAFFERTY: There are two points of access. The main stairway you can see at midpoint on the right-hand side of the plan, that's coming down from the step-in, and you come downstairs.

At the end of the building, if you go

to the bottom right of the plan, there is an elevator that opens right onto the sidewalk on Brattle Street. So that's the handicapped access into the premises.

So there is a slight vestibule that the elevator door is recessed in from the plain of the building slightly, so patrons, handicapped patrons, would access the premises through that elevator.

The other main entrance is down those stairs. There's a -- that's the little patio area that is depicted with the four table there (indicating) to create a little ambiance. Those windows open, as you can see, and the main entrance is right in front of those tables (indicating).

The two other means of egress are off to the right. As you go between the two bars, behind the rest rooms, you can see a set of stairways that leads directly out to Palmer Street.

And in the back of the premises you'll see another stairway, in the middle and the back, and that leads to the loading area behind the building.

MICHAEL GARDNER: And is that where the goods will come in and refuse will go out?

JAMES RAFFERTY: That's correct. I believe there's also some loading on Palmer Street. There's access --

Can you point on the plan --

JOHN BARDY: This stairway leads up from the kitchen area, this is Palmer Street, that will mainly be for deliveries; trash will go out the back, the egress, and that is the alleyway behind the whole complex (indicating).

MICHAEL GARDNER: And what, from your experience with the Beehive or elsewhere, assuming reasonable patronage, what do you expect is the frequency of trash pickup and what are your controls for rats and vermin?

JOHN BARDY: There is a community compactor that we'll be sharing with the whole complex. So I would imagine our presence will require them to increase the pickup.

MICHAEL GARDNER: I take it there is no food-type refuse going out now?

JAMES RAFFERTY: Oh, no. This is where the Fire and Ice currently is. That alley in the back is currently receiving food. So it's all managed by the landlord. Each tenant is responsible, but the frequency of the pickup, I believe, our understanding is it's three times a week now, and that may need to increase because, obviously, the volume will increase as a result of this activity.

ROBERT HAAS: And the live entertainment is principally for evening hours or during your operation?

JOHN BARDY: Maybe brunch on weekends and in the evenings.

ROBERT HAAS: So breakfast typically,

and lunch you wouldn't have live entertainment; it would only be brunch and in the evening hours, typically?

JOHN BARDY: Typically. But we'll evaluate if there is an opportunity to do it for lunch, to have some jazz trio or duet playing during the day hours.

MICHAEL GARDNER: When you are doing the buildings, you make all of the arrangements for soundproofing or to keep the noise inside?

JAMES RAFFERTY: The landlord has very stringent soundproofing. It's a mixed-use building; there's office tenants, there's retail tenants upstairs. The lease has very detailed requirements that the tenant needs to abide by in order to ensure that there is no interruption or disruption in others' quiet use and enjoyment of their premises.

MICHAEL GARDNER: Any other

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

(Audience member)

MICHAEL GARDNER: Please come forward and state and spell your name for the record.

RICHARD GETZ: My name is Richard Getz, G-E-T-Z. My company manages the abutters' property to this. And we have questions about how the trash will be handled, and if the fire exits are going to cause people to come out and look at our property as a space of refuge, if there is a fire, you know.

That building is quite large and there is many restaurants now. And after this goes in, I think there will be three, plus you have the bar. That's a lot of people exiting and I would just like to know how he is planning to have those people exit the building?

MICHAEL GARDNER: You are talking

about during an emergency or generally?

RICHARD GETZ: During an emergency. And we planned to close off the gate in back. So the issue of deliveries, I'd like to know how that's going to be done? If it was going to be done just during the day?

I've talked to John DiGiovanni about this, and he has agreed with me to work with the city in trying to change the meters in front of his property. So there's a loading zone directly in front of his property, so it doesn't really overburden our property.

Mr. Rafferty talked about a communal dumpster. That really isn't a communal dumpster. It's on our property, and I don't think -- we don't have any agreement as to the use of this. This will probably increase the use of the dumpster, and I think this is something that we've got to resolve between us as to how this matter is solved.

The other issue is employee

break-outs. Right now we have employees on our land, sitting there, you know. And I think there should be some area in these buildings for all the employees to take a break.

So those are the questions that we have the most concern with.

MICHAEL GARDNER: And, for the record, sir, could you identify the business or the property that you have the interest in.

RICHARD GETZ: It's 1741A, it abuts right directly beside that property. It's a parking area for our tenants, tenants like the Manellas for Bertucci's that park there. There is quite a few tenants that use it.

And we just want to make sure that the deliveries don't impact our use.

MICHAEL GARDNER: Thank you very much.

PAUL DUFFY: My name is Paul Duffy, D-U-F-F-Y. I'm a lifelong member of the South

End, born and raised within three or four blocks of the Beehive. I'm a founding member the South End Business Alliance, a founding member of the Ellis Neighborhood Association, and I've never heard any negative words about the Beehive. I'm pleased to have it in the neighborhood.

MICHAEL GARDNER: Ever been any issues that you are aware of with respect to congestion or problems with deliveries or trash?

PAUL DUFFY: No, none, absolutely none.

MICHAEL GARDNER: I understand the configuration will be different.

PAUL DUFFY: It is. They've been real good neighbors and good community supporters, too, which I'm more interested in.

MICHAEL GARDNER: Thank you very much.

WILLIAM GREGOR: My name is William

Gregor, G-R-E-G-O-R, and I live at 92 Appleton Street in Boston, South End, approximately two blocks from the Beehive. I'm also a member of Ellis Neighborhood Board. I was the former chair, just before the Beehive arrived.

They have been a very good neighbor. We were concerned about having a new institution moving in, and have had lengthy discussions and have been very impressed with the professionalism of the management and lack of any problems in the neighborhood. And, in fact, they've been very good neighbors.

We have had a number of events there. Our members enjoy having dinner there. It's a very casual neighborhood-oriented place as well as a very exciting jazz location.

As a private citizen, we've seen no rowdyism. There is a plaza there, that you could conjure up images of students mulling around and drinking afterwards and it doesn't happen.

It's very well managed. If there are any issues, which there doesn't seem to have been, they are managed by the Beehive, and it's a very good neighbor to have.

MICHAEL GARDNER: Thank you.

SHANE BARON: My name is Shane Baron, B-A-R-O-N. My family and I live at 61 Lexington Avenue in Cambridge.

I'm here to voice my support for the Beehive and the operators. And I think bringing the operation to Harvard Square would be a huge amenity. My wife and I frequent the Beehive for dinner. On the early hours, we'll take our three kids there for a burger, and it's a wonderful atmosphere and I think it will be a great addition to Harvard Square.

MICHAEL GARDNER: Thank you very much.

RON FRANK: My name is Ron Frank. I live at 31 Concord Avenue. I've lived there for 20 years now, and I've lived in Cambridge

for a couple of years prior to that. I'm here to support the new restaurant.

I've been going to the Beehive for several years with my wife. We had a small birthday party with my daughter; I think she was eight at the time. I've also taken my father-in-law there. It's great.

It has a very interesting menu and it's creative, they change it up a lot, which is fun. And the music is wonderful. And the artwork that they display is very well curated and changes a lot. So all around it's very nice.

And the people who work there, also seem very happy all the time and I think that says a lot for the owners.

MICHAEL GARDNER: Thank you very much.

KRISTY KEEFE: My name is Kristy Keefe, K-E-E-F-E. I'm the Director of Events for Community Relations at the Boston Center

for the Arts.

The BCA is the landlord of the Beehive, and we would like to support their application to the Commission. They are very responsible tenants, attract a very mature clientele, and they adhere to all of the regulations put forth by the City, including noise control and (inaudible).

MICHAEL GARDNER: Any problems, ever?

KRISTY KEEFE: No, no problems at all. They have been a very responsible tenant for the past five years.

MICHAEL GARDNER: Thank you.

CHARLES TEAGUE: My name is Charles Teague, T-E-A-G-U-E, 23 Edmond Street, Cambridge.

First, I just wanted to make sure, I would say that I hope you keep track of Mr. Getz's concerns. I heard him here discussing the Sinclair, so he's getting a lot of extra traffic around his dumpster and I

hope you keep track of his concerns.

My concern is the -- if this is another large increase in capacity, which is considered, which may or may not be a no-value, and it's a 75 percent increase according to my quick calculation, and also it's an increase in hours. And I just don't see that the city should just be giving that away. So where you can't charge for it, I don't think they should be either.

So that's my concern. I think that we have a CAP and I think we should get back to honoring it. Thank you.

MICHAEL GARDNER: Thank you.

DENISE JILLSON: Good evening.

MICHAEL GARDNER: Please state and spell your name for the record, and also identify yourself.

DENISE JILLSON: My name is Denise Jillson, J-I-L-L-S-O-N. I'm the Executive Director for the Harvard Square Business

Association, and I'm here in support of this applicant for several reasons.

First and foremost, I've been to the Beehive and it's really fabulous. And it would be wonderful, we don't have an operation quite like that at the moment. But also because it's consistent with the Harvard Square initiative, which is really the guiding document that we look at as we support different operations.

Specifically, it calls for more entertainment, more late-night dining, more excitement. And this is something -- the document that was -- it was a document that was prepared under of the leadership of the City of Cambridge Economic Development Department that dated back to 2005 and 2006.

It was a series of meetings that were held by Stella Johnson primarily, bringing all the various stakeholders together, and that included people from the neighborhood,

business owners, folks from the university, students, everybody getting together and really talking over a period of about 18 months about what they wanted for Harvard Square. So this is certainly consistent with that.

The other thing that is important to note is that the Greater Boston Convention and Business Bureau just released some numbers and they were anticipating that we're expecting 22 million visitors to the Boston area this year; probably the largest number that we've seen in this area in a very long time.

So to be able to offer yet another, sort of, menu choice, as well as a venue choice, is really important.

I also think it's important that the previously speaker addressed certain issues around Mr. Getz's concerns. And I certainly was here the night of the Sinclair application and I believe that the owner of the property,

Mr. DiGiovanni, addressed those questions. But I'm certain that he will be more than willing to address them again.

Because, you know, we want the Square to be clean, we want it to be safe. The last thing that anybody is looking for is a disruption in the neighborhood, and concerns around cleanliness and, you know, frankly, even smells. Because sometimes, particularly in the summer, if you don't take care of things, it can get pretty overgrown and we don't want that either.

So all of those issues need to be looked at and I'm sure that they will be addressed. And, therefore, I am here to show my support, and I thank you for listening.

MICHAEL GARDNER: Thank you.

Is there anybody else would like to be heard?

Please state and spell your name for the record.

JOHN DiGIOVANNI: Good evening, Mr. Chairman. My name is John DiGiovanni, D-i-G-I-O-V-A-N-N-I. I'm trying to think how to start, quite frankly.

MICHAEL GARDNER: Well, to be clear here, are you the landlord?

JOHN DiGIOVANNI: Yes, I'm sorry. I'm the trustee of 50 Churchill Realty Trust, which is the landlord of this particular property.

And what's sort of curious is, I think five days ago I spoke to Mr. Getz and his question was just: How did I procure this particular tenant? That was the extent of our discussion.

But what I will do is address some of the issues about deliveries and egress and trash, because I think those were the three main concerns. If there are other questions, I'd be happy to answer those, too.

So to start, the majority of the

deliveries will not come in off of Church Street. The majority of the deliveries will come in off of Palmer Street; a street the Coop uses for deliveries and other retailers on that street.

There will be some deliveries coming in from the back. But the majority -- as you can see from the plans, it's much closer to the kitchen from Palmer Street.

As far as trash, we had a pretty active retailer there for 31 years that had a fair amount of trash; it wasn't food, but they had a fair amount of cardboard which, by the way, we've recycled for 22 years. And we received an award from the City of Cambridge in 1990 on recycling.

So we have a plan for that trash as well. There is a dumpster, actually, a self-contained -- a 30-yard, self-contained compactor in the back area, that the properties have had for at least 25 years and

have worked in cooperation to put our trash together and have it in one unit.

I anticipate that that was to be the case. If that isn't the case, then we have rights on the property there to have trash removed, let's say, and we'll absolutely handle that.

And I think there was one other issue on --

MICHAEL GARDNER: Egress.

JOHN DiGIOVANNI: So there has been some discussion about a gate created from Church Street, possibly at the top of that. That has to be done in cooperation. And, quite frankly, we would have been the only entity there that would need egress from that spot. So it would have to be reviewed by the fire department in order to be permitted.

At this time, it's not there. And we are open to that idea because I think from an esthetic standpoint it would look nice there,

and from a security standpoint, it probably is a good idea. But we would need a sign off from the fire department because there are a number of properties that egress that way.

MICHAEL GARDNER: Any questions?

