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COMMONWEALTH OF MASSACHUSETTS  
CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION  
DECISION MAKING HEARING

LICENSE COMMISSION BOARD MEMBERS:

Richard V. Scali, Chairman  
Robert C. Haas, Police Commissioner  
Gerald R. Reardon, Fire Chief

STAFF:

Elizabeth Y. Lint, Executive Officer and

--held at--

Michael J. Lombardi Municipal Building  
831 Massachusetts Avenue  
Basement Conference Room  
Cambridge, Massachusetts 02139

Thursday, July 1, 2010  
10:00 a.m.

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P R O C E E D I N G S

ELIZABETH LINT: License Commission  
decision making hearing Thursday, July 1,  
2010. We're in the Michael J. Lombardi  
Municipal Building, 831 Mass. Ave. basement  
conference room. Before you the  
Commissioner, Chairman Richard Scali, Chief  
Gerald Reardon and Commissioner Robert Haas.

RICHARD SCALI: Good morning,  
everybody. This is our decision making  
meeting from the two hearings in June.

ELIZABETH LINT: Do you have any  
minutes you need to accept?

RICHARD SCALI: We don't have the  
June 22nd minutes?

ELIZABETH LINT: No, we don't have  
them.

RICHARD SCALI: All right, motion to  
accept the minutes from the June 22nd  
meeting.

ELIZABETH LINT: We don't have them

1 yet.

2 ROBERT HAAS: We don't have them.

3 We didn't get them yet.

4 (Discussion off the record).

5 RICHARD SCALI: There's only two  
6 items from June 8th, Mrs. Lint, right? And  
7 two items on June 22nd?

8 ELIZABETH LINT: I think so.

9 RICHARD SCALI: Let's take the short  
10 items, please. Which would be?

11 ELIZABETH LINT: Bombay Club.

12 RICHARD SCALI: Bombay Club. Are  
13 they here?

14 ELIZABETH LINT: They're not here.  
15 He's out of the country.

16 RICHARD SCALI: Bombay Club? You  
17 want to come up?

18 Good morning.

19 SORABH KAPOOR: Good morning. How  
20 are you?

21 RICHARD SCALI: Good. Just tell us

1           who you are, please.

2                   SORABH KAPOOR: I'm Sorabh Kapoor,  
3           S-o-r-a-b-h, K-a-p-o-o-r.

4                   RICHARD SCALI: Are you the son of  
5           the owner?

6                   SORABH KAPOOR: Yes, yes.

7                   RICHARD SCALI: Okay, good. So is  
8           your dad out of town?

9                   SORABH KAPOOR: Yes.

10                  RICHARD SCALI: I think the question  
11           we had last time is you applied for inactive  
12           status again, but there was someone who had  
13           offered or was it you were in discussions  
14           about selling the license?

15                  SORABH KAPOOR: Yes.

16                  RICHARD SCALI: And there was an  
17           issue about whether the price was reasonable  
18           or whether you were negotiating a good faith.  
19           So are you still negotiating with those  
20           people?

21                  SORABH KAPOOR: It's kind of come to

1 a dead stop. I mean, they haven't really  
2 come back to us and offered anything  
3 reasonable.

4 RICHARD SCALI: Okay. I think we  
5 made it clear last time at the hearing when  
6 your dad was here that prices are not what  
7 they were, you know, three and four and five  
8 and six years ago. Even in Harvard Square.

9 SORABH KAPOOR: Right.

10 RICHARD SCALI: So, if you're  
11 looking for like, you know 400,000 or 500,000  
12 for a license, that's not going to happen.

13 SORABH KAPOOR: No. We're looking  
14 for something that's reasonable and that we  
15 can work with.

16 RICHARD SCALI: Okay.

17 Mrs. Lint.

18 ELIZABETH LINT: I did have a  
19 conversation with Attorney Kim the other day  
20 and he was going to get in touch with his  
21 clients and have them respond to the latest

1 request. They're being given information  
2 from some of the license brokers that perhaps  
3 the license is worth significantly less than  
4 what the going rate's been in Harvard Square,  
5 and they're going on that assumption. So, I  
6 think that's what the problem's been.

7 RICHARD SCALI: All right.

8 So do you think you can come together  
9 at some point? Because what's happening is  
10 there are new tenants coming into the  
11 building and they're all looking for  
12 licenses. So what it's brought everything to  
13 a dead halt.

14 SORABH KAPOOR: Right.

15 We would like to entertain any offer  
16 that comes in, and I mean we're looking for  
17 that as well.

18 RICHARD SCALI: All right. At a  
19 reasonable price, right?

20 SORABH KAPOOR: Yes, absolutely.

21 RICHARD SCALI: Anybody from the

1 public wanting to be heard on this matter? .

2 Want to come forward?

3 SAJAL LATKA: Good morning.

4 RICHARD SCALI: Good morning. Tell  
5 us who you are.

6 SAJAL LATKA: My name is Sajal  
7 Latka. First name is S-a-j-a-l. Last name  
8 is Latka, L-a-t-k-a. We are the new tenants  
9 where the Bombay used to be.

10 RICHARD SCALI: Bull Barbecue?

11 SAJAL LATKA: No, it's the maharaja.

12 RICHARD SCALI: Oh, the maharaja.  
13 Okay.

14 SAJAL LATKA: If I may,  
15 Mr. Chairman, this is the last offer of  
16 communication we have from Mr. Kapoor. He's  
17 still citing that your quote, unquote, words  
18 that he, you know, the Chairman of the  
19 Cambridge Licensing Commission has cited a  
20 similar license for over 400,000.

21 RICHARD SCALI: I'm sorry, say that

1           again?

2                         SAJAL LATKA: I'll show this to you.

3                         (Handing document to Chairman).

4                         RICHARD SCALI: Okay. Well, I don't

5                         remember saying that. But our records can

6                         verify that. I think that's a number of

7                         years ago, I think, if I'm not mistaken,

8                         right, Mrs. Lint?

9                         ELIZABETH LINT: Well, I think what

10                        you have said, is that licenses have been

11                        known to go to up to that amount.

12                        RICHARD SCALI: Yes, but not

13                        recently.

14                        SAJAL LATKA: In the last 18 months,

15                        September 9th, Russell House Tavern was sold

16                        for \$250,000. That was the last one we had.

17                        And our offer is within that ballpark.

18                        RICHARD SCALI: Okay.

19                        SAJAL LATKA: And so I think that's

20                        a very reasonable offer comparing in the last

21                        18 months, and the only license that was sold

1 was for \$250,000. And considering the  
2 economics and the market conditions and that,  
3 you know, a lot of normal licenses have been  
4 issued in the recent times, so... And these  
5 are the minutes, you know, from the hearing  
6 on February 10th. And your words were, you  
7 know, that's kind of usually the case.

8 They're looking for a higher price. Our  
9 policies have changed over the last couple of  
10 years, and I didn't want you to be the victim  
11 of us changing our policy back again. That's  
12 what I mentioned at our last hearing. I  
13 guess we need to make clearer to the public  
14 that if there are licenses for sale out  
15 there, that's the first option. Although we  
16 don't want people to be gauged by the high  
17 prices that they were asking years ago.

18 RICHARD SCALI: Right.

19 SAJAL LATKA: And they were asking  
20 for half a million dollars in Harvard Square  
21 two years ago for a license, which is totally

1           outrageous. I think that's why we changed our  
2           policy two years ago to show that we are now  
3           offering free license for those who may need  
4           them.

5                     And I think an offer between 200 and  
6           220 is a very reasonable offer. They should  
7           take it.