ROBERT HAAS: So you haven't finalized any plans for the egress from the establishment? I mean, there's a couple of places to get out of the restaurant, but you are also looking for a third option out to Church Street; is that right?

JOHN DiGIOVANNI: No. There's currently three egresses. And the question is that one of them will egress out onto Church Street, and there is some discussion between the property owners that there may be a gate at some point on that egress point where vehicles currently go through.

So for a safety standpoint, there may be a gate at that point, which would be operated, of course, from the other side to

open it up in case of an emergency. So there is still two means of egress, that's permitted.

JAMES RAFFERTY: And a number of the establishments that border around that area in the back rely upon egress through there.

So Mr. DiGiovanni's point is that there has been some discussion about the possibility of putting some type of gate at the top of that driveway. That would have to be addressed. Because Mr. Getz's property contains Bertucci's, it contains Flat Patty's, a Cafe, a number of uses. And there are other uses that have rear egress into that area including Fire and Ice.

So any decision about a gate at the top of the driveway that was referred to by Mr. Getz, Mr. DiGiovanni said, will need to be able to accommodate emergency egress for patrons. So it would have to be designed in a way that people could open it from the inside

if it were indeed ever installed.

ROBERT HAAS: So would your concern be about the additional capacity --

GERALD REARDON: The gate could be particularly problematic depending on where it is because it creates a choke point. And I don't know whether or not that would be something that we would approve or not.

And all these egresses and exit points of flow is predicated on each door, what the floor is. And there is a scientific formula for normal, ambulatory people, what their rate is, and what the extra flow is. Stairs all calculate into this and we would have to figure out what that is. So we would know to a certain degree what to expect as to flow out that particular door (inaudible).

So, again, this is -- it's good there is three exits but it would have to be reviewed to find out whether or not (inaudible). So it has to pass all the codes.

JOHN DiGIOVANNI: There are three exits and the gate is outside the building.

MICHAEL GARDNER: Are these plans, have they been reviewed by the persons with disabilities commission, or are they normally sent there?

ELLEN WATSON: We wouldn't send them there.

JAMES RAFFERTY: As part of the building permit review, that happens. In order to get a building permit, we would have to comply with access requirements.

MICHAEL GARDNER: Any other members of the public who would like to be heard on this matter?

Seeing none. Any other questions?

ROBERT HAAS: No questions.

GERALD REARDON: No.

MICHAEL GARDNER: Pleasure of the Commission? (No response.)

Well, I guess I have some timing

questions. This is one of the first steps in the process. The construction has to start -- or what is the status of construction?

JAMES RAFFERTY: As you might imagine, nothing would begin until an approval is obtained here and then affirmed by the ABCC.

So it's the critical first step that allows capitalization and commitment to the type of enhanced mechanical and architectural drawings that lead towards the building permit. But it's all contingent on the transfer of the license.

MICHAEL GARDNER: And the plan or the realistic business plan for when -- with all the approvals in construction, the location might open?

JOHN BARDY: A year.

MICHAEL GARDNER: So next spring, 2013?

JOHN BARDY: Yes.

GERALD REARDON: I would make a motion to approve the application subject to all the terms and conditions that are put forth by safety through inspectional services that they require.

Again, there has to be a complete review of all the exits -- this is all conceptual right now, it has to have further review.

And the fact that you are not looking for a waiver or any remedy from the building code in terms of sprinklers or fire alarm systems to bring it up to code. The kitchen area, the duct systems, the compliance of the crowd manager, at the end of the day this license is going to probably land somewhere, I would think, safetywise, on the complete rehab of the building is probably a safe place to utilize this.

MICHAEL GARDNER: So your motion is for a for-value license for the number stated,

and a 2:00 a.m. close on the weekends? Or do you have any concerns about that?

GERALD REARDON: The concerns are the no value, the transfer is, what, 210 from the Marino's site?

MICHAEL GARDNER: 210 is what we had, according to my memory, Ms. Watson, is that right?

ELLEN WATSON: That's correct.

GERALD REARDON: The difference between the 210 and the 328, I'm looking at the overall size and capacity and layout of the building and the increased number.

MICHAEL GARDNER: Any thoughts, concerns?

ROBERT HAAS: I have a couple of concerns. I'm little bit concerned about the question being raised by Mr. Getz. Despite the fact that Mr. DiGiovanni had a conversation five days ago and these weren't discussed then, so -- and I'm a little bit

worried about the notion that there may be some modifications to the Church Street exit.

But, again, I'm going to defer to the fire chief to make sure there aren't any safety concerns with respect to points of egress, given the additional capacity going through the area.

Mr. Chairman, I'm going to defer to you as to whether or not I should second the motion.

MICHAEL GARDNER: Given the long time line involved here, my preference would actually be to put this matter over to the first item on the agenda at the next hearing on the 17th; and with a report back from the applicant addressing any progress in conversations regarding the concerns expressed by the abutter, and to give us a chance to consider more fully the issue of both a 2:00 license to start with, and the matter of having a for-value seats for free. That would

be, in general, my preference.

JAMES RAFFERTY: Mr. Chairman, can I speak briefly on the issue of the abutter?

I think the point is that the abutter and the landlord have a long-standing relationship. And I think what Mr. -- what you heard from Mr. DiGiovanni was surprise that issues of concern get voiced here and not in private conversations.

But having said that, the issues that were identified, I think that the -- we spent a lot of time on this gate at the top of the driveway. That is a very abstract, uncertain concept that would only get installed if it was seen as a favorable means of regulating access into the rear. I don't anticipate we are going to have any resolution on that between now and the 17th of April.

You heard a very detailed description by Mr. DiGiovanni about the history. I think he said something about a 20-year history of a

shared trash compactor.

Mr. Getz took exception with the characterization of being communal. It feels like a semantic difference to me.

So these issues were all addressed as you know. Mr. DiGiovanni has multiple licensees in his building. In the building that Mr. Getz manages for others, he has multiple licensees. He has multiple retail operators, all of which generate deliveries and trash.

This has been going on for decades. And to suggest that we need to wait until the 17th for a conversation to occur about something that operationally really isn't going to be fine-tuned for several months.

A year might seem like a long way away, but we find ourselves in the position that -- in the context of these applications, by the time they are approved here, it takes time at the ABCC. And I must say, I find it

rather striking that both of the public testimony and the written record here is absent any objections.

Licensing is based on public need and fitness of character of the operator. And I would suggest there has been overwhelmingly favorable evidence on both scores to want a transfer, and to allow the Board to make a decision, and it would be burdensome for the applicant.

I personally will not be here on the 17th of April, but that's not to say that the matter couldn't proceed. But I just felt, if there are issues that need further work, we are prepared to do them. It doesn't strike me that the issues that are identified by a single speaker here, who has a history of cooperation with Mr. DiGiovanni, require a report from us. But I offer that for your consideration. Thank you.

MICHAEL GARDNER: I guess, one of the

things that I'm concerned about is that we are within a few months of potentially increasing, in a relatively compact area, a license for over a thousand spaces.

I'm not as concerned about the issue about, "If there is an emergency, where the people outflow to, and if they might happen to outflow to somebody else's property"; this strikes me as a particularly viable concern.

On the other hand, there is our need to be assured about public health and rodent control and all of that, this is a concern that we take very seriously in a congested area like this.

I'm assuming and expecting that the matter or the plan will be fine, but it was a little disconcerting that -- to hear that, in fact, it appears that there perhaps were assumptions made that don't necessarily conform to everybody's understanding.

And if any of the speakers want to

clarify that, I'd be happy to hear about it, but I think we do have to worry about that.

And I don't think it's actually fair to say that there were no oppositions; many of the speakers, and appropriately so, have experience with a similar place in a different community with a different configuration. That's all very reassuring to us, but we did, I think, get some expressions of concern for both the hours and the congestion from local residents as I understood it.

JAMES RAFFERTY: I'm sorry. And where are those expressions embodied? Is it written --

MICHAEL GARDNER: Well, Mr. Teague spoke. I don't think we have any written oppositions.

JAMES RAFFERTY: Okay. You used the plural when you said local residents, and I --

JOHN DiGIOVANNI: John DiGiovanni,

attorney for the properties at 50 Church Street.

I just want to be very clear. We have an absolute right to have trash out in that area. There is no question about that. There is an easement. We had this discussion about the Sinclair. It's been there at least 25 years. The compactor is plugged into our building. The utilities are in our building. And if you would like to separate that, we can separate it and he can have his trash and we can have our trash. There is just no question about that.

The issue is about cigarette butts in the back. We had to have video surveillance back there monitoring that.

And as far as the gate, it's been discussed for three years and the only way it can go on is if it's attached to our building. And I will state for the record, we won't attach any gate unless the fire department

signs off on it.

And as far as rodent control, I can assure you that the plan that they will ultimately submit to you under the lease, we are required to review on how they are doing all that, including the grease traps and all of the things that you must do by sanitary, which I think is inspectional services.

And I appreciate Mr. Rafferty working to have a decision sooner here because it does take a long time. That space will now be vacant for a year. And I'm having my men monitor the front of that vacant store front now, we even put a video camera up there, just so we don't have more issues for the police or fire issues.

I'd like to see activity here, as far as building it out and having it open, as soon as possible.

MICHAEL GARDNER: Well, there is a motion on the table.

ROBERT HAAS: So Mr. DiGiovanni, you are satisfied that there is no issues that need to be resolved between you and the adjoining property owners at this point that are going to be problematic going forward?

JOHN DiGIOVANNI: I'm happy to continue talking with Mr. Getz.

There is no issue as to our right to have trash back there, and actually have people egress out that space for a fire code. So I know we have three means of egress.

And I want to state for the record, there will be no gate unless the city approves it. And we'll make the issue about all of the conflicts of that building. And the only way a gate can go up is if it's attached to our building. There is no other way to put a gate there.

And there are issues -- you heard Mr. Getz talk about cigarette butts. There are still cigarette butts out there. We have

surveillance cameras back there for safety and all of that.

But relative to this and deliveries, absolutely not, Commissioner.

MICHAEL GARDNER: My concerns don't relate to that.

JOHN DiGIOVANNI: I understand.

ROBERT HAAS: And my concerns don't relate to the efficacy of the operation. Again, I'm just concerned about the configuration. The cohesion rate with respect to emergency access and egress, and that's the only thing that I'm really concerned about at this point.

JAMES RAFFERTY: With all due respect, Commissioners, I didn't hear the concerns raised by --

ROBERT HAAS: Well, Mr. Getz has raised issues with respect to his concerns about people getting emergency egress out of that restaurant in the area.

I don't know if I'm familiar enough with the area to sit here and say --

JAMES RAFFERTY: But as I understood his concern, it was related to the potential gate and what impact that could have. That gate may never come. And Mr. Getz doesn't have any understanding of access or egress out of this building.

There are two other points of egress; one is on Palmer Street, the other is on Church Street. Only one of the three access into an area that Mr. Gets has a concern about. And his concern, as I understood it as expressed, wasn't that people would be able to get out of the building, but once they are out of the building and up the driveway, what if there was a gate there?

You heard Mr. DiGiovanni say the only way a gate would ever go there would be with the approval of the fire department.

So I don't think there is a lingering

issue about egress.

I think the only question is whether or not at some point in the future it's advisable to install a gate at the top of that driveway. But that isn't anything that is going to get resolved between now and April 17th.

MICHAEL GARDNER: So let me offer an amendment to your motion? I think I can do better than that, or can I? Does it have to be seconded first?

JAMES RAFFERTY: No. I would say parliamentary rules to allow us to do that, would be my opinion.

GERALD REARDON: I concur with him.

MICHAEL GARDNER: So I would amend the Chief's motion to approve subject to all the conditions that he put on it, with an approval of the hours as stated, but with a six-month review after operations begin, particularly to focus on the issues of

potential congestion, noise problems from spilling out at 2:00 a.m., and further approval of the transfer of the for-value license for the number of seats in the original Mass. Avenue location, which I think 210, and I think the remainder of the seats which are applied for, be reviewed as no-value/no-transfer seats.

And, you know, my purpose in doing that is, I think, to try to be economically fair with respect to what we would be approving as to transfer without adding more value based simply on the serendipity of the size of the space of the potential purchase.

Was I clear?

ROBERT HAAS: I'll second the motion.

MICHAEL GARDNER: The motion as amendment has been seconded. Is there any further discussion?

All those in favor signify by saying aye.

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: None opposed.

So welcome back to Cambridge. We wish you well and we wish you a speedy transition. And I have every confidence that the concerns that were addressed tonight by others can be worked out by all you people.

JAMES RAFFERTY: Thank you very much.

* * * *

ELLEN WATSON: Application continued from March 20, 2012, Diciples, LLC, d/b/a Bull B.B.Q., Daniel Shin, Manager, has applied for a new all alcoholic beverages as a restaurant license at 57 JFK Street, basement level. The hours of operation will be 11:00 a.m. to 1:00 a.m. seven days per week with a seating capacity of 95.

MICHAEL GARDNER: Good evening. Would you come forward and state and spell your names for the record and identify

yourselves.

KAREN SIMAO: Good evening, Mr. Chairman, Commissioner and Chief. My name is Karen Simao, I'm from the law firm of McDermott, Quilty & Miller, and I'm here on behalf of the listed applicant.

To my left is Mr. Jin Kim, J-I-N, K-I-M. And to his left is Daniel Shin, S-H-I-N. And for the record my last name is S-I-M-A-O.

MICHAEL GARDNER: So if you could, we have some confusion in the record here. The call to the meeting says that this is an application for a new all alcoholic beverages as a restaurant license. The file, at least as I saw it, appeared to take a somewhat different form.

KAREN SIMAO: First and foremost, the reason that we are here before the Commission today, we are really here on bended knee before your Commission.

The two folks seated before you have been here before you in the past on a transfer. The subject license to this premises, in and egregious error admitted by them, that license was not properly renewed for 2012.

And that, as the Board can imagine, and clearly through no-fault of the Commission, your office was wonderful, placed calls to these folks, to people who were working in the space building out, and those messages never got to the owners here. And that is a problem that falls directly on the owners. We are very apologetic for even taking up any of the Board's time on this today.

That being said, we are left with the very practical realty, a couple of practical realities that are referenced in what should have been Tab 1 in your package, set out in a brief motion related to this application.

We, number 1, have a license which in this particular case was a license that did have value; dollars were paid for that license, it was not a no-value license.

And number 2, we are looking at significant expenses incurred in the build-out of that property.

Those two things taken together will result in a financial detriment in excess of half a million dollars to these people before you, between the license purchase price that was exchanged and the build-out.

And while I may understand why the Board does not necessarily take pity on the business person who did not do what they should have done in this particular case, I would also just submit, as you are listening to our statements today, that you keep in mind that we are also talking about approximately 25 jobs that this Commission has the opportunity to save with this motion today, as

well as the personal financial detriment to these folks, and filling in a long-standing empty space at this location.

With all of that and with that in the backdrop, I would submit that to the Chairman's point, we have two things that we are submitting to the Board today.

One is very much under the jurisdiction of the local Board and is entirely the Board's decision.

And the second is set up the way it was for the purposes of ABCC. Late file renewals, unfortunately, are not uncommon throughout the Commonwealth of Massachusetts. And the ABCC has taken the position, and I know that Mr. Sackrimony (ph.sp) did have some conversations with Ms. Lint to this extent.

But the ABCC will accept an application, but it needs to be filed as a new application for their purposes simply because they have redone all of their forms and there

is not a category that says, "we didn't do the right thing."

The local jurisdiction, it's entirely in the local jurisdiction's authority, whether, number 1, you chose to accept what is called the late file renewal; and in this case, whether you chose to reinstate this particular license, which is in Cambridge's circumstance is important because, again, there is a distinction in this jurisdiction between value licenses and no-value licenses.

So there are really those two significant issues before the Board.

The first being whether or not -- and that was the request in the motion -- whether or not this Board would accept the late file renewals/reinstatement of the license; and that, if so, we go on to the mechanical process in the form that the ABCC requires, which is this application material which we have cross-referenced with the prior

application. There are no changes to the operation that are submitted to this Board, everything is identical. And we can certainly go through that. But I know the Board has a full agenda and I don't want to belabor that point. But everything is identical.

The manager of record was previously approved, the concept, the operation, the hours, the members, even the pledge of license that I appeared here on behalf of the landlord previously on this remains the same and is here.

So presuming that the Board will be willing to act on the initial motion to reinstate -- and I use that in quotations -- the prior license and accept the late file renewal, then would we ask that the Board vote on this new application as it was submitted for purposes of the ABCC, including the pledge of the license that is there.

And I cannot emphasize enough -- and

both of these gentlemen are here -- but I cannot emphasize enough how seriously these gentlemen have taken this.

And there is no other way to approach this kind of situation with the Commission other than to say that we are extremely embarrassed and extremely sorry for even taking up any time on this.

That being said, again, the reality is that we are ready to open as early as the end of this month. And, again, the financial consideration, the job creation, and the overall economic activity, we're hoping that the Commission continues to view that that outweighs the error of this particular applicant.

MICHAEL GARDNER: So I think we remain perplexed as to what was going on. You described it here as an egregious error. In the motion, you said, "An employee of the licensee failed to process the renewal

application for 2012."

But our records show that a letter was mailed to Daniel Shin at Diciples, LLC, 57 JFK Street, Cambridge, on December the 5th of 2011, and the document was returned to the License Commission on December 9th of 2011, "Return to Sender. Diciples moved, left no address, unable to forward. Return to Sender."

So I guess one of the things that I don't really understand is, what was going on in the fall and late fall of 2011 that things were so disorganized that mail wasn't being accepted?

KAREN SIMAO: I can't explain why the post office would have or anybody would have marked that "Return to Sender" because Mr. Kim at the time was there building out the property.

Now, because the business wasn't open yet to the public as Diciples, LLC, and that

is a possibility, and I have seen that happen, but I cannot disclaim any responsibility by the licensee on his part.

Your Commission was kind enough to send that letter on December 5th. But as your Commission knows and as you also do, and as I tell all of my clients, "It happens once a year every year, just like your birthday, it's the last business day of November. It doesn't change."

And so by this point it's an egregious error because internally the employee should have been aware, as should the owners, they should have been aware that it needed to be renewed.

Any correspondence that they were not receiving -- while I appreciate that perhaps the post office wasn't aware that they were in there -- the ultimate responsibility here lies with this licensee.

I understand that the Commission also

placed a phone call. And, again, this is where, when we talk about the disorganization and confusion, I'm sure that at least one or two of the Commission members have been on-site, on any site when it's being built-out, that it's not the most organized process.

That being said, unfortunately, that was happening in the fall and at the end of the year during renewal season. And that is, again, completely on the licensee.

I'm not here to make any excuses for these folks. Whatever the reason, if they weren't getting letters, it shouldn't have mattered. They should have known that they needed to be here at your office at the end of the year renewing that license. It's as simple as that. There is no way for me to sugarcoat that on behalf of the client.

And they understand that. And, as I said, they're very apologetic about it, but

that doesn't change the fact that it happened and now, unfortunately, we are here.

So for all of those reasons, I would very respectfully ask the Commission, because it is in your jurisdiction to do so, that you consider the error. And that, again, doing this for a living, it is an egregious error, it's your livelihood if you don't renew that license and it shouldn't happen. It's as simple as that.

MICHAEL GARDNER: Ms. Watson?

ELLEN WATSON: May I just add that the renewal letter itself that went out at the end of October did not come back to us, so that was received by somebody there. That is the bill payment that goes out at the end of November. So two correspondences did go out from our office in addition to phone calls.

KAREN SIMAO: Right. And that's why we are not -- up to that point, we are not sure why the Post Office didn't send it back.

Some, but not others -- well, it frankly doesn't matter, because it should have been the responsibility of the licensee to be on top of this. That is way I feel. Thank you.

MICHAEL GARDNER: So I'll ask the question to my fellow Commissioners, to Ms. Watson, and to you counsel, is there anybody who's got any information about this?

Do we have any experience with reinstating a license when the licensee failed to renew during our authorized period? Have we ever done this before?

ELLEN WATSON: In my 25 years, no. We have cancelled licenses. The only time I can remember reissuing a license was Torrey Row, which is a free license. And then the License Commission cancelled it because they didn't use it within the six months, and the License Commission issued another free license. But it wasn't cancelled during the renewal period.

Any license that has not renewed during the month of November has always been cancelled during the last 25 years.

MICHAEL GARDNER: I take it neither of you have any experience to contradict --

GERALD REARDON: I don't know of any licensees that have been reinstated. It has been, as Ms. Watson said, the license was reinstated.

The question here is, this is a new application, which could be handled on its own merits, but it doesn't necessarily mean that we are reinstating the old license.

KAREN SIMAO: Right. And, again, I think this particular situation is a bit unique.

First and foremost, I can speak, generally again, in the Commonwealth and not specific, because Ms. Watson knows the jurisdictions certainly better than anyone else and I defer to her 25 years.

But throughout the Commonwealth, it is not uncommon to see late file renewals. And let me give you an example only because it's your neighbor in Boston.

Our office personally handled some 25 late file renewals. Again, I don't understand why it happens, we give all of our clients our speech, but every year it seems to happen. That's only office; and me, personally, handle some 25.

And if you think about conceptually, these were businesses, actually, all of the ones that I handled, these were existing businesses, open, they are open, and they somehow forget to renew this license.

So there was an existing license for-value that they had paid for this location, they are open and they are operating it.

Again, the local Board made the decision, and this is common throughout the

Commonwealth, I'm only using Boston as a concrete neighbor example.

But the Board voted to accept what they call the late file renewals, which means a late file renewal of that license that was, by operation of law, cancelled, I mean, if you don't renew.

And the ABCC accepted the application in exactly this formation that I have provided it to you, and within 24 hours they turned it around, because these were done in batches and people were going to have to close, you know, following the first of the year. And it was quite chaotic, but this is how it was handled, not only in Boston, our office did several other jurisdictions throughout the Commonwealth.

I use that as an analogy, one, to show jurisdiction of the Board; but, two, this issue of -- my big concern in Cambridge is that you do have the CAP system, you do have

the value and no-value licenses. And so more than ever it is particularly critical that, at least for your records -- again, the ABCC does not get involved, as the Commission knows, in allocating licenses, are they for-value, are they not for-value? The ABCC leaves that entirely up to the local jurisdiction.

So for your records, we would want it to reflect however the Commission deems appropriate. And whatever you want to call it, whether it's "reinstated" or some other language, because, one, we don't want the licensee to be out over \$200,000; he has paid for that license, number 1.

Number 2, we have a pledge on that license that was critical to keep in effect because, and the Board may or may not recall, but it's in here, that these individuals are on the hook for that money, and they are on the hook by virtue of a note. So they have a loan for that money that was paid out and a

pledge on that note.

MICHAEL GARDNER: But they didn't use the proceeds to pay for the license?

KAREN SIMAO: They did. There was a closing on this. When this Board originally approved the transfer, there was a closing on it. So those funds were exchanged, the note is in effect, and these gentlemen are responsible for the payments under that note. The lender, obviously, wants their security in the form of the pledge on it.

So there are a lot of significant impacts by virtue of -- and that is the significance of my use of the words "egregious mistake" because it really is for these individuals, through their own inaction, a very serious ramification for them.

MICHAEL GARDNER: I guess I may misunderstand the rule. I thought that the license itself could not be pledged to help support the purchase of the license, but to

support the build-out or renovations or the expenses directly related to the operation of the establishment.

Am I incorrect in that understanding?

KAREN SIMAO: I think that you may be perhaps transposing a few things.

100 percent it is absolutely authorized for the ABCC; and it was approved in this case a pledge of the license for value of a promissory note.

And, as my colleague, Mr. Rafferty, had noted, a promissory note can cover the purchase of the liquor license. It cannot be a promissory note to cover some non-related purchase to the entity. But the promissory note, in this case only, covered the liquor license.

But I will note, those promissory notes and pledges, can, in fact, cover -- you know, if someone has loaned you the money for build-out, buying equipment, anything related

to that licensed premises, the promissory note is in effect and then a pledge can serve as collateral for that promissory note.

A pledge of the license cannot serve as collateral for anything other than a promissory note as Attorney Rafferty had noted in his prior presentation.

MICHAEL GARDNER: I guess the other thing I'm worried about is that something else was going on and this restaurant was nowhere near ready to open.

Should I be disabused of that?

KAREN SIMAO: I don't know where that came from, but that certainly was not the case. Again, Mr. Kim can testify that they were in the property, that they were building out the property at that time.

And as I said, they are towards the end of completion. And by the end of the month, at the latest, they would be -- presuming, if this Board were to approve it

and then the ABCC were to do a quick turn around, they could be open as quickly as the end of the month, subject to the final approval.

So I don't know. I heard that rumor. We spoke with the landlord, we spoke with the applicant about it. And at no time, at least with the individuals directly involved in this, was that the case.

MICHAEL GARDNER: There is no plan to have this establishment taken over by anybody else?

KAREN SIMAO: No.

MICHAEL GARDNER: When did you first discover that you missed the deadline?

KAREN SIMAO: Pardon me. Could you just state, the Chairman is asking when you realized that you had not filed the renewal, which, I think, is probably when you came to my office?