8                     RICHARD SCALI: I can't force them  
9           to take your offer.

10                    SAJAL LATKA: I understand, I'm just  
11           explaining.

12                    RICHARD SCALI: The only thing we  
13           can do is take the license or just extend it.

14                    SAJAL LATKA: I understand. I'm  
15           just presenting that, you know.

16                    RICHARD SCALI: So we're kind of in  
17           the ball park somewhere and you're --

18                    SAJAL LATKA: They're asking for  
19           \$400,000.

20                    SORABH KAPOOR: That's not true.

21                    ELIZABETH LINT: No, they're not.

1                   SAJAL LATKA: That's the  
2                   communication that we have.

3                   RICHARD SCALI: All right. So, are  
4                   you able to speak again and try to negotiate?

5                   SORABH KAPOOR: Can we schedule -- I  
6                   know my dad will be back next Tuesday from  
7                   his trip, and next week we can set-up a  
8                   meeting date to try to negotiate a deal. I'm  
9                   not opposed to that.

10                  RICHARD SCALI: Okay. All right.  
11                  So, we're in the ball park somewhere. I'm  
12                  not sure whether -- somewhere between 200 and  
13                  400. I don't know what that means.

14                  SAJAL LATKA: We've been going back  
15                  and forth since July of last year. It  
16                  started off with 165. They counter-offered.  
17                  We accepted that. And then they countered  
18                  back again. It's just been going back and  
19                  forth. And there comes a point where, you  
20                  know, you've got to set a limit, and which I  
21                  think it's a very reasonable offer compared

1 to -- I talked to a lot of brokers around.

2 RICHARD SCALI: How much time do you  
3 need more to do this?

4 SORABH KAPOOR: I don't know, three  
5 months.

6 ROBERT HAAS: I think that's  
7 reasonable.

8 RICHARD SCALI: All right. Any  
9 other discussion?

10 GERALD REARDON: I think three  
11 months is generous at this point.

12 RICHARD SCALI: Generous.

13 ELIZABETH LINT: Our rules gives  
14 them, too.

15 RICHARD SCALI: We're trying to move  
16 this along so people are not held up in not  
17 being able to operate when they should be  
18 able to operate.

19 SORABH KAPOOR: We're not looking to  
20 hold anybody from starting their business.  
21 We're trying to get what we can for the

1 license because we basically left with zero  
2 out of that place.

3 RICHARD SCALI: I understand.

4 Anybody else in the public want to be  
5 heard on this matter?

6 (No response).

7 RICHARD SCALI: Motion then for a  
8 three-month extension.

9 ROBERT HAAS: Motion.

10 RICHARD SCALI: Moved.

11 GERALD REARDON: Second.

12 RICHARD SCALI: All in favor?

13 (Aye.)

14 RICHARD SCALI: If we don't see a  
15 transfer within three months, we'll see you  
16 back here in three months.

17 SORABH KAPOOR: Thank you, Mr.  
18 Chairman.

19 SAJAL LATKA: Thank you.

20 ELIZABETH LINT: We also have  
21 Superior Market and AMC.

1 RICHARD SCALI: I'm sorry?

2 ELIZABETH LINT: AMC.

3 RICHARD SCALI: No. Clara Gomes?

4 Clara Gomes? Secondhand goods. Not here.

5 What was the issue, Mrs. Lint?

6 ELIZABETH LINT: Background check.

7 RICHARD SCALI: Background check?

8 ELIZABETH LINT: It's fine.

9 ROBERT HAAS: So I make a motion to  
10 approve.

11 RICHARD SCALI: Motion to approve.  
12 Seconded.

13 GERALD REARDON: Seconded.

14 RICHARD SCALI: All in favor?  
15 (Aye).

16 RICHARD SCALI: Is that all we have  
17 from June 8th? Did you say something about  
18 AMC?

19 ELIZABETH LINT: Yes.

20 RICHARD SCALI: I didn't know what  
21 you were saying.

1 ELIZABETH LINT: It's not on that  
2 one.

3 ROBERT HAAS: That was the prior  
4 hearing, and I don't think they were ready  
5 the last time we met.

6 ELIZABETH LINT: He is here.

7 RICHARD SCALI: Did we continue you  
8 to this date?

9 CARLO LOCHARD: Yes.

10 RICHARD SCALI: Come on up. I'm  
11 sorry to be so confusing here.

12 CARLO LOCHARD: My name is Carlo  
13 Lochard. Last name is L-o-c-h-a-r-d.

14 RICHARD SCALI: And you're the  
15 manager, right?

16 CARLO LOCHARD: Yes.

17 RICHARD SCALI: All right,  
18 Mr. Lochard.

19 CARLO LOCHARD: Yes.

20 RICHARD SCALI: So you continued  
21 this matter because you were going to come up

1 with your final plan and talk.

2 CARLO LOCHARD: Correct.

3 RICHARD SCALI: Yes.

4 CARLO LOCHARD: We worked with  
5 Captain Brogan on that. Gave him a copy.  
6 Then we also had the system inspected and  
7 pretty much everything went smoothly with  
8 that. He was supposed to forward some  
9 paperwork on that over as well.

10 RICHARD SCALI: Fire department  
11 satisfied with the plans?

12 GERALD REARDON: I don't have a copy  
13 of that.

14 ELIZABETH LINT: I don't either.

15 GERALD REARDON: I'm sure we can get  
16 it.

17 CARLO LOCHARD: He has a copy of  
18 everything.

19 RICHARD SCALI: Any other issues?

20 ROBERT HAAS: So as I recollect, one  
21 of the things we were checking on was to see

1 if in fact when the fire alarms were  
2 actuated, that the projector shut down and  
3 some lighting comes up.

4 CARLO LOCHARD: Correct.

5 ROBERT HAAS: And that worked?

6 CARLO LOCHARD: Yeah, the lights go  
7 up to full and then the projectors and  
8 everything shut off. And then we have our  
9 horns and sirens going off.

10 ROBERT HAAS: And the staffing  
11 issue's has been resolved as well?

12 CARLO LOCHARD: Correct, yep.

13 RICHARD SCALI: So you have two  
14 people on at all times?

15 CARLO LOCHARD: Correct.

16 RICHARD SCALI: Even to the end when  
17 there's --

18 CARLO LOCHARD: To the very end.

19 GERALD REARDON: I'm going to put  
20 approved assuming the paperwork from Captain  
21 Brogan is in order, which I'm sure it is.

1                   RICHARD SCALI: Well, this was  
2 actually an investigation on the incident  
3 that happened with the fire alarm being  
4 pulled and so we wanted to make sure we have  
5 all the details down on the plan. So your  
6 motion's placed on file?

7                   GERALD REARDON: Placed on file.

8                   RICHARD SCALI: Motion placed on  
9 file. Moved.

10                  ROBERT HAAS: Pending Captain  
11 Brogan's report.

12                  GERALD REARDON: Assuming that the  
13 report says that everything's been  
14 adjudicated which I'm sure it has been  
15 because assuming that's okay and correct.

16                  RICHARD SCALI: Okay. Motion.

17                  ROBERT HAAS: Second.

18                  RICHARD SCALI: Placed on file  
19 pending Captain Brogan's final report.

20                  Moved and seconded. All in favor?

21                  (Aye.)

1                   RICHARD SCALI: Thank you so much.  
2                   I'm sorry for the confusion.

3                   CARLO LOCHARD: Thank you so much.

4                   RICHARD SCALI: That's all for June  
5                   8th.

6                   June 22nd. Lesley.

7                   ELIZABETH LINT: We have two.  
8                   Lesley and Richie's Italian Ice.

9                   RICHARD SCALI: Lesley. Is Lesley  
10                  here? Mr. Carr, come on up.

11                  LAWRENCE CARR: Yes. Good morning.

12                  RICHARD SCALI: Good morning, how  
13                  are you? So I think we approved everything  
14                  except for one which was Mel Len Street  
15                  because we were unsure on Mel Len Street and  
16                  who owned it and all that. Are we clarified?

17                  ELIZABETH LINT: We have the city  
18                  owns it down to the chains and Lesley owns  
19                  the rest.

20                  ROBERT HAAS: What do you mean down  
21                  to the chains? The entire street then, is

1 that what you're saying?

2 GERALD REARDON: No, it's just a  
3 very short -- it's probably 250 feet at the  
4 end. Mellen Street is all City of Cambridge  
5 Street all the way down. It's probably 90  
6 percent of the street is Cambridge, and then  
7 there's a small area between the buildings  
8 that's chained.

9 LAWRENCE CARR: Right. And the  
10 issue was brought out at the June 22nd  
11 hearing, our neighbors who were there that  
12 night are here again today. We've had  
13 discussion. We reviewed it jointly. And,  
14 again, there's a common understanding that we  
15 did not want drive-through traffic, that we  
16 want to maintain those chains. The only time  
17 we would use it is if Lesley operations  
18 advises Public Safety that we have a  
19 situation where we need some either egress or  
20 allow some cars on that lane, would be on a  
21 scheduled event. And I've spoken with them

1 about doing a better job of enforcement to  
2 make sure that cars are not in.

3 Now, one of the questions, that we have  
4 a do not enter sign off of Lot B so that  
5 people shouldn't progress out of Lot B  
6 towards Oxford Street. They should, you  
7 know, go out towards Mass. Ave. The other  
8 end off of Oxford Street is not signed and  
9 because it is a chain, it is possible that  
10 somebody can remove it, drive through, remove  
11 another chain. I don't know from a city's  
12 point of view if a do not enter sign would be  
13 appropriate to put at that other end just to  
14 clearly indicate to people this is not a  
15 drive --

16 GERALD REARDON: Either that or we  
17 can do a fire lane only. Or do not enter  
18 fire lane. Something to that effect.

19 LAWRENCE CARR: Would that be a  
20 problem if we said fire lane in terms of  
21 Lesley using it on a scheduled basis?

1                   GERALD REARDON: Because a fire lane  
2 for us now the code is 18 feet. So we need  
3 18 feet of unobstructed depending on when you  
4 got that fire lane which could have been  
5 under the old regulations it was 12 feet.  
6 The reason there was 18 because I was  
7 instrumental to moving it to 18 because of  
8 the aerial ladders and stuff, the outriggers  
9 and stuff need that kind of spread.

10                   We're looking for the corners to be  
11 clear, you know, so we can make the swing.  
12 In Cambridge, even though it might be a  
13 surprise to everyone, it's 20 feet from every  
14 corner you can't park which doesn't happen.  
15 We need the availability of turning the  
16 corner and that we have an 18-foot area if  
17 it's available. So that's, that's our issue.  
18 I would -- I did go down there. I would  
19 suggest that we do something about the  
20 chains. I think that's just a hazard waiting  
21 to happen. They're not visible at all at

1 night. So, I don't know what you want to  
2 come up with in terms of, you know,  
3 reflective things on it or a simple gate type  
4 thing. But it should be something a little  
5 bit better because I think it just poses a  
6 hazard because the chain is pretty  
7 indistinguishable in the dark.

8 LAWRENCE CARR: Understood.

9 ROBERT HAAS: My sense would be you  
10 probably want some kind of a gate and it's  
11 well reflectorized. But, again, I'm not sure  
12 who bears the expense of that, the city or  
13 the university.

14 LAWRENCE CARR: Yeah, I mean that  
15 would be my concern right now. We don't have  
16 it in our budget plan and I don't know the  
17 cost of those. But, yeah, I can understand  
18 why a gate would be preferable I think.

19 ROBERT HAAS: It's much more  
20 manageable. You can maintain control over  
21 it, and clearly, it's much more of a

1 structure so you can see it and you're not  
2 going to have somebody inadvertently driving  
3 into it. But in the meantime there should be  
4 some sort of or something that makes it more  
5 visible.

6 LAWRENCE CARR: We can address that  
7 to maybe the longer term solution.

8 ROBERT HAAS: So would the Board  
9 send it back to Traffic and Parking to  
10 reevaluate?

11 RICHARD SCALI: I'm sorry,  
12 Mrs. Lint, didn't you tell me someone cut the  
13 chains and took them down or something?

14 ELIZABETH LINT: That's what I had  
15 been told but that's not true. Steve LaRossa  
16 went up to check it out the other day, and he  
17 said it is dead ended and that part is their  
18 property and they wouldn't be doing anything.

19 RICHARD SCALI: All right. So you  
20 want some follow up in terms of making sure  
21 that the chains are gone and there's a gate

1 in the future?

2 ROBERT HAAS: I'm still trying to  
3 understand who maintains control on where  
4 those gates are. On they on a public street  
5 or are they on private property?

6 ELIZABETH LINT: No, they're private  
7 property.

8 ROBERT HAAS: So it's your  
9 responsibility.

10 LAWRENCE CARR: Right.

11 ROBERT HAAS: So it's a liability  
12 for you if somebody were to do something?

13 LAWRENCE CARR: I can point that out  
14 to my seniors that the issue of liability.

15 ROBERT HAAS: Right, right:

16 LAWRENCE CARR: Still doesn't fix  
17 the cash flow.

18 ROBERT HAAS: Who is going to pick  
19 up the ball and run with it at this point  
20 rather than have it remain in the condition  
21 it's in right now?



1 normally you would go in through Lot B for  
2 most construction. We wouldn't go down the,  
3 down into that, down that lane. So it's very  
4 limited use of it.

5 ROBERT HAAS: If I recollect from  
6 some of the pictures, there's no regulatory  
7 signs that I saw along the street. So  
8 there's no way for the city, if it's a city  
9 public street, for the city to enforce it.  
10 And then it's up to you kind of maintain how  
11 you want to manage it, you know, without  
12 those signs.

13 LAWRENCE CARR: Okay.

14 GERALD REARDON: It is private but  
15 it is under the control of us as a fire lane.  
16 So there are regulations that apply to it.

17 LAWRENCE CARR: Okay.

18 GERALD REARDON: Even though it's  
19 private.

20 LAWRENCE CARR: Okay. And I'll make  
21 that point.

1                   GERALD REARDON: It was original  
2                   condi ti ons as to the reason i t' s there.

3                   RI CHARD SCALI : So does that mean,  
4                   they shoul d put si gns that woul d say fi re --

5                   GERALD REARDON: We' re l ooki ng for  
6                   the wi dth. You know, i f we want to work  
7                   together and see i f there' s goi ng to be a  
8                   probl em, but we need the wi dth access at al l  
9                   ti mes regardl ess of what the functi ons are.  
10                  I di dn' t go out and measure i t, but I bel i eve  
11                  i t' s wi de enough to accommodate that. The  
12                  i ssue woul d be i s i f you' re goi ng to do i t,  
13                  through the nei ghborhood, i s that, you know,  
14                  they exi t and enter out of Mel len and not  
15                  open that gate at Oxford unl ess i t' s an  
16                  emergency si tuati on and that shoul d ki nd of  
17                  deal wi th most of the i ssues.