DANIEL SHIN: Actually, I don't

remember but --

MICHAEL GARDNER: You have to speak louder, please, so we can hear you.

DANIEL SHIN: Back then we didn't pay attention about the license renewal thing. And we realized we had to renew the liquor license and we called and asked, you know, "What's going on." And so she --

MICHAEL GARDNER: How did you learn about it? How did you realize it?

DANIEL SHIN: Just big a mistake. But we still want to be a part of Cambridge, be part of Harvard Square, that's all we want to do.

MICHAEL GARDNER: How did it come to your attention that you hadn't met the obligation? Did somebody tell you? The landlord? Did somebody from the Commission tell you?

How did you become aware that you had not done what you were supposed to do?

KAREN SIMAO: Who told you?

DANIEL SHIN: Back then, I told the landlord. (Inaudible) Back then, I said to the Chairman, we didn't pay attention. I'm learning still. We have to renew, so we are here.

MICHAEL GARDNER: Had you come in here in the summer of 2011 to get an extension? Could you just revisit that history for us, please.

KAREN SIMAO: I had to come for the extension personally. I know that prior counsel had come in for an extension on the -- we received -- prior counsel, who does not work in our office and isn't at all related to our firm. In my review of the records, it indicated that finally the ABCC issued approval was received in February of 2011. And then there was delays and costs in the build-out, which the Commission knows is not that uncommon, and that they then came in and

requested an extension on that approval. And my records indicate that your Commission approved that extension or request on July 19, 2011.

To be very frank, I don't know what the details of the extension request were. I can't speak to that so I don't want to be disingenuous to the Commission.

MICHAEL GARDNER: I guess my point about that is, if you were in in July, even more concerned that you didn't understand, you still had to come back here in December.

KAREN SIMAO: Right. And I'll give you the best answer I can because, sadly, my brain is a little more frazzled than it should be these days, but I know that Mr. Dhanda, the landlord contacted me the same day that he became aware of the issue, which is the same day that he contacted Mr. Kim. I believe that was at some point in February, but I would have to look back at my records to get that

specific date.

MICHAEL GARDNER: So the file includes a, if I understand it right, a new pledge agreement signed in February of 2012? Is that the wrong expectation of -- there is a prior pledge agreement?

KAREN SIMAO: I would not use the word "new." This is the same pledge agreement that was previously approved by this Commission and the ABCC.

The only distinction is that at that time we noted to the Commission that neither the note, nor the pledge, get executed until there is a closing, i.e., the money is exchanged and now they are on the hook for the money.

After your approval and the ABCC's approval, there, in fact, was a closing and those dollars were exchanged, and so now the only difference is, it was the same note, the same pledge, but they are executed now and in

your submission packet.

MICHAEL GARDNER: So help me understand the implications of this.

If we were inclined to not do, for the first time, something we apparently never had done, but we were prepared to act to facilitate the opening of an establishment in Harvard Square, and through the vehicle of the no-value/no transfer license, would that fatally submerge the viability of the operation, or would everyone hope that these are good business people who are going to go with the right concept and the right location and they are going to be generating the cash in order to service the note, whether there is a pledge or not?

KAREN SIMAO: A frank discussion on the note and the pledge, to answer your question, is that effectively, not immediately but eventually, it would result in the termination of this business.

And I speak to that point from the point of the lender, because the lender would then go to seek judicial enforcement of it. Because now they are not secured, right, for the \$232,000. They have no guarantee that they are going to get their money; you hope that they will. But without security for that, no lender would be comfortable having put that much money out without having a lien on the property. It would be the equivalent of a bank loaning somebody money to buy a house and then the bank says, "Well, the mortgage didn't work out the way we wanted it to, but we are going to let it go and hope it works out. That's the equivalent. So judicial action would be sought on it.

And I think that that would then create realistically -- I don't litigate, but the litigation fees, as I'm sure the Commission is aware, can be quite absorbent. And I don't know how -- the point being, to

get security, I don't know what else these folks would be able to give in terms of security for that dollar amount, you know, because they are pretty gone out now.

MICHAEL GARDNER: Well, again, I'm not sure I understand the dynamics of this.

Let's just say that, given the money of they've expended and what they owe already, they are basically judgment-proof with respect to recovery of the value of the license.

Isn't, in fact, the assets that they have, the capital, the fact that they've moved the ball this far, they are near opening and they have got the capacity to run a business which can generate the cash to service the note?

KAREN SIMAO: I think that would be the idea. That would be the intent. But, again, lenders aren't in the business of taking that kind of risk. That is just a very really answer here on that.

MICHAEL GARDNER: Questions from other Commissioners?

ROBERT HAAS: What strikes me is, given the fact that we can't recollect any time that we've reinstated a license, I'm just really concerned about creating a very dangerous precedent. If we have licensees that don't pay their fees, that they couldn't reinstate the license, they've done this before. (Inaudible)

And that's where, I think, for me, it's kind of in a quandary because you've never done this before. And I'm sure your representation that the jurisdiction is accurate, but I'm not familiar with this area, so I'm somewhat hesitant to move forward with respect to the motion of reinstatement.

Tonight, when I was coming here and until the Chair pointed it out to me, I thought we were entertaining a new license, no fee, no-value. So that's where I'm stuck

right at this point.

KAREN SIMAO: I just want to be very clear that this licensee -- and certainly the Commission wouldn't expect this from anyone, and it's not in any way trying to circumvent payment of the fee -- they absolutely want to pay the fee. They would not ask for it to be prorated.

This is effectively reinstating, accepting a late file renewal, and all the rules apply, so, you know, you get this one shot.

I have other jurisdictions where the same licensee sporadically doesn't renew, and this happens repeatedly and, again, it shouldn't. But there is no request here for any consideration or waiver of any of the annual fees, any prorating of that fee, absolutely not. We are not -- we want to pay what should have been paid. And we certainly would not ask for any consideration at all.

ROBERT HAAS: I just don't understand the logic of -- I mean, the way it was presented to us initially, like you are looking for a new loan on the license, and how that was going to take care of the existing promissory note. It's not likely that your clients would be able to do that. If we did, in fact, present them with a new alcoholic license --

KAREN SIMAO: The reason that it's presented as a new all-alcoholic license is because this is how the ABCC requires that any late file renewals be filed. They require the application -- and Mr. Sackrimony (ph.sp.) I know spoke with Ms. Lint on this.

And you know, I'm very comfortable on this, I spoke with him on multiple of these applications, including this one.

In the similarities of terms, the ABCC does not care whether Cambridge, Boston, Westborough, Framingham, anybody, if you want

to call it a late file renewal, we can call it a late file renewal. If you want to call it a reinstatement of the license, then you, as the local Board, that is in your jurisdiction. Because the ABCC does not make a distinction on its licenses as to whether it's a for-value license or a no-value license; that is entirely in your control.

All the ABCC cares about is that their forms look the way that they have asked them to be.

So if you look at the boxes that you check off, under tab 2, the ABCC application forms, the very first form, you have a list of options there. And they don't really like you to do what I did here, but I'm doing it in this case for obvious reasons.

So I checked off "Reinstatement of license and late file renewal," and in the application itself it is indicated as a new application because that is mechanically how

the ABCC processes it. The ABCC processes it as a new it does a new license application. I will tell you that it's the same exact process as it is for a transfer of a license as it is for the stock purchase, it's the same. It's a matter of which box do you check. So there is no box for me to check there. And that is acknowledged by the ABCC and they take it as a new license. And it's up to the local jurisdiction to determine, "Do you want to call it a "late file renewal"? We don't care what you call it. For us, they all come in --

ROBERT HAAS: So coming into this hearing, my understanding of the new license, as this body had indicated, it's always been for no-value, nontransferable.

And we have had some discussions unrelated to this, with respect to the ability of the License Commission to issue for-value licenses. And I don't have an answer in that area yet.

And what you are really asking us to do is to issue a for-value license, a new for-value license, in order to make your clients whole?

KAREN SIMAO: Well, understanding that we can only set so much precedent here, that is why I was very careful to request that the Board consider a motion for a reinstatement.

So you have your pools regarding a no-value license, this license existed in Cambridge. And in your file, we would be asking you to reinstate, revive, whatever the Commission wants to call it, for exactly that reason. I'm not here to lobby the Commission to change its rules and regulations as it relates to value for new licenses.

My motion to the Commission was very specifically for that reason, a motion to reinstate and to accept a late file renewal on this specific license that you have in your

files. And that's why my motion was so specific in that regard, understanding your rules and regulations as they exist.

MICHAEL GARDNER: Any questions?

GERALD REARDON: I am in the same situation. We've got a number of licensees over a number of categories that have disappeared and then they fail to get it renewed.

And some of them have come back and we do end up -- I would say that in 12 years, we have never done a for-value license and reinstated it once it expires and if someone lost it.

KAREN SIMAO: My understanding is that it's never come up, right, not that the Board denied it?

The Board has accepted, on the no-value license, accepted effectively late file renewals and then issued a new license, which in that case it's a zero-zero.

My understanding is that this situation to date has not come up for the for-value license.

ROBERT HAAS: Ms. Watson, have we ever cancelled a for-value license in the past that you are aware of?

ELLEN WATSON: We have cancelled for-value licenses. I think one of the mechanisms that we need to explain is that the staff in the office goes to extremely great lengths to get in contact with all the licensees. We do phone calls, we do e-mail, we send it out by postal, and sometimes we do it by investigators as well if we can't get in touch with them, we'll send the investigators out.

So, you know, in a small area in the City of Cambridge, there is not many people that we can't get touch with; even those that are inactive, we have ways to get in touch with them. We really do reach out and get in

touch with everybody. So there is really not much of a chance for us to cancel anything out that --

ROBERT HAAS: So with respect to the cancellations, has there ever been a motion made to this body with respect to cancellations to try to reinstate or renew a license? So once we have cancelled, nobody has come back and said --

ELLEN WATSON: No.

KAREN SIMAO: And through the Commission, I would guess there is a few different ways to look at that question. There's cancellation for none-use, as the Commission knows; or for some violation, there is cancellation for that.

Then there is the automatic cancellation of the license for nonrenewal; and I don't know if that was one of the for-value licenses.

And then there is the third question,

which is the question of: Has anybody made the request of the Board -- and I understand it's a decision that the Commission is going to weigh, I would just really submit that it's entirely within the jurisdiction of this Board, and it is taken on in a case-by-case basis.

And, you know, despite, again, the egregious error, there is really a greater good here in the form of real jobs and real business being impacted. And I know that the Commissioners all know that, I just wouldn't be doing my job if I didn't emphasize that.

MICHAEL GARDNER: So I guess the concern I have is in terms of the egregiousness of the error, to the extent it reflects on the experience of the prior license holder and whether or not that isn't some indication of a fundamental flaw in the operation. How good can they be if they can't take care of that business?

KAREN SIMAO: That's a very fair question, Mr. Chairman. And all I can say to you is, clearly, these folks have had conversations with us, at least on some level. To the extent that you may or may not find comfort in this answer, the 25 folks that I told you about just in Boston that didn't renew, of those, I could tell you that one of them is one of the most sophisticated operators, not only in the Commonwealth of Massachusetts, but in Connecticut, owning in excess of 15 different locations; several of those 25 were publicly-traded entities. This is what they do.

And so it's a very logical question and a valid question. And I would just point to these examples and say, yes, those are great operators, there's no question. If you ask anybody in the neighborhood, they are fantastic operators.

This is an administrative issue that,

in the middle of all this going on -- I hope that the Commission doesn't take it to be a reflection of the day-to-day operations, but rather a part of this build-out process that is a very cumbersome and confusing process.

And I don't know that that offers you any comfort, but I do think that those examples are interesting, at least to our office, and I've done this for 12 years and I'm a managing partner in excess of 30 years, and we couldn't believe that this year alone, how many very experienced, head operators with multiple locations, didn't renew at their multiple locations.

And, as I started with, it's just not -- I can't come up with a good excuse. It's like saying "I forgot my homework." It's something that has to happen. And they have been given significant speeches by me personally as well as the landlord in that regard; and who obviously is also concerned.

He wants to make sure there is a good operator in there, who, you know, next year, "Are we going to have a license, or do we have to go through this every year?" So there has been a lot of reprimanding.

MICHAEL GARDNER: Thank you.

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

(AUDIENCE MEMBER)

MICHAEL GARDNER: Please come forward and state and spell your name for the record and identify yourself.

SOLMON CHOWDHURY: Solmon Chowdhury, S-O-L-M-O-N, C-H-O-W-D-H-U-R-Y. I'm a tenant at 57 JFK Street. I own my own restaurant and lounge in the same building. I also have another license at 45A Mass Ave, a restaurant called Moksa.