18                  LAWRENCE CARR: Ri ght. And I mean,  
19                  Iagai n, obvi ousl y i n a fi re emergency i f you  
20                  want to enter that way, publ ic safety woul d  
21                  be movi ng that chai n i n advance of your

1 coming on campus.

2 GERALD REARDON: Correct.

3 LAWRENCE CARR: Yeah. And same way  
4 with another type for medical emergency type  
5 vehicle if that was the way they're going to  
6 enter. But outside of that, you know, we  
7 don't believe, we do not want to see people  
8 coming in Oxford Street for any reason.

9 RICHARD SCALI: The chain is not  
10 being maintained in terms of people, you  
11 know, they're taking it down.

12 LAWRENCE CARR: Well, it is now. It  
13 was up most -- but there were I think some  
14 laxity in terms of it's out of the sight line  
15 even though it's close to public safety.  
16 Right now they know they have to monitor that  
17 chain, because somebody can remove it because  
18 we need that also for allowance of emergency  
19 vehicles. So it just has to be more -- do a  
20 better job of monitoring.

21 RICHARD SCALI: All right. Anybody

1 else want to be heard on this matter?

2 Ma'am, you want to come up? Just tell  
3 us your name again.

4 CAROL WEINHAUS: Carol Weinhaus,  
5 W-e-i-n-h-a-u-s. And I just want to thank  
6 you all and thank Lesley for being so  
7 wonderful to work with. Our neighborhood has  
8 been working with them for years and this has  
9 just been a pleasure. So thank you all.

10 RICHARD SCALI: Okay. Now, if you  
11 can just resolve it.

12 Sir.

13 FRED MEYER: Fred Meyer, M-e-y-e-r.  
14 And I'd like to echo what Carol said to thank  
15 you. It really is a pleasure to work with  
16 Lesley. At Lesley's suggestion I went to the  
17 City Clerk and got the paperwork which I  
18 think will help you. This is from the deed  
19 of the city to Lesley of this private land,  
20 and you can see the cul-de-sac there which  
21 was obviously managed as a turnaround. And

1           there' s a l e t t e r   b e h i n d   f r o m   t h e   T r a f f i c  
2           D e p a r t m e n t   w e l c o m i n g   t h e   c h a n g e   b e c a u s e   t h e y  
3           d o n ' t   h a v e   t o   t h e n   p u t   a   t r a f f i c   s i g n a l   o n  
4           M a s s .   A v e .   a n d   M e l l e n   S t r e e t .   S o   o b v i o u s l y  
5           t h e r e ' s   a   c l e a r   i n t e n t i o n   t h a t   t h i s   b e   a   d e a d  
6           e n d   s t r e e t   a n d   t h e   p r i v a t e   l a n d   b e   --   n o t   b e  
7           u s e d   f o r   a   c u t   t h r o u g h .   W h i c h   w e ' r e   a l l  
8           a g r e e d   o n .   J u s t   f o r   o c c a s i o n a l   o r   e m e r g e n c y  
9           u s e .   O b v i o u s l y   i t   w o u l d   b e   a p p r o p r i a t e   f o r  
10          y o u   t o   w o r d   s o m e t h i n g   f o r   y o u r   M e l l e n   S t r e e t  
11          p a r k i n g   l o t   p e r m i t   t o   m e m o r i a l i z e   t h e  
12          a g r e e m e n t   t h a t   w e   a l l   h a v e   t h a t   w o u l d   s u r v i v e  
13          o u r   t i m e   h e r e .   S o   s o m e o n e   w o u l d   h a v e  
14          s o m e t h i n g   t o   l o o k   t o   f o r   t h e   f u t u r e .

15                   R I C H A R D   S C A L I :   T h a n k   y o u .

16                   F R E D   M E Y E R :   T h a n k   y o u   v e r y   m u c h .

17                   L A W R E N C E   C A R R :   T h a n k   y o u ,   F r e d .

18                   R I C H A R D   S C A L I :   D o e s   t h e   C o m m i s s i o n  
19                   n e e d   a   f o l l o w   u p   o n   t h i s   o r   d o   w e   t h i n k   w e  
20                   c a n   r e s o l v e   i t   w i t h   T r a f f i c   a n d   P a r k i n g ?  
21                   D o e s   i t   n e e d   t o   b e   c o n t i n u e d ?   I   t h i n k   m a y b e

1 Lesley can resolve this matter with the  
2 neighborhood. Am I correct?

3 LAWRENCE CARR: I feel --

4 RICHARD SCALI: It sounds like you  
5 don't need us.

6 LAWRENCE CARR: -- absolutely sure  
7 of that. And also I see no related to Lot B,  
8 we are not allowing people to exit which was  
9 a major concern that we were --

10 RICHARD SCALI: Yes. That's kind of  
11 is clear that Lot's got nothing to do with  
12 that entrance. But it's good to clear it up  
13 with the neighborhood.

14 LAWRENCE CARR: Yes. It became an  
15 opportunity I guess.

16 RICHARD SCALI: Okay. Motion then  
17 to approve the lot that you applied for at 30  
18 Mel Len.

19 ROBERT HAAS: Motion.

20 GERALD REARDON: Second.

21 RICHARD SCALI: Moved. Seconded.

1 All in favor?

2 (Aye).

3 RICHARD SCALI: And just to  
4 encourage Lesley and the neighbors to work  
5 this out with Traffic and Parking and the  
6 Fire Department, and if need be, I guess we  
7 can put it back on the agenda, but it doesn't  
8 sound like that. It sounds like you can work  
9 it out. Okay?

10 LAWRENCE CARR: Thank you.

11 RICHARD SCALI: Thank you very much.  
12 Good luck.

13 The other is Richie's Italian Ice. Is  
14 he here? No.

15 Issue was whether it was private  
16 property or public property.

17 ELIZABETH LINT: Private property.

18 RICHARD SCALI: Private property on  
19 the mall. So it's similar to like the  
20 Johnny's Popcorn type of thing.

21 ELIZABETH LINT: Right.

1                   RICHARD SCALI: Which the Marriott  
2 Hotel requires a peddler's license on public  
3 property.

4                   Anybody from the public want to be  
5 heard on this matter?

6                   (No response).

7                   RICHARD SCALI: Questions?

8                   ROBERT HAAS: So I mean he had some,  
9 he had a variety of plans. I'm not sure what  
10 he's applying for, outside, inside?

11                  ELIZABETH LINT: Outside.

12                  ROBERT HAAS: He's going to be  
13 outside.

14                  RICHARD SCALI: Right under the  
15 overhang of the mall.

16                  ROBERT HAAS: What about the issue  
17 with respect to the peddler's license with  
18 his employees on the mall.

19                  GERALD REARDON: If he's inside he  
20 doesn't need it.

21                  RICHARD SCALI: He's not on public

1 property. He's on private property. So it  
2 should be -- it's fine. Same.

3 All right. So it's private property  
4 only at the mall.

5 Motion to approve.

6 ROBERT HAAS: Motion.

7 RICHARD SCALI: Moved.

8 GERALD REARDON: Seconded.

9 RICHARD SCALI: Seconded. All in  
10 favor?

11 (Aye).