As far as I know, there hasn't been any activities in that space since probably March or April of last year.

Matter of fact, me and my wife, we went to one of their operations in Allston to see what's going on because we wanted to see when they are moving in, and they told us that they are having some issues, they don't know what's going on, so they'll let us know.

Now, also, recently, at least two to three times that the space showed on Craigslist for rent, marketed by -- I believe the broker's name is Don Lundry; he works for the Diamond Group.

And after that listing, there was another listing that was posted; it was also a liquor license that was for sale. And I did call the broker and then he tell us that is the restaurant on 57 JFK Street at the basement. Also, I think I did do some research on it and that's the case.

Also, if they are looking for the license to be revised, I think, in all respect to the Commission, it needs to advertise

properly so the license holder knows that if you fail to renew your license, you can't come back and get it again.

If it's a standard for the last 25 years, you know, we all did our part of work renewing it on time. I think, you know, that should be considered also.

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

Ms. Watson?

ELLEN WATSON: During the renewal period when they were supposed to be coming in, we had three people come to our office to ask about transferring the liquor license or getting the liquor license in the 57 JFK basement. So they wanted to get the paperwork to transfer done.

MICHAEL GARDNER: Well, I guess one of the things we are concerned about is whether or not we are being dealt with in a

clear and straightforward way.

And I do believe that the landlord may be here and may be interested in speaking. I'd be happy to hear from him.

But mostly I'd like to hear from you with respect to what, you know, the issue or claim that there has been very little activity, or no activity there since March.

KAREN SIMAO: I realize that the Commission sees several licensees and several applications. I also know how involved the Commission is in this community. So the Commission may recall that Mr. Chowdhury has been opposed to this particular business operation from day one. I cannot explain why that is.

I know that I sat through the Commission meeting on the initial transfer and the opposition is on the record.

And while I respect his opposition, I think that we may have found the source of

some of the misinformation that the Board has gotten on this regard.

That being said, I would also point out that the Board has properly noticed the application that the ABCC requires, which is for a new license. And so there is -- it is not incumbent on the Board to notify licensees, they are now free to not properly renew.

MICHAEL GARDNER: I guess, with all due respect to that, the notice that was put out, you say may meet the ABCC requirements, it confused the Commission.

The Commissioners didn't know until five of 6:00 that this was not a request for a new license. Because the ABCC -- that may be what the ABCC says, but this is not a request for you a new license, that is not what is before us.

KAREN SIMAO: And, clearly, I defer to the Commission. I think the statement was

one of meeting the statutory legal requirements. The statutory legal requirement for the state has been met. It's completely separate from what the Commission's statement is in that regard and I respect that.

I would also point out that the cover letter to the application that I sent, clearly did say "late file renewal and reinstatement license." So I apologize for any confusion.

But to that point --

MICHAEL GARDNER: It may not all be on you.

KAREN SIMAO: Two things. I would like Mr. Shin, who is of the proposed manager of record, to talk a little bit about -- you know, I find it disingenuous for people to come in -- and this happens all the time -- and say, I can name five going businesses today alone that I received calls on, "Oh, what do I need to do? Are they selling?" This is very common in the industry.

But Mr. Shin can certainly speak to the work that has been done at the premises and that has been going on since the fall, and that they are ready to open --

DANIEL SHIN: My name is Daniel Shin, S-H-I-N. And I just want to respond to the previous speaker that, for me, personally, I have seen it and we are ready to open. So I don't see where the idea of us not being ready or not wanting to open a restaurant down there, that doesn't really align with, I guess, us as business people wanting to open up this restaurant right now.

GERALD REARDON: Well, one of things would be that -- you know, we have a couple options. Obviously, one, we could approve potentially, speaking for myself now, the license that we previously approved as a new application, which would be a no-value/no transfer. I know that has financial implications on it.

The other thing we have to -- I guess we can't get assurances of -- but are we, in fact, approving potentially, are you asking for a reinstatement and the license has value, and then six months from now the license is getting flipped.

KAREN SIMAO: Do you have any intention of selling this business in the next six months?

DANIEL SHIN: Not me.

GERALD REARDON: I think you can understand where we are coming from?

KAREN SIMAO: Absolutely.

MICHAEL GARDNER: Mr. Shin is not an owner.

KAREN SIMAO: Is the manager or record. He is the LLC manager and the manager of records, so it's the equivalent to a board of directors on a corporation, so he's involved in these decisions.

What's the term of the lease?

DANIEL SHIN: Ten years.

KAREN SIMAO: It's a ten-year lease that's executed.

If it adds any comfort to the Board, if you do vote this in, in the way we are discussing, and if you feel like you want to put in some sort of restriction that it could not be sold in six months -- we can't predict the future, but to the extent that it reassures the board that we are not here asking for this only to then flip it and sell, and be before you in a couple of months with another application, I think my client would be comfortable.

We didn't discuss that, but every indication to our office and the reaction of these folks when they came in, the same day that Mr. Dhanda (ph.sp.) called me, they were in my office that same day and they were distraught over this. Because, in their minds, they were ready to open.

GERALD REARDON: I mean, with all due respect, obviously, it's a \$200,000 mistake financially.

KAREN SIMAO: And over what they put in building out. So to the extent that any -- we are open to any of those kinds of restrictions. As I said initially, we are here on bended knee.

GERALD REARDON: And you believe, at this point, you're within, the beginning of April, you believe that you are close to an opening by the end of this month?

KAREN SIMAO: By the end of this month, yes. Obviously, subject to approval of all the licenses, yes.

Could I also just ask Mr. Dhanda, would you just stand and state your name for the record, please.

RHA DHANDA: Rha, R-H-A, last name Dhanda, D-H-A-N-D-A. A few things on presentations here. I believe I'm reasonably

well known to the Commission. I never -- I'd talk maybe if there was no response. I might have heard that they didn't pay the fees, I never heard.

Number 2, the previous speaker referred to a broker. I deal with that company in many other situations. The person referred to, I don't know who he is, but I can tell you, we never asked them to find -- to lease that space while the lease was going on with these folks.

They have been there working. Lots of time, I'm not there all the time, but I go there perhaps once a week. And they have spent in the renovations, not counting the very recent work, \$500,000 or \$600,000, in that range.

They put in exhaust systems that blew my mind. They put exhaust systems going through the floor going up, because of the part of the concept is a Korean Steak House,

and the cooking is done on the table, everything is done on the table. And every other kind of thing they had to do, they have done. And they are ready to open.

I've seen it, in terms of the state of readiness, the painting is done, and they are putting together the tables.

GERALD REARDON: So other than the inspections and so forth, you would agree that in your estimation, looking at it, they are very close to opening?

RHA DHANDA: Oh, absolutely. No question about it.

KAREN SIMAO: I would also like the record to reflect that in one of my conversations with the administrative office for the Commissioners, they also indicated to me that they had heard that the space was for lease. And our office doesn't like to be toyed with either. And I immediately called Mr. Dhanda and he vehemently said that that

space -- because a "for lease sign" was referenced in my call with your office -- and he said, "There is absolutely not a "for lease sign" on that space. I have never posted it, I have never done anything."

So he has been very consistent in his representations to our office as to the fact that there has never been any intent to lease that space to somebody else.

And he has been very committed to this tenant. And he, as I said, is, in fact, the one who called me and said, "Karen, can you drop everything and try to help these people."

MICHAEL GARDNER: So I will ask you to -- and through you to either of the principals from the applicant or the landlord or anyone else who may have any knowledge of this -- do you know if this property appeared on Craigslist for lease? And did any of the parties coming before us tonight have any role

in arranging for it to go on Craigslist?

KAREN SIMAO: I'll ask you the question. Did either of you request that this business be posted for sale on Craigslist? Did either of you request that the space be put for lease?

Mr. Dhanda, could you testify, did you request that any broker list this on Craigslist?

RHA DHANDA: I did not.

KAREN SIMAO: Did you request to list this on any site other than on Craigslist or anywhere else?

RHA DHANDA: No.

KAREN SIMAO: I will note for the Board, as a side note on Craigslist, my mother's home in which she lived in was recently listed for rent on Craigslist while she was living there. You have to go through a whole process of filing with the federal government on it, but apparently it's very

common. I'm not suggesting that that's what happened here, I'm just suggesting it's not a reliable source for advertisements.

MICHAEL GARDNER: Just let the record reflect that when the question was asked of the applicant, they both shook their heads, "no, no."

KAREN SIMAO: Thank you,
Mr. Chairman.

GERALD REARDON: Do you have the capacity for late day fines? Is that specified out?

ELLEN WATSON: We have an administrative fee of \$50.

GERALD REARDON: But we are not precluded from -- (inaudible) that you are aware of?

ELLEN WATSON: The only thing we do have is an administrative fee, a flat fee of \$50.

MICHAEL GARDNER: So I think what I'm

at least interested in doing in this matter is deferring it to the first order of business on the 17th, which would give me at least the opportunity to review the full record, including the original application, and to have some request on our investigative staff to do a further investigation as to the state of readiness of the location, and some of the contradictory statements that we've heard here this evening.

KAREN SIMAO: Would you like me to ask the landlord and the tenant to reach out to Ms. Lint or somebody in the office with their direct cell phone numbers to coordinate inspections, you know, a visual, prior to that date?

I will be out of the country on a family obligation, and I will request that my managing partner be here on the 17th.

But to the extent that there is any additional information that we can provide,

please let me know. If there is any additional fee that the Commission wants us to pay in terms of the renewal, please let us know. If there is any additional legal notice that you need checks for, please let us know.

Again, we'd like to be open by the end of the month, following the April 17th hearing date, obviously, this would still (inaudible) -- with the ABCC. So I just want the record to reflect that we are saying at the end of April, but we are not going to -- we wouldn't imagine opening without the necessary permits. So I want the record to be really clear because I know there has been some confusion between --

MICHAEL GARDNER: That was only my suggestion.

ROBERT HAAS: Mr. Chair, would it be helpful to have an affidavit filed by the applicants and the landlord stating that this property has never been offered for lease or

the license has never been offered for sale during the course of this period of time? Or do you think it's unnecessary?

MICHAEL GARDNER: I believe that that would certainly supplement the record in a written way which might be of some value.

ROBERT HAAS: And Mr. Chair, I'd like to go back to the Fire Chief's question and respond to the ten year lease. I'm just trying to figure out what the implication would be on the ten year lease to prevent the applicants from turning around and flipping the property within less than ten years? Is there a prohibition that they couldn't do that?

KAREN SIMAO: I need Mr. Dhanda to sign a clause where he would have to pre-approve anybody that would go in -- if they wanted to assign the lease some day, and that's for the landlord but more importantly for the Board -- a whole new application would

be before you for transfer of that license.

I was only suggesting that it seems like there is some concern, understandably, about "Are we here to do some immediate something to flip this?"

And I was just offering assurances that there is a long-term lease, number one. And, number two, whether it's in the form of an affidavit or a condition on any approval of the Board, to the extent that you want to limit their ability to sell that license for a certain period of time, we would be amenable to that.

I did not want to say, you know, for a five-year period or a ten-year period they can't, because that is just not realistic.

ROBERT HAAS: Right. But I'm also thinking that they have made a significant financial investment already, and let's say the business goes horribly from day one.

I mean, I don't know how binding

that agreement is going to be if they find themselves in a situation that they are going bankrupt or --

KAREN SIMAO: The lease agreement, you mean?

ROBERT HAAS: Well, lease agreement --

KAREN SIMAO: But any condition on this license would certainly -- if it is six months that you can't file a transfer, if it's in a year that you can't file, and that's a condition on your approval, I mean, it's a condition on your approval and you are within your right to make such a condition.

ROBERT HAAS: And that would result in a cancellation of the license, is that your understanding?

KAREN SIMAO: Not necessarily. That would be up to the Board. That would result in a cancellation that -- that's up to the Board to determine at that point in time.

What it would mean would be that they wouldn't be able to enter into a purchase and sale agreement for that license for at least that period of time. Because nobody is going to sign up on a license and then let it sit for year.

ROBERT HAAS: I'm just trying to find a way that if we do entertain the notion of reinstatement, that I just don't want this to become something that's going to be appealing for people to conveniently forget.

You said you have a number of clients already who, for a variety of reasons, did not renew. And I just want to find out if this is a situation where they'll be in front of this Commission over and over again, especially in light of the fact we have never done this before.

KAREN SIMAO: And let me say, I don't know a single client who has been in this position who are happy to be in this position.

Any inference about any other licensee that -- this is not a position that any licensee wants to be in. They are not doing themselves any favors here.

More often than not, when we are dealing with non-renewals, we are dealing with open businesses. So what's the immediate penalty? They can't open for a certain number of days. From January 1st to when it's up. Which local licensing boards and the ABCC all work to prevent that. This year, certainly in the economic climate, that wasn't anybody's goal. But, you know, everybody really sweated this out a little bit, the licensees. This isn't a position you want to be in.