12 RICHARD SCALI: And that's just that  
13 one location, Mrs. Lint?

14 ELIZABETH LINT: Yes.

15 RICHARD SCALI: If he wants to  
16 change that, he's got to come back.

17 Is anybody here for other than  
18 Idenix? No other hands. All right.

19 We're going to go to the Idenix Special  
20 Variance request which has been continued a  
21 number of times. And our final hearing was

1 on June 22nd. I just want to make clear that  
2 anybody that submitted information after June  
3 22nd, we did receive it and read it, although  
4 it's not part of the record because it was  
5 passed the date of testimony being accepted  
6 at that point, but we did receive them  
7 through Mrs. Lint and we did read them, but  
8 they're not part of the record per se.

9 So pleasure of the Commissioners,  
10 discussion on the matter?

11 GERALD REARDON: Before we go  
12 forward, I would like to know from Idenix  
13 what the variance number they're looking for.  
14 Is it still 60?

15 ATTORNEY RICHARD JOHNSON: As we  
16 indicated --

17 RICHARD SCALI: Tell us your name,  
18 I'm sorry, for the record.

19 ATTORNEY RICHARD JOHNSON: I'm  
20 Richard Johnson, attorney for Idenix. And  
21 Mr. Gilman may have something to say about it

1 as well. But I think this question up  
2 indirectly at the last hearing, and what I  
3 said then I think still goes now, there have  
4 been improvements that would suggest that 60  
5 is not an absolute number. On the other  
6 hand, we have serious concerns about No. 1,  
7 how the measurements are going to be taken.  
8 I.E. where they're going to be taken, whether  
9 they're going to be at five feet or 16 feet,  
10 that would have an impact of where the  
11 readings are going to end up being.

12 And second, how Idenix will be impacted  
13 if there are adverse changes in the  
14 background levels which would affect what the  
15 accumulative background Idenix readings are.

16 So, I mean, we are looking, and I'm not  
17 sure that we have great solutions either, for  
18 some way that the Commission's interest can  
19 be satisfied but that Idenix isn't unfairly  
20 penalized by having things sort of outside  
21 its control and end up whacking it in the

1 future.

2 GERALD REARDON: With all due  
3 respect, I don't think you answered my  
4 questi on.

5 RI CHARD SCALI: So you're sayi ng 60?

6 ATTORNEY RI CHARD JOHNSON: I  
7 understand -- I understand that you woul d be  
8 perhaps di ssati sfied wi th the questi on. If I  
9 had answers to those other two questi ons, I  
10 might be in a better posi ti on to answer  
11 yours.

12 GERALD REARDON: It's like  
13 approachi ng the ai rcraft carrier, you got to  
14 call the ball. You have to give us somethi ng  
15 what you're looki ng for, at least in my  
16 opi ni on for me to vote on. I have to know  
17 what I'm voti ng on. It can't be an open  
18 ended number.

19 ATTORNEY RI CHARD JOHNSON: Well,  
20 that's I thi nk why we di dn't move off of 60  
21 at the last heari ng, because there were sti ll

1 these unresolved issues. And if we had some  
2 more, you know, finality as to what would  
3 happen with those two issues, it might be  
4 easier then for the company to look at a  
5 number.

6 RICHARD SCALI: Let me lay out an  
7 option, a scenario for you and you tell me  
8 whether you can do this. This is strictly my  
9 thinking, and I'm sure the Commissioner and  
10 the Chief have their other thoughts. But my  
11 thought is that, here's a scenario for you,  
12 you tell me if you can maintain and fit into  
13 this, then that might help the Chief in some  
14 way.

15 From my point of view, there is a  
16 section in the noise ordinance which allows  
17 residential in industrial which allows up to  
18 55 decibels. So there's a guide for me that,  
19 you know, maintaining 55 decibels would be  
20 probably what the most in this scenario that  
21 should be able to be considered. If that was

1 the case, if it was 55, if it was clear that  
2 the readings were taken from the lot line  
3 vertically up -- and I'm suggesting further  
4 than 16 feet, I'm suggesting at the roof line  
5 that they be taken, and the equipment that we  
6 need to get, we can get through Ms. Bower and  
7 our equipment that's needed, that's not a  
8 problem. That it be for Idenix only. That  
9 if you should leave, that it wouldn't be for  
10 anybody else but for Idenix. And that it be  
11 on a one year basis. That it be simply for  
12 that one year and reviewed again in the high  
13 C's, and again and with everything on again  
14 in a year. That would be, for me, the most  
15 -- I would consider in that scenario. And  
16 I'm just wondering whether you can maintain  
17 that or fit into that scenario at all?

18 ATTORNEY RICHARD JOHNSON: I think  
19 we'd probably have to talk outside and then  
20 return, because there are a number of issues  
21 that you raise. One is if the readings are

1 going to be taken not at 16 feet but even  
2 higher, I think it's going to complicate  
3 things for Idenix. Because we've obviously  
4 been pushing -- and we think the legal answer  
5 is that the readings are supposed to be taken  
6 a lot lower. The readings are somewhat  
7 higher, you know, when you take them at 16  
8 and higher when you take them at 18 or 20.

9 RICHARD SCALI: I guess for me,  
10 legally reading the -- we have to go by the  
11 Ordinance. It may not be the most perfect  
12 Ordinance in the world. You know, there's a  
13 lot simpler ordinances that I've seen and a  
14 lot more complicated ones, but we have to go  
15 by what we're given. It says vertically up  
16 in the air where the disturbance is. To me  
17 you've taken five foot and 16 feet and you've  
18 -- Mr. Linguist is being disturbed at his  
19 level. So I mean, I don't think it's fair to  
20 take the readings at his window because  
21 that's not the lot line. And if we're

1 reading it, interpreting it legally, where  
2 the disturbance is, vertically up we can take  
3 5, 16 and 24 whatever it is. I don't know  
4 what those might be, but I think that's  
5 probably the legal interpretation for me  
6 would be the most fair. And I, I don't know  
7 how the Commissioners -- I can't see going  
8 higher than 55 because it just, there's just  
9 no precedent for that, No. 1. And No. 2,  
10 residential and industrial, which is probably  
11 even more intense, allows 55 if it was an  
12 industrial. Although you're not industrial,  
13 you're an office, office space. So do you  
14 want to take sometime?

15 ROBERT HAAS: So, just before you  
16 take sometime. I want to first of all  
17 implore Mr. Johnson in terms of your caution,  
18 because I'm not convinced and I think the  
19 issues you raise are valid, and I think this  
20 has got to get resolved one way or another,  
21 and I don't want to even go ahead and even

1 consider an alternative decibel level because  
2 I don't want to be back here two months from  
3 now, a month from now, six months from now.  
4 And I think it appeases the neighborhood,  
5 appease the company so you can move on. I  
6 appreciate the fact that you are cautious. I  
7 appreciate the fact that -- because I think  
8 there are some issues here, and I think there  
9 are some major questions that have to be  
10 answered. And I don't think the burden is on  
11 the Commission to address those issues. I  
12 think the company has to come back and say to  
13 us how are you going to account for the  
14 ambient noise? How can you assure us that  
15 you can stay within whatever -- if in fact  
16 we're going to consider a Lesser Variance in  
17 terms of decibel levels. How are you going  
18 to maintain that? And not find ourselves in  
19 a situation where everyone's on edge now  
20 waiting to see if you're going to go over or  
21 not. So, I would encourage you that unless

1 you're absolutely sure that you have enough  
2 safeguards in place and you can manage this  
3 thing effectively, it doesn't serve a useful  
4 purpose to come in and get a Special Variance  
5 and then three weeks from now or a month from  
6 now sitting here again and having another  
7 disciplinary hearing. So, you know, I'm  
8 looking at the comparisons of the two  
9 reports. There is not a lot of deviation. I  
10 think you've done a lot. I think you tried  
11 to do a lot to try to get it down. But I'm  
12 not convinced, and the fire chief I think  
13 raises this issue either, you know, all you  
14 have to do is have one piece of equipment  
15 start to creep up over the noise again and  
16 we're right back where we are. Or you can't  
17 disaggregate the noise from what the company  
18 is generating. I think before I'm prepared  
19 to even consider anything I just need to have  
20 some assurances that this thing is being well  
21 managed and well handled, and I'm not there

1 quite honestly. I'm not there to agree with  
2 that at this point.

3 RICHARD SCALI: Well, I think -- and  
4 actually, I didn't mean to interrupt you. I  
5 think part of that would be that in order in  
6 your mind to maintain whatever number we give  
7 you it may take -- you've done a lot of  
8 changes. You've put a lot of money into  
9 changing and consolidating and I do applaud  
10 you on that, you really have. I mean, that's  
11 why it's taken us so long because you've been  
12 so cooperative in trying to upgrade and put  
13 newer equipment up there and put up the  
14 curtains and all that. That has done, I  
15 think has done a world of good. Not  
16 completely the way we want it, but much more  
17 than it was one or two years ago in the  
18 lesser decibel level. But I guess part of  
19 that would be that you would assure us that  
20 you're not going to be adding to the noise,  
21 No. 1, by, you know, putting things that

1 would be noisier up there or cause more  
2 decibel levels to go higher. But also you  
3 can admit to do what you're doing already  
4 which is consolidating and changing and  
5 upgrading and making sure that you have up  
6 there now -- maybe it's one piece a year. I  
7 don't know, maybe it's spread out over a  
8 number of months or years that you could make  
9 sure that older equipment is then changed on  
10 a continual basis so that it doesn't creep up  
11 passed the number.

12 ATTORNEY RICHARD JOHNSON: Well, no  
13 one wants to have this matter behind it more  
14 than the company, and wants to do so in a  
15 responsible fashion. I appreciate the  
16 Chief's question. It's a very fair question.  
17 I also appreciate Commissioner Haas'  
18 understanding that it's not as easy as it may  
19 look. Why don't we have a caucus and see how  
20 we can respond to your respective concerns  
21 and come back and address them.

1                   GERALD REARDON: I want to make sure  
2                   that you understand, you know, I understand  
3                   you've done a lot of work and effort in  
4                   trying to deal with this. The problem is  
5                   going to be is to look at this. I mean, you  
6                   were under 60 when that started and that  
7                   noise was, was, you know, not tolerable for  
8                   neighbors because I was down there and it's  
9                   just way too loud. So to go back and say you  
10                  could get to 60, it could slip back to the  
11                  two years ago, and that's unacceptable. So,  
12                  I mean, I'm trying to look at this, you know,  
13                  in my job -- in the rest of the city I have  
14                  to adjudicate matters like I judge all the  
15                  time. I try to be fair to both sides. I  
16                  understand you spent a lot of time and money  
17                  at it, too. But there's got to be something,  
18                  as Commissioner Scali has said, there's got  
19                  to be something here that we get this thing  
20                  down lower and we somehow maintain that lower  
21                  number. And that may not be panacea for

1           either side of the street at the end of the  
2           day, but certainly to, you know, to come in  
3           at 60, which you were under 60 when we  
4           started this whole thing, is not movement  
5           forward in terms of -- and I know you're less  
6           than that now, but we've got to come up with  
7           something in my view. That would be status  
8           quo if it stayed at 60 potentially. I'm not  
9           saying you do that and I'm not impugning  
10          anyone that they let it to do that. But it's  
11          really like saying we need to lower the speed  
12          limit, but we're going leave it at 70 even  
13          though we want you to be, you know.

14                   ATTORNEY RICHARD JOHNSON: I think  
15          what complicated things along the way was the  
16          finding, and it occurred part way through the  
17          process that the background levels were  
18          significantly impacted what was happening  
19          with the readings at Idenix more than what  
20          anybody had previously anticipated.

21                   GERALD REARDON: And there is no

1           doubt in my mind that the ambient noise level  
2           down there, combining depending on the time  
3           of the year, in terms of window air  
4           conditioners, there's general traffic, I mean  
5           there is. I don't think Idenix itself is the  
6           only source of the situation. And I'm not  
7           trying to insinuate that if you were to shut  
8           that down, that all the noise would go away.  
9           But at the same time you are a participant in  
10          that noise, and you are the closest ones to  
11          the neighbors. So, in terms of, you know,  
12          how we control it, I think you understand the  
13          position.

14                    ATTORNEY RICHARD JOHNSON: No, I  
15                    understand the position. And we will have a  
16                    discussion and return in 15 minutes?

17                    JOHN WEIDENBRUCH: We can be back in  
18                    five minutes.

19                    RICHARD SCALI: All right. Before  
20                    you go people want to make comments. If you  
21                    want to come up and make a comment. Again,

1 we're not rehashing. We're just commenting  
2 on the suggestions that have been proposed.

3 PETER LINGUIST: Peter Linguist, 11  
4 Market Street. Just two points. Regarding  
5 the letter that Mr. Tocci wrote to you. You  
6 asked Mr. Tocci a question that should have  
7 been a yes or no answer, and you got a  
8 four-page yes and no answer. And I received  
9 -- I found this in my e-mail yesterday and  
10 did not have time to respond to you. I don't  
11 want to go through it all because I can speak  
12 to virtually every point in it, but I hope  
13 you do not consider the rationale presented  
14 here in any sort of decision-making process.  
15 It was very clear in 2008 that these figures  
16 which they presented, the intent of that was  
17 to show what ambient noise was and what  
18 background noise was. And it did. We agreed  
19 with those figures in 2008. We did not agree  
20 with the model figures lower down in this  
21 report which I think is also -- or is what

1           they base their five or six decibel  
2           improvement upon. And they weren't presented  
3           for that reason. They were presented back in  
4           2008 to try to show that because the base  
5           noise on the building was so loud, it was  
6           impossible for them to put one piece of  
7           equipment up on that roof and comply with the  
8           city noise ordinance. And the Commission  
9           agreed that that was not -- agreed with  
10          myself and others that that was not a valid  
11          argument. So I hope you do not consider  
12          those figures or consider that modeling  
13          compared against actual field data collected  
14          on May 25th.

15                 The second point I have is, Mr. Scali,  
16                 your suggestion about -- since there is a  
17                 precedent or since there is an article in the  
18                 noise ordinance that allows 55 decibels for a  
19                 residential in an industrial zone, you seem  
20                 to be leaning towards that kind of scenario.  
21                 But we do not have that situation here. This

1 is not a residential within an industrial  
2 zone. It is an office one zone abutting a  
3 residential zone. So I don't think that's an  
4 applicable area to justify a 55 decibel  
5 level.