And then you have a licensee such as this one, who have not yet opened. You know, how do we penalize them? Is it a monetary amount? Or is it some sort of condition on the vote?

I understand you want to make this a

further deterrent than it should already be for a licensee.

GERALD REARDON: Right. And I want to be clear, we don't want to put a failure upon a failure either.

At the same time, we have a conundrum in terms of -- and we certainly don't want -- I personally would probably look into something where there's a guarantee, like a split between the two, like potentially a two-year period.

So we know it would have to be held in equity, but it couldn't be flipped right away. So that it will give some reassurance that it wouldn't be back on the market again quickly, you know.

And the other think is also you're looking at a per day fine for being late as well. So we have to have something in place so that this is not a commonplace issue.

Say it comes up that there's a

penalty -- and with all due respect, it's not going to be \$50 -- it's X amount of dollars per day for the license being out. That just sets the bar that you are taking us seriously.

Again, I'm not saying that it's going to happen. Again, I don't want to see someone fail and I don't want them to suffer a financial hardship as a result of this, although it is their fault.

KAREN SIMAO: And, again, I appreciate the Commission taking the time with us. And I appreciate Ms. Watson's comments. I've done a lot of work with your office; they are very good. I don't want there to be any implication on your office or on your staff that --

MICHAEL GARDNER: Well, there was testimony that it was sort of our fault that we didn't contact the landlord.

KAREN SIMAO: Well, the landlord was made clear, when he contacted my office, that

he wasn't the licensee.

There was some concern initially that there is some case law that there is an obligation of the Licensing Board and the ABCC before cancelling to notice a lienholder, which he was. And I'm not making that argument here before you today, that's not the direction I'd like to take this in at all. I would really like to that see it amicably resolved and taken care of. I'd like to have it not happen again. And understanding the need for penalties and things of that nature.

MICHAEL GARDNER: Thank you. I'll make the motion that we defer this matter until the meeting of April 17th, and that there be staff, both investigation and inspection, of the premises and the history of the issues that were raised here this evening with respect to, in fact, how seriously the current license holder was intent on proceeding with opening the premises.

GERALD REARDON: One more question.
How close are you to looking for inspections?

DANIEL SHIN: (Inaudible)

GERALD REARDON: How long is it
before he is looking at doing inspections? Is
he several weeks away?

DANIEL SHIN: I think he said last
week.

KAREN SIMAO: That this is his last
week?

DANIEL SHIN: Like about two weeks
out.

GERALD REARDON: I can send over
someone (inaudible) --

ELLEN WATSON: And they are there
every day working?

KAREN SIMAO: Just so that we are
clear, the fire department will do a
preliminary walk-through. Members of the
Board would like to go in and see the level of
work done, so it's important to know what time

you guys are there.

DANIEL SHIN: Usually we are there every day.

KAREN SIMAO: From what time to what time?

DANIEL SHIN: 8:00 to 6:00.

MICHAEL GARDNER: If you can supply some cell phone numbers so that our staff can be in easy contact.

GERALD REARDON: We will have the inspectors out there. It won't be the final inspection, but just to make sure everything is on track.

KAREN SIMAO: I appreciate --

MICHAEL GARDNER: There is a motion which is looking for a second.

GERALD REARDON: Second.

MICHAEL GARDNER: Motion having been made and seconded. Are there any further discussions? All those in favor of deferring this action until April 17th with staff work

to be done as outlined in the motion, please signify by saying aye.

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: None opposed.

This is not at all -- it's sort of preliminary to a favorable decision for you. This is our desire to be careful and thorough in determining what we do.

KAREN SIMAO: Thank you.

MICHAEL GARDNER: It's about 8:34.

We'll today a three- to five-minute break and reconvene afterwards.

(Brief recess)

MICHAEL GARDNER: We're back on the record at approximately 8:43 in the evening of April 3rd.

I see we are not even halfway through our agenda. My apologies to those of you who have been waiting.

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ELLEN WATSON: Review of Uno Restaurants, LLC, doing business as Uno Chicago Grill, Andrew Sklar, Manager, holder of an all alcoholic beverages license as a restaurant license at 820 Somerville Avenue for review of their inactive license status.

MICHAEL GARDNER: Good evening. Would you come up and state and spell your name, please, for the record.

GEORGE HERZ: I'm George Herz, H-E-R-Z, Senior Vice President and General Counsel of Uno Restaurants, LLC.

MICHAEL GARDNER: Tell us what has happened and what you want to happen.

GEORGE HERZ: My name is George Herz and when I was before the Board last, we were engaged in a discussion about a company called Buffalo Wild Wings.

But I had also had received correspondence from them that they -- that they were close to a deal with the landlord,

and that they assured me that upon completion they would immediately move to secure the license. It was a difficult discussion. And I verified that through the broker they were using, who I also knew. Thereafter they ceased to pursue that opportunity.

And then a company by the name of Bar Louie, it's a restaurant/bar concept. Currently there's one down on Patriot Place. It's a company based out of Texas. It started to pursue that in late November of 2011.

We provided certain plans. They proceeded to have discussions with the landlord. But they have been unsuccessful to date.

And, quite frankly, I don't want to mislead the Board and suggest that they are even close to striking a deal with the landlord.

I have just recently reached out to the landlord, who I believe to be the right

contact, to see if they have an interest in acquiring the license itself.

Because, if you recall, this particular license is tied to the premises; if it were not, then it would be a different story with respect to our being able to perhaps transfer the license to somebody else.

We have, as you know, renewed the license through the year. We paid for it through the six-month period, and expect to continue to pay the second half.

And my thought was in coming before you this evening, is that I would continue to go back to the landlord to see what interest, if any, he has, and then provide written correspondence back to this Board in terms of where I think that a deal could be had or not, or if there is any other possibility.

It's my understanding, and I say "understanding," because definitely it's not truly factual. I know, that the landlord may

be in that particular premises trying to develop more than just our particular space itself. He has a grander scheme that goes beyond our space, maybe that's the reason why other companies have not been able to secure a lease with him.

GERALD REARDON: Is this space still empty?

GEORGE HERZ: My understanding is yes.

(Inaudible discussion)

MICHAEL GARDNER: Is this a for-value license tied to the building?

GEORGE HERZ: It is. It's my understanding that there was a bank that was also looking at it simultaneous to the restaurant concept Buffalo Wild Wings. It would be a geographic setup of a restaurant that poses some challenge inasmuch as it's a two-story in the basement and the first floor as well.

MICHAEL GARDNER: This is for either of the Commissioners or Ms. Watson, the negatives to our leaving the matter as inactive now and then further discussions? It is whenever the commerce is, but --

ROBERT HAAS: How long was it in inactive status?

ELLEN WATSON: Just about two years. And that's not long compared to some of them.

GERALD REARDON: Going back in the early 2000's to see -- this one is a little bit different in that it's tied to the property and the limits (inaudible) are purchase --

MICHAEL GARDNER: I take it that represent the owner of the current license?

GEORGE HERZ: Yes. And I am actually on the board itself, an officer for the company.

ROBERT HAAS: Mr. Herz, your sense is that the landlord is not willing to enter into

the negotiations?

GEORGE HERZ: No. The landlord had negotiations with both of these respective tenants, very different negotiations from what I've been told. Beyond that, they haven't shared exactly what's been difficult about that, except that I've gotten a sense that he has a bigger scheme in terms of development of it, and he controls other property there, too.

ROBERT HAAS: And where are you in terms of your discussion with the landlord now?

GEORGE HERZ: I just recently reached back out to the landlord himself. And that's why I questioned the contact that I was given by my lease administrator, and I did not receive a response back. So, again, I was following up on that before I came this evening.

So, again, I propose to you that I'll personally go back and correspond with the

Board here with respect to my efforts to see where the landlord is. And, you know, I will, of course, call the Bar Louie contact and verify where they are, too, and include that in the correspondence.

MICHAEL GARDNER: Any members of the public who would like to be heard on this matter? Anything you would like to add Mr. Herz?

GEORGE HERZ: Nothing.

MICHAEL GARDNER: So I make a motion that we retain the license on inactive status and that the staff report back to us on any communications or on developments that we receive, and that the matter be calendared for --

ELLEN WATSON: Six months.

MICHAEL GARDNER: After six months; is that all right?

GEORGE HERZ: Yes.

GERALD REARDON: Second.

MICHAEL GARDNER: Motion having been made and seconded, I defer the matter for another six months pending new developments, and maintaining the licensing in an inactive status for that time.

That motion being made and seconded, all those in favor signify by saying aye.

ROBERT HAAS: Aye.

GERALD REARDON: Aye.

MICHAEL GARDNER: None opposed.

I wish you well in your conversations. We'd like to see the space become viable again.

GEORGE HERZ: Thank you,
Mr. Chairman.

* * * *

ELLEN WATSON: Application of Fawaz Abu Rubayah, doing business as Olive Tree Café, holder of a common victualer license at 245 Mass. Avenue has applied for a change of business name from Olive Tree Café to Bean

Town Taqueria, Hugo Mendez, Manager.

MICHAEL GARDNER: Could you state and spell your name for the record and just identify yourself.

FAWAZ ABU RUBAYAH: I am Fawaz, F-A-W-A-Z, Abu, A-B-U, Rubayah, R-U-B-A-Y-A-H.

HUGO MENDEZ: Hugo, H-U-G-O, Mendez, M-E-N-D-E-Z.

MICHAEL GARDNER: So tell us about the plan.

FAWAZ ABU RUBAYAH: I'm Fawaz Abu Rubayah and I'm moving to a new business at 148 Western Avenue, Middle Eastern cuisine, open maybe the 1st, 20 days from now.

And I change the store on 245 Mass. Avenue to Mexican food, and he will be my manager. He worked with his brother for almost ten years. He is my neighbor. (Inaudible) and I tried to make Mexican food there.

MICHAEL GARDNER: So you are moving

your own operation to a place on Western Avenue?

FAWAZ ABU RUBAYAH: Yes.

MICHAEL GARDNER: That is something we already approved?

FAWAZ ABU RUBAYAH: Yes, sir.

MICHAEL GARDNER: So you want to than, what, lease the space?

FAWAZ ABU RUBAYAH: No. I'm the owner, but he is my manager to make Mexican food for me in this location. Because my wife, she is going with me to 150 Western Avenue, she is making Middle Eastern food.

MICHAEL GARDNER: So you're going to take this space and this license and change the theme of the restaurant from Middle Eastern to Mexican?

FAWAZ ABU RUBAYAH: Yes, sir.

MICHAEL GARDNER: And could you tell us, Mr. Mendez, about your experience in operating or being involved in the restaurant

business.

HUGO MENDEZ: Of course. I'm a former employee of Jose's Mexican Restaurant. My brother is the owner, Carlos Mendez. He bought the place in 2002, I believe, January 2002, and I've been working with him since I got out of high school until now.

And I'm going to be, of course, his manager and I have the expertise on Mexican food. I'm going to change the menu, change the whole concept as a Mexican taqueria.

GERALD REARDON: Where had you been working at before?

HUGO MENDEZ: Jose's Mexican Restaurant on North Street and Washington Street.

GERALD REARDON: And how many seats will this have?

HUGO MENDEZ: I think 18.

MICHAEL GARDNER: And how many employees?

HUGO MENDEZ: Me, I'll be working there.

FAWAZ ABU RUBAYAH: And his niece will be working there and maybe another waiter.

HUGO MENDEZ: Should be like around two or three; it's small.

MICHAEL GARDNER: What are the hours of operation?

FAWAZ ABU RUBAYAH: From 8:00 to 4:00 a.m.

MICHAEL GARDNER: 8:00 a.m. to 4:00 a.m.?

FAWAZ ABU RUBAYAH: Yes.

MICHAEL GARDNER: And tell us about the kind of business you'll be doing.

FAWAZ ABU RUBAYAH: Take out, more delivery.

HUGO MENDEZ: Yes. I think the Chicago Taqueria has a license to 4:00 in the morning, too. And I think they operate doing

deliveries.

ROBERT HAAS: You've been approved for a 4:00 a.m. license already?

FAWAZ ABU RUBAYAH: Yes, I have.

ROBERT HAAS: Seven days a week?

FAWAZ ABU RUBAYAH: Seven days a week.

MICHAEL GARDNER: And how long have you operated to 4:00 a.m.?

FAWAZ ABU RUBAYAH: Almost like maybe a year now, one year.

MICHAEL GARDNER: Are there any other questions?

ELLEN WATSON: He is going to need workers' compensation insurance because he has employees. So we are going to need it, if the Commissioners approve the name change.