6 Thank you.

7 RICHARD SCALI: Thanks very much.

8 Good morning.

9 CAROL BELLEW: Carol Bellew,  
10 B-e-l-l-e-w.

11 RICHARD SCALI: Ms. Bellew.

12 CAROL BELLEW: Since I sat on the  
13 Rooftop Mechanical Committee and I sat on the  
14 ECaPs as co-chair, this is a very important  
15 decision because this is a very odd situation  
16 where there's an O1 next to residential. It  
17 will be extremely important what this  
18 decision is for our neighborhood because we  
19 really get the blunt, you know, the blunt --  
20 most of the stuff, most of the noise coming  
21 over to us. And if we can get a clear

1 definition as to what and how we're supposed  
2 to be testing these buildings, we can try and  
3 work on these other buildings that create,  
4 you know, with Andrea. Many times we have to  
5 go on the rooftop actually to find the one  
6 that's creating the problem. But this is an  
7 extremely awkward position I think for the  
8 residential group, because it is literally  
9 next-door and we don't have that situation.  
10 I'm probably the closest to one of those, but  
11 we don't have that situation in East  
12 Cambridge as much. So it's extremely  
13 important. I do think 55 is too high. I  
14 think it should be down to 50. But to go up  
15 to the roof is really important for us to be  
16 testing because that's where the noise is.  
17 And yes, we all have ambient. If you come  
18 over to East Cambridge you can listen at  
19 night and you can hear it. Certainly  
20 Commissioner Haas is over there regularly.  
21 And we do get regular noise and we're working

1 hard to try and get the stuff cleaned up.  
2 Usually it's old equipment. But I think it's  
3 very unfair for this residential  
4 neighborhood, which is residential, to be  
5 dealing with an 01 trying to flip over to,  
6 you know, with what these commercial  
7 buildings put out. So that's my two cents.

8 Thanks.

9 RICHARD SCALI: Anybody else?

10 GERALD BERGMAN: Gerald Bergman 82  
11 Elm Street. I think I wanted to go back to  
12 just the understanding when they took  
13 measurements back in '08, the background  
14 noise, I know that when they tried to turn  
15 off the system, the background in noise  
16 generally was under 50. I think that's part  
17 of the record. I think that's significant.

18 It seems to me that as a matter, you  
19 know, the trust and corporate responsibility,  
20 when they, again, the engineers signed on to  
21 do this building, since that date, there

1 hasn't been any new major buildings in that  
2 neighborhood. I don't even know that there's  
3 proof that there's a huge increase in  
4 background noise or anything else since that  
5 date because those buildings were in place.  
6 So when they signed on to go with this  
7 Ordinance, I don't know if they had a little  
8 quote in there with Variance. I think they  
9 said they would deal with the law as it was  
10 written. That was my understanding. And  
11 when they got the okay to expand their  
12 license to store materials and they expanded  
13 their operations, as I understand, again,  
14 that discussion was made and they said they  
15 would, they would deal with the Ordinance as  
16 it was there. And it seems to me now that  
17 they're not willing to do that. I think the  
18 other points are made. And they're tentative  
19 of metropolitan life. It seems to me that  
20 part of their corporate responsibility then  
21 is to go back to their landlord who's

1           creating background noise as a tenant and say  
2           that you're contributing to this. I don't  
3           see enough on the corporate level with  
4           multibillion dollar owners like Metropolitan  
5           Life having to do -- they're not doing their  
6           part. I don't think they should come to the  
7           Commission to ask for relief because as a  
8           matter of trust, they said what they would do  
9           they can't do it apparently. They should go  
10          back to their landlord, not the Commission  
11          and say give us relief. We have to work  
12          something out. You have to do more. Because  
13          it's the landlord that's creating part of  
14          their own problem.

15                    RICHARD SCALI: Thank you.

16                    Anyone else?

17                    (No response).

18                    RICHARD SCALI: Discussion? Further  
19                    discussion?

20                    ROBERT HAAS: No, I think it's  
21                    important to recognize the fact that I denix

1 has done quite a bit to resolve this issue  
2 and tried really hard to put it together.  
3 But I do, working back to Mr. Bergman's  
4 comments last time with respect to how much  
5 of the responsibility falls to the Commission  
6 with respect to a situation that's kind of  
7 gradually over time increased from when the  
8 equipment was initially on the building and  
9 over time. And I don't believe for a minute  
10 that Idenix had some invariant plan that they  
11 were going to do this all along. This is  
12 where your business model took you. I  
13 understand that. But at the same time it's a  
14 balancing, in my view, of hardships both from  
15 the residential and corporate standpoint that  
16 needs to be addressed. I don't think it's an  
17 either/or proposition. And I can applaud  
18 what you're trying to do, Mr. Chairman, in  
19 trying to find what's that balance? And, you  
20 know, where can Idenix live and coexist  
21 peacefully with the neighbors and that

1           there's some assurances. But I am really --  
2           I'm really hard pressed to believe that going  
3           to 60 is a viable level at this point in  
4           time. I think it does place too much of a  
5           burden on the residential area in the  
6           neighborhood. So I think there's got to be  
7           some efforts to get it closer so that there  
8           is a better -- a balance going forward and I  
9           just don't see that at this point in time.

10                         RICHARD SCALI: I mean, I guess I  
11           just -- one of the major pieces of this is  
12           that, and I guess the question of putting the  
13           burden back on Idenix is that, you know, we  
14           don't want Andrea out there every other day  
15           or every other week.

16                         ROBERT HAAS: No.

17                         RICHARD SCALI: My point to saying  
18           it's a one year Special Variance is that in a  
19           year, I mean, we will then do a reading and  
20           make sure that you are maintaining.  
21           Hopefully you know what that level would be,

1 and that you would be doing readings all  
2 along yourself to make sure you're  
3 maintaining that. But that if you're not in  
4 compliance with -- I'm not talking about high  
5 C's and everything on, making sure that it's  
6 hot, I mean that's the worst case scenario.  
7 I know that, you know, one day it's 60, one  
8 day it's 84. All those things vary the  
9 conditions and the ambient level and all  
10 that. All those things change all the  
11 numbers. But I guess at that point then I  
12 think the burden is back on you to make sure  
13 that you're maintaining your equipment,  
14 making sure that everything is, you know, up  
15 to -- all the equipment's working properly.  
16 And that you're continuing to replace and  
17 maintain what you have up there already and  
18 making sure that things are lower. So that  
19 maybe in a year you come back and it's under  
20 55 hopefully just because of technology and  
21 newer equipment and more consolidation. I'm

1           sure there are other things that you can do.  
2           I know it's expensive. But I think we don't  
3           want to, you know be out there every five  
4           minutes taking readings because that just  
5           would be a total waste of the neighbor's time  
6           to have to kind of have to maintain that.

7                     ATTORNEY RICHARD JOHNSON: It was a  
8           concern of the company obviously that if  
9           there was some level that's granted at the  
10          Variance, whatever that number is, they don't  
11          want to be subject to the possibility that  
12          they're half a decibel over one day out of 200  
13          but that's enough to shut them down.

14                    RICHARD SCALI: And I hear what  
15          you're saying about that, but I guess that's  
16          part of the request for we're making a view  
17          and, you know, maybe you need to confer about  
18          that. But if you honestly can tell us we  
19          can't do that or we can't assure you of that,  
20          then I guess we're back to square one again  
21          which, which is fine. I mean, you know,

1 we' re back to square one and we' re back to  
2 where we were before you made the speci al  
3 request agai n.

4 JOHN WEI DENBRUCH: I thi nk i f we  
5 have a few mi nutes, we can come back wi th  
6 somethi ng I thi nk woul d address thi s.

7 RI CHARD SCALI : Okay.

8 JOHN WEI DENBRUCH: We' ll be very  
9 qui ck.

10 RI CHARD SCALI : Do you want to go  
11 off the record for fi ve mi nutes.

12 JOHN WEI DENBRUCH: Fi ve mi nutes.

13 RI CHARD SCALI : Is that the pleasure  
14 of the Commi ssi oners?

15 GERALD REARDON: Sure.

16 RI CHARD SCALI : Off the record for  
17 fi ve mi nutes and we' ll be back at 11:05.

18 (Whereupon, a di scussi on was  
19 hel d off the record.)