But before you can higher any employees, you're going to need workers' compensation insurance for whatever name you are operating in.

FAWAZ ABU RUBAYAH: Yes.

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

Seeing none. I'll make a motion that we approve the change in the business name and approve Mr. Mendez as the manager, subject to meeting all the conditions, including the workers' comp. insurance, and that we'll, I think, set the matter up for a six-month review, with a focus both on whether there have been any issues in the operation, and also the matter of the 4:00 a.m. license.

ROBERT HAAS: Second.

MICHAEL GARDNER: Motion having been made and seconded to approve the change in the business name and the designation of the manager, such conditions offered. All those in favor, signify by saying aye.

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: None opposed. Good luck with your new operation. Thank you.

FAWAZ ABU RUBAYAH: Thank you.

HUGO MENDEZ: Thank you.

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ELLEN WATSON: The next is the application of Café Dilara, LLC, Ragip Isman, Manager, holder of a common victualer license at 645 Cambridge Street has applied for a change of hours from 11:00 a.m. to 11:00 p.m. seven days per week to 11:00 a.m. to 3:00 a.m. seven days per week.

MICHAEL GARDNER: If you could please state and spell your name for the record.

RAGIP ISMAN: I am Ragip Isman, R-A-G-I-P, I-S-M-A-N.

MICHAEL GARDNER: Are you the manager now of the restaurant?

RAGIP ISMAN: Manager and owner.

MICHAEL GARDNER: How long have you been in operation?

RAGIP ISMAN: I am almost there a year.

MICHAEL GARDNER: Almost one year.

RAGIP ISMAN: Almost one year, yes, 11 months.

MICHAEL GARDNER: And why do you want to go until 3 a.m.?

RAGIP ISMAN: I believe that it will have an impact on my business, a positive impact. A lot of students demand that we have after hours deliveries, which is 2:00 a.m.; they state that they study late. And I believe that it will have a good impact on the survival in this type of business. It's a competitive business.

And I have spoken with a couple of employees, if you are to approve the hours, to hire them and they handle these hours.

GERALD REARDON: Is this the former Snack Bar location?

RAGIP ISMAN: No. Right next to it.

There is Lizzi's Bar right next to it as well; they are open to 2:00 a.m. I believe.

MICHAEL GARDNER: And is your plan to both have sit-down and take-out until 3:00 a.m.?

RAGIP ISMAN: Yes.

(Handing documents to Watson.)

ELLEN WATSON: I need the form itself.

RAGIP ISMAN: I gave it to Chris.

MICHAEL GARDNER: And how many seats in the location, sir?

RAGIP ISMAN: 19.

MICHAEL GARDNER: You don't serve any alcohol?

RAGIP ISMAN: No alcohol involved.

MICHAEL GARDNER: Any other questions?

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

(Audience member)

Please come forward and state and spell your name.

GEORGE DELANEY: My name is George Delaney, D-E-L-A-N-E-Y. In the interest of saving time, I prepared a statement.

May I have permission to read this statement? I think it will be quicker.

MICHAEL GARDNER: Please, go ahead.

GEORGE DELANEY: Thank you.

Gentlemen, as the owner of three apartment buildings on Lambert Street, numbers 20, 23 and 25, 27 and 29, I wish to voice my objection to the application by the Dilara Cafe to extend the operating hours to 3:00 a.m. seven days a week.

The primary reason for my objection is the negative impact that the extended hours will have on my residential tenants living in 27 and 29 Lambert Street.

This is a six-family brick building. Three of the apartments in the six-family

apartment building have bedrooms immediately abutting 645 Cambridge Street on the alley side behind 645 Cambridge Street.

There is a large exterior ventilation system which runs from the first floor of the restaurant up the side of the building to the roof that contains an industrial, noisy ventilation fan motor that vibrates and is quite loud.

This ventilation carries cooking fumes. And when the deep fryers are in operation, the strong cooking odor permeates the areas, especially right outside the unit. While some noise and cooking odors are unavoidable after 11:00 p.m., they become a nuisance because they will affect the ability of my tenants to enjoy a quiet sleep. They also would not be able to open their windows in the warm weather for fresh air because of the noise and the smell; it's impossible to sleep.

We've also had a chronic problem with this restaurant location with grease spills, rats and soil accumulation around the 55 gallon fire drums that sit in that alley.

It's been an ongoing issue with the inspectional services. I've had Putty Packer out there over the past three years, and the condition is still not rectified.

The system and surrounding concrete is not kept grease free and is not cleaned frequently enough. And due to the natural drainage at this location, grease runoff is a constant problem. As rain water dilutes it and removes the accumulation which then drains into my yard -- into my drain in my yard, which then goes in and permeates my driveway drain, which ultimately enters the city sewers.

The extended hours for this restaurant will mean that if more grease is generated, it will further compound the grease

problem; it's an ongoing problem.

Now, I just checked the location today before I came to this meeting, and I closely looked from my property at those grease barrels, and there is still about a one-inch thick accumulation of soil and grease that has yet to be cleaned. And it is still running -- it's evidenced to run into my property.

So what I'm trying to say is that the restaurant operator is not doing a good job in sanitation and maintaining the situation. There is also -- I have to continuously put rat poison in my traps on my side of the property because rats come from that property. I have live traps, I have bait stations, and it's a constant source of the problem for my residence especially.

So I would request that the Board consider the impact to my tenants compared to the limited customer demands in the early

morning hours, and the overall public benefit that would be served.

And as a taxpayer in this City, I have a significant financial investment on Lambert Street. Like I said, I have those three buildings. I've done significant renovations. I'm in the middle of the renovations at 23-25 Lambert Street and I'm paying a lot of taxes.

So I have a vested interest that this neighborhood have a viable environment for my residents, people who are paying me rent. And so the quality of life to my residents is paramount to my business success; both for the current residents and to attract future people that are attracted to my apartments.

So, again, I would employ that from my perspective, this is not a good thing to extend those hours beyond the current 11:00.

I have copies of this statement for the Board.

MICHAEL GARDNER: I have a question. Is Lizzi's in operation?

FAWAZ ABU RUBAYAH: Yes. Lizzi's Restaurant is across Lambert Street on the other corner, Cambridge and Lambert Street. Across from the restaurant. And it although it's not directly exposing our bedrooms in the rear of the building, we do have bedrooms in the front of the building in some of the other apartments. And there are occasionally late nights which you would expect from the bar, when the bar empties out, which is normally 1:00. And occasionally, I'll get complaints from the tenants that there's a loud group of people, but that normally dissipates within ten minutes.

And occasionally, we'll find nip bottles -- we have three doorways in the building and, as people leave the bars, they will tear up their lottery tickets and then move on, and I clean it up the next day. So

it's somewhat of a problem, but we've been tolerating it.

It was Pubs before that, but it wasn't really much of a problem. It may be a little more of a problem but not something that was impacting me to where I would complain.

But this particular request directly affects my residents on the rear side of that building, and it would really make it hard for me to rent those apartments as well.

ROBERT HAAS: Mr. Delaney, where the nip bottles are coming from?

GEORGE DELANEY: People just -- they are inebriated -- they sit -- I don't know where they'd get them but we find them.

MICHAEL GARDNER: Presumably, they are not buying them in Lizzi's?

GEORGE DELANEY: I doubt it.

AUDIENCE MEMBER: There is a liquor store across the street.

GEORGE DELANEY: And for the purpose of the Cafe Dilara, the business he's trying to operate, I support it. He does provide a service to the community. It's the specific request to extend the hours. If he could get that sanitation problem under control, I would probably have no problem. But that has been going on for years and even with the previous owners.

And there is a lot of correspondence record of this. I've written numerous letters. I've had inspectors out there. Putty Packer knows me on a personal basis. I just wish I could get some support in making that improvement in that area.

That ventilation system I don't believe is cleaned frequently enough. And I can actually see grease sometimes coming up and it's six feet from my windows.

MICHAEL GARDNER: Thank you, sir.

Any other members of the public who

would like to be heard on this matter?

GEORGE M. DELANEY: My name is I'm George M. Delaney and I'm one of the tenants in the building. And I have something that I would like to read.

MICHAEL GARDNER: Go ahead.

GEORGE M. DELANEY: "We the residents of 27-29 Lambert Street object to extended operating hours for Cafe Dilara from 1:00 p.m. to 3:00 a.m. seven days a week.

"The reason we are opposed to the request is because we are directly exposed to the noise and fumes coming from the restaurant. Our apartment building is attached to 645 Cambridge Street, and our bedroom windows are directly net to the restaurant's fryer ventilation system. When operating, the fan makes a loud, continuous vibration noise. The exhaust leaks through the ductwork and we always have a strong odor of French fries, chicken wings, burgers, and

other fried foods. Extended hours until 3:00 a.m. will severely impact our quality of life because the unavoidable ventilation noise and cooking odors will interfere with our sleep. We'll not be able to open our windows for fresh air due to the loud noise and strong cooking odor.

"Late restaurant hours will attract an undesirable clientela to the neighborhood. As it is now, we find nip bottles, Lottery tickets and trash in our three front entrance doors, and occasionally intoxicated individuals sit on our steps as they leave neighborhood bars. Later hours will attract more intoxicated customers looking for food after a night of drinking, and they will end up sitting on our steps, talking loudly, and leaving their trash and bottles, and waking up the tenants with bedrooms overlooking the sidewalk on Lambert Street.

"For these reasons, we wish to oppose

application for extended operating hours
Dilara Café, and we feel the 11:00 p.m.
closing time is reasonable."

ROBERT HAAS: I assume you're
related?

GEORGE M. DELANEY: I'm his son. But
I have an apartment on the second floor on the
left-hand side, which is directly above the
exhaust fan, so I can't open my window at
night without having that French fry smell
coming in.

MICHAEL GARDNER: Any other members
of the public who would like to be heard on
this matter?

Do you have any response, sir?

RAGIP ISMAN: I'm surprised. I have
not been contacted by Mr. Delaney regarding
any of these issues personally. When I had
purchased the place 11 months ago, I had been
-- the person who sold it to me, he mentioned
about Mr. Delaney. That he is very meticulous

about the area where the barrels are. And I have worked to clean that area tirelessly.

I work with Terminex for the rats and rodent problems. And me and my wife, we tried -- we went out extra to clean out places because we deal with food. And Terminex comes every month regularly.

And as far as barrels are concerned, we try to tilt them a little bit so that the water doesn't get piled up and goes onto his property.

There could be a solution, we could block that area where the water flows with the oil, we could block that area.

And in response, as far as the noise is concerned, this ventilation has been improved. It's a business, maybe he could deal with the landlord. But if he can change the ventilation, that is something that I --

GERALD REARDON: You don't own the building, you just rent?

RAGIP ISMAN: I just rent it, yes. And it has been 11 months since I bought this business, and it's a struggling and competitive business. And my competitors are open late. They tend to tell me there is not much of dining in, it is more deliveries. And for me to keep my stock full or to survive in this economy, it's crucial.

And I'm willing to work with Mr. Delaney to block the ventilation, maybe we could block the sound.

MICHAEL GARDNER: I think you can understand the concerns if the fan is running outside your window, too. You can understand that cities are a very densely populated area. And, again, if it's going off at 11:00 at night versus 3:00 in the morning --

RAGIP ISMAN: I'm willing to work with it. I could shut it down at certain times. It's not an ongoing fryolator, it's an oven. We sell pizza. We work the fan when we

heavily cook French fries.

GERALD REARDON: Fryolator?

RAGIP ISMAN: Yes, fryolator.

I'm willing to work with Mr. Delaney. I've never met him. This is the first time I've seen him today. And I'm willing to go beyond and work with him and to be successful in his business because he rents to his tenants.

I'm more than willing to work with you.

MICHAEL GARDNER: And we have one letter of opposition from city councillors?

ELLEN WATSON: Yes. We have two other e-mails, one from someone at 633 Cambridge Street, which is right across the street, I guess.

GERALD REARDON: Close to it.

ELLEN WATSON: Yes. On the same side. And one from Robert Solenas.

GEORGE DELANEY: He used to own

Pug's. He still owns the building that Lizzi's is in.

MICHAEL GARDNER: In opposition or in support?

ELLEN WATSON: In opposition.

MICHAEL GARDNER: But we don't really have any businesses operating as late as 3:00 a.m. in this area of the city. There are some 3:00 or 4:00 a.m. licenses in the squares. And the one down -- that we heard the conversation about earlier this evening at 245 Mass. Avenue near the MIT area.

I think personally I have some concerns about extending the desire for late night dining in Cambridge, of which we hear a fair amount of from time to time into this area where it really doesn't exist right now.

I'm not sure where your competition comes from, but I'm also troubled to hear that inspectional services had to be called out on the rodent and grease issues.