20 RI CHARD SCALI : Are we okay? Can we  
21 go back on the record?

1                   ATTORNEY RICHARD JOHNSON: We can go  
2 back on the record.

3                   Mr. Scali, taking into account the  
4 various considerations and concerns that have  
5 been raised this morning, the company  
6 proposes as follows: That you issue the  
7 Variance at 57.

8                   RICHARD SCALI: Go ahead. It's  
9 okay. We're listening.

10                  ATTORNEY RICHARD JOHNSON: The  
11 company will commit to not putting anything  
12 else up there on the roof. The company will  
13 commit to doing periodic readings and  
14 reporting those readings either in  
15 conjunction with Ms. Boyer or in direct  
16 conjunction with the Commission. That the  
17 Variance that you suggested would be for one  
18 year. And at the end of one year, the matter  
19 be revisited. If the readings show that  
20 they've been able to keep things consistently  
21 below 55, then it may be appropriate for you

1 to reduce the level to 55. But particularly  
2 because you've said that the readings are  
3 going to be up at 16 foot or higher, which  
4 causes the company, you know, significant  
5 concern because the disparities between five  
6 feet and higher, they would like for that  
7 year to have some additional clearance if you  
8 will, to take into account Commissioner Haas'  
9 concerns that we not be back looking for  
10 something more.

11 JOHN WEIDENBRUCH: We'll also commit  
12 to maintaining the equipment in as much -- as  
13 close to the current state as we can possibly  
14 do that. So as Chief Reardon indicated, if  
15 there's anything that occurs, we will  
16 maintain it in a way that tries to maintain  
17 exactly where we are right now. And we will  
18 not be adding anything to the roof and trying  
19 to maintain the emissions level, the noise  
20 that comes from our roof it is our intention  
21 that that will not change other than trying

1 to reduce it as much as we possibly can.

2 RICHARD SCALI: Well, I mean,  
3 everythi ng you said makes sense to me except  
4 for the number obviousl y. The 57 is  
5 troubl esome. I mean, the worse case scenari o  
6 the evening of May 25th which was a hot  
7 night, and as I understand it from Ms. Boyer  
8 everythi ng was on. Amgen was on and CDM, and  
9 there was pretty typical top of the line  
10 evening. It was between 55 and it may even  
11 have gone up to 56 or something that evening  
12 on a real peak. So I'm kind of viewi ng that  
13 as your -- as the most that it's going to be.

14 JOHN WEIDENBRUCH: And we agree wi th  
15 that. And the probl em is as you're sayi ng,  
16 it would go to 56, you give us a Vari ance of  
17 55, if it goes to 56, we're in violati on.

18 Secondl y, as i ndicated by the Tocci  
19 report and others, the devi ati on associ ated  
20 wi th any testi ng is plus or minus 1.5  
21 deci bel s. Not suggesti ng that that ought to

1 change, but the fact that if a 55 reading or,  
2 55 emission could actually be read as 56 and  
3 a half, the intention is, again, let's try to  
4 an account for what we can't control. And  
5 that's, our intention is not to give us  
6 flexibility to be louder than we are, it's to  
7 give us flexibility to address things what we  
8 have no control over.

9 And again, for one year and as  
10 Mr. Johnson indicated, we will commit to do  
11 readings on a periodic basis and we will  
12 report back to the Commission what those  
13 readings are. Again, our intention is to not  
14 have it be any noisier than what it is right  
15 now.

16 GERALD REARDON: Excuse me, can you  
17 keep it --

18 RICHARD SCALI: Yes.

19 ELIZABETH LINT: It's very hard for  
20 the stenographer to hear when people are  
21 speaking in the back.

1                   RICHARD SCALI:    Discussion?

2                   I'm having a hard time with 57, I have  
3                   to be honest with you, I really am. I just  
4                   think that that opens the door to a lot of  
5                   other potential problems with other, setting  
6                   a precedent with us and not using it as a  
7                   guideline for the future. And residential  
8                   and industrial is 55, and that's, you know.

9                   JOHN WEIDENBRUCH: I guess in  
10                  response to that would be that we do have the  
11                  concept of a buffer zone that has not been  
12                  implemented before. And understanding that  
13                  there is a precedent for the 55 in different  
14                  circumstances, to allow a deviation for a  
15                  period of time with the concept of a buffer  
16                  zone, it would not be outside the realm of  
17                  the regulation.

18                  RICHARD SCALI:    So that if in a year  
19                  we come back and it's 56, 57, then what?

20                  JOHN WEIDENBRUCH: Well, then.

21                  RICHARD SCALI:    Then you lose your

1 Variance.

2 JOHN WEIDENBRUCH: Correct, correct.

3 RICHARD SCALI: And we're back to  
4 you shutting things off and complying.

5 JOHN WEIDENBRUCH: That is correct.  
6 And the enforcement that would occur in the  
7 one year time period, we would do everything  
8 we can to try to maintain the level of where  
9 it is now. And if we are trending in a  
10 direction that is below -- that is above the  
11 55, then we know we've got an issue that we  
12 need to address even further. But our  
13 intention, again, our commitment is to  
14 maintain -- to worse case maintain the level  
15 where we are right now and try to improve  
16 that, continue to try to improve that. And  
17 again, you have that, our commitment on the  
18 record for that commitment.

19 RICHARD SCALI: Again the goal is  
20 not to be 55. The goal is to be under 55 or  
21 50.

1                   JOHN WEIDENBRUCH: Yes. To clarify,  
2                   our goal would be --

3                   RICHARD SCALI: To maintain 55 to me  
4                   doesn't get you anywhere.

5                   JOHN WEIDENBRUCH: Our goal is to be  
6                   as low as we possibly can be. And we will,  
7                   again, commit to maintain the current  
8                   equipment up there. And we will continue to  
9                   plan to evaluate what we can as far as the  
10                  older equipment. We will continue to  
11                  evaluate what we can do to reduce the noise.

12                  GERALD REARDON: I guess, you know,  
13                  this has been going on for two years. What  
14                  is what's on the Ouija board right now in  
15                  terms of what's next in terms of equipment?

16                  JOHN WEIDENBRUCH: We pretty much  
17                  have come to the end of any creative  
18                  solutions. So I think it will -- and then  
19                  Mr. Gilman can speak to this. We will  
20                  continue to evaluate are there ways to look  
21                  at the frequency variation between something

1 we can control with that. Any of the, you  
2 know, of the wiring that can be modified.

3 GERALD REARDON: With all due  
4 respect, I think we're postponing the  
5 inevitable if there's nothing that -- there's  
6 no breakthrough that's forthcoming that looks  
7 as though, you know, with a strategic plan or  
8 something that's being proposed, that you can  
9 turn around and I mean, are we not just --

10 JOHN WEIDENBRUCH: Well, I guess if  
11 in the granting of a one year Special  
12 Variance is higher than the 55 number, and if  
13 as we check periodically over the course of  
14 the 12 months, if we have consistently  
15 maintained that level below 55, and then if a  
16 year from now we consider the possibility of  
17 having the Variance at that number. Our  
18 intention is to make sure, again, the issues  
19 beyond our control do not impact whether or  
20 not we're in compliance with the regulation.

21 ATTORNEY RICHARD JOHNSON:

1           Particularl y because on that one reading i n  
2           May there was, you know, one Vari ance above  
3           55.

4                     RICHARD SCALI:   All right.  
5           Di scussi on or questi ons?

6                     ROBERT HAAS:   So, agai n, I  
7           appreci