RAGIP ISMAN: It's the time we work with them, we try to show them what we done. It's not like we sat down and not did anything. I want to work at it very hard, to the community as well. I'm not just working for my own there, it's for the whole street. I am I'm willing to work at it.

ROBERT HAAS: You're saying inspectional services has never been to your establishment?

RAGIP ISMAN: No, they have been. The grease problem, rodent problem, we work with them. Terminex has been coming sometimes twice a month, three times a month.

GEORGE M. DELANEY: In that alleyway alone, we caught about 20 rats.

GEORGE DELANEY: We see dead rats in the trash. It's very difficult problem.

RAGIP ISMAN: And this was a year before I bought the place. But when I bought the place, I'm meticulous and more careful of

the rodents and rats. We don't leave food out because they like to come to the food.

MICHAEL GARDNER: Well, I think I'm prepared to make a motion to deny the application. And I guess I would suggest that we have staff make inquiries in both to review the inspectional services record and perhaps do our own inspection, including the noise.

ROBERT HAAS: Mr. Chair, if there is going to be further investigation, would it be fair to continue the matter?

MICHAEL GARDNER: I was proposing to deny the application and do a further review and then be willing to entertain the matter again at some point in the future. But I respect your --

ROBERT HAAS: If we do a further investigation, we'll continue the matter. Because we are trying to get more information and to also maybe give the applicant the opportunity to -- I mean, I applaud

Mr. Delaney and his willingness to try to work with you. But it looks like you have to go more than halfway. You have to revolve the grease problem and the rodent problem. And how you work out the exhaust problem --

RAGIP ISMAN: I inherited this business. This is the way it was and I tried to make it better.

ROBERT HAAS: It is your business now.

RAGIP ISMAN: Yes, it's my business and I try really, really hard to survive in this business.

And the students have late night deliveries in that area and I think it's a need that has to be filled.

I could work with Mr. Delaney to block any sound or the fumes. And I'm asking the Commission to reconsider before you deny it, please.

GEORGE DELANEY: I don't see any

movement on my part as far as the operating hours. I would like to see the some cooperation on the sanitation and the grease problems. But as far as -- I don't see a resolution possible.

GEORGE M. DELANEY: And his business is largely takeout, which a good amount of it is fried food. He might have the best intentions of not running those fryolators, but people want chicken wings at 2:00 in the morning and that's not going to stop.

And incidentally, for Commission, please, when I learned that this business was sold a year ago, I was not informed. I did not receive a notice. And when I found out through neighbors that the business had been sold, I sent a letter to the Commission strongly objecting to the sale. And that had I been notified, I would have come and testified that that business not be renewed or sold.

RAGIP ISMAN: I really would have wished to have known you.

GEORGE DELANEY: I tried to come in your restaurant several times.

RAGIP ISMAN: Mr. Caesar told me that --

MICHAEL GARDNER: Okay. At this late hour, I don't want to have that dialogue.

RAGIP ISMAN: Your job is very difficult.

MICHAEL GARDNER: You can have the conversation later if you'd like.

RAGIP ISMAN: But it's my survival, too, in this business. I would like to survive. I don't want to fail. I have a family to take care of; and not just my wife, I have my mother, father here.

MICHAEL GARDNER: So is it viable for you to only run the ovens after a certain time and not run the fryolator?

RAGIP ISMAN: Yes, it's viable.

MICHAEL GARDNER: I'll make a motion that we defer this matter until after we get information on inspections and further reporting in, what, three months? Or else I will withdraw my motion and let you make a motion.

ROBERT HAAS: No, Mr. Chair. I think there is one or two ways we can do this. I think we deny the application automatic outright. And then if they are willing or able to rectify the situation, and/or continue the matter and give him an opportunity to rectify the matter.

But I think you've got insurmountable issues with respect to the noise generated by your system, and I think it's going to be awfully expensive to do.

RAGIP ISMAN: I work real hard. I have work 15, 16 hours. Normally, I'm not dressed like this (indicating). This is the first time I'm going before the Committee so

for a change over a year and I wanted to put a suit on. I'm in flour. I try to make my money, and it's not easy out there, it's a tough economy.

And, you know, all the years I saved up money to put in this business. If I had known Mr. Delaney, I would not have bought this location.

But this is the last bullet in my gun. I need to succeed. I need to support my family. A lot of people depend on the business that I'm bringing in, 11:00 to 11:00 is okay, but I cannot turn the business -- and, please, I repeat it, this is a business and I would like to make money. We are not here to entertain drunk people out in the streets or to bring drunk people in my place. Nobody could come in drunk. I don't drink myself alcohol, I don't use alcohol. But it's very tough out there.

MICHAEL GARDNER: On reflexion, I'm

going to go back to my original motion that the matter be denied and that there be further review of the record, a review of the inspectional services' record and our own inspection. And that we would invite you, sir, to, if, in the future, including conversations with the neighbors, you want to come in with a revised application, perhaps for a time earlier than 3:00, and perhaps with some provisos about the kind of food you would sell or the kind of equipment you would operate after 11:00 in a way to try to mitigate the impact in the neighborhood with something that we would appreciate.

RAGIP ISMAN: In three months you would like me to come back?

MICHAEL GARDNER: I think in three months you could come back in, yes.

RAGIP ISMAN: Thank you for the opportunity to hear from me.

MICHAEL GARDNER: I make my motion --

RAGIP ISMAN: I want the Committee to know that it's not fun out there, it's very tough. I'm a 38 year old man, look at me --

GERALD REARDON: And I hope you understand that we are not unsympathetic. But we could not shift one person's problem over to some other. We are trying to strike a balance here. We don't want you to think that this is trivial to us at all.

RAGIP ISMAN: Your job is difficult as it is, I heard it earlier. I appreciate you guys for hearing me.

MICHAEL GARDNER: Motion having been made, is there a second?

ROBERT HAAS: Second.

MICHAEL GARDNER: Motion having been made to deny, with the applicant to reapply with perhaps an amended application in perhaps three months. All those in favor, signify by saying aye.

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: None opposed.

We wish you well. We want you to be a success. And maybe a modification of the menu after a certain hour, might help with some of it. There's got to be a way to solve this rat and rodent and grease problem. He should not be getting grease running into his yard.

RAGIP ISMAN: Yes. Thank you for the opportunity to hear me.

MICHAEL GARDNER: Thank you. That's it.

* * * *

ELLEN WATSON: The last application is Rothman Properties, Inc., has applied for a lodging house for 19 rooms with 19 occupants at 364-366 Harvard Street. Application is also seeking an exemption from the requirement for having a resident manager.

MICHAEL GARDNER: Please state and

spell your name for the record.

JAMES CURRAN: Mr. Chairman and members of the Board. My name is James Curran, J-A-M-E-S, C-U-R-R-A-N, Farkas and Curran, 923 Massachusetts Avenue in Cambridge.

Next to me is a Ralph Barone. He represents First Cambridge Realty who is on the property as agent, management agent, for owner. That's spelled B-A-R-O-N-E, Ralph Barone.

Members of the Commission. This application is being done -- the old owner and the new owner are basically the same people, the same property manager, same owners, all they've done is charge legal title to the property.

George Rothman is trustee of the Harvard Street Realty Trust. He has conveyed it to Rothman Properties, Incorporated; same cast of characters, same office and contact numbers, and pretty much all the same. I

guess there is no procedure for changing the name if the license is not transferable in that sense, it has to be a whole new application.

MICHAEL GARDNER: So there is a corporate restructuring essentially?

JAMES CURRAN: Essentially estate planning. They have done it for estate tax reasons, estate planning. George is getting older -- well, he has already transitioned to the next generation, and they are doing that here. But I think the main point is the same property managers, the same use. Nothing is really going to change, it just appears that procedurally this is how it has to go to -- the license has to be put in a new name.

MICHAEL GARDNER: Sorry you had to sit through our many complicated businesses.

GERALD REARDON: What is the relationship of Stu Lynn?

JAMES CURRAN: Well, first Cambridge

is the is property manager, also controlled by the Rothman family. The Rothman family owns a number of different real estate. One of the entities is Stu Lynn Realty Management Corp., which is also a property owner. They are all the same people. Stuart Rothman is the principal of Stuart Rothman (inaudible) and they are members of -- the Rothman family now are the principals of those various entities that control numerous properties but, more particularly, this property. And Stu Lynn, is just one of the entities that he does business under. I guess that's one of the best ways to describe it.

And the main reason why we are hear, in my mind, is that the title to the property has changed legally, even though you can argue the beneficial interest has not. But because there is no other way to put the license in the way of the new owner, that a new application had to be made.

And I did bring Mr. Barone in case you had any questions as to the property. All that is going to stay the same. It is actually up to code. There has been inspections every year. Part of the prior inspection, I believe, that their renewal is going to be up soon and there will be inspections that will take place (inaudible).

MICHAEL GARDNER: Could you describe the business a little bit. It's a lodging house, 19 rooms -- what's the market you are serving?

RALPH BARONE: It is short-term. Harvard does a lot of business with us. You know, usually people are staying for, you know, three to four months. And we have a broker that we send them out to, they usually find it. They have a good relationship with the University and different companies in the area.

JAMES CURRAN: It's kind of a

corporate stay. It's not cost-effective to stay in a hotel that long; they stay in one of these lodging rooms essentially. There is a little kitchenette. So it's a little more accommodating than what most people call a lodging house. They do have their own bath and their own kitchen.

But, as I mentioned, sometimes they are here for business reasons, particularly with Harvard or MIT, they stay for longer than a couple of weeks. It's just more cost-effective for them that way.

MICHAEL GARDNER: Any other questions?

ROBERT HAAS: So you already have an exemption for on premises resident manager?

JAMES CURRAN: No. We're not changing anything.

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

Seeing nobody. Pleasure of the Commissioners?

ROBERT HAAS: Second.

MICHAEL GARDNER: Motion to approve the change in structure having been made and seconded. All those in favor, signify by saying aye.

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

MICHAEL GARDNER: None opposed. Good luck with the new change. And I hope you don't have to go to too many other places and sit for three and a half hours.

* * * *

ELLEN WATSON: Ratifications.

Medallion No. 31, refinance, Jezil Cab, Inc., Debtor, Progressive Credit Union, Creditor.

Medallion No. 246, Refinance, Noma Cab, Inc., Debtor, Mercantile Bank & Trust, Creditor.

Medallion No. 90, refinance, Joyse Cab, Inc., Debtor, Progressive Credit Union, Creditor.

Medallion No. 132, Refinance, GGM Cab, Inc., Debtor, Progressive Credit Union, Creditor.

Medallion No. 182, Refinance, B&V Cab, Inc., Debtor, Mercantile Bank & Trust, Creditor.

Medallion No. 171, Refinance, Arnold Court Taxi, Debtor, Progressive Credit Union, Creditor.

Medallion No. 139, Refinance, H&L Cab, Inc., Debtor, Progressive Credit Union, Creditor.

Medallion No. 164, Refinance, Pable Taxi, Inc., Debtor, Mercantile Bank & Trust, Creditor.

That's it. Everything is in order.

MICHAEL GARDNER: Motion having been made to accept or approve the ratifications of

the Executive Director, I'll second it, all those in favor say aye.

ROBERT HAAS: Aye.

GERALD REARDON: Aye.

MICHAEL GARDNER: None opposed.

So, as the last order of business, I would like to say that it has been almost a year since we heard the first testimony on the issue of third-party employers in the hotel industry.

We did have a couple of subsequent meetings to that and we asked for information to be submitted from the Hospitality Industry, some of which we've gotten.

We have the vote from last September, and I'm wondering if it works for the Commissioners in terms of their availability that we put the matter of additional action in connection with the Board vote of September 27th, or whatever the date was, of 2011, we put that matter on the agenda for the evening

of April 17th.

Will that work for the two of you?

ROBERT HAAS: Yes.

GERALD REARDON: Yes.

MICHAEL GARDNER: The 17th, that's the Tuesday right after the Monday holiday, that's our next scheduled Board meeting.

So all three Commissioners are indicating that it is a viable plan.

And before we get to that, we should make sure that a broad notice of this has been put out. It will give me a chance to look at the notice.

(Discussion off the record.)

MICHAEL GARDNER: Okay. A motion to adjourn is always in order.

GERALD REARDON: Motion to adjourn.

ROBERT HAAS: Seconded.

MICHAEL GARDNER: Motion is made to adjourn at approximately 9:35 on April the 3rd of 2012. All those in favor, signify by

saying aye.

ROBERT HAAS: Aye.

GERALD REARDON: Aye.

MICHAEL GARDNER: We are adjourned.

(Whereupon, the Hearing was adjourned
at 9:35 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 15th day of April, 2012.

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

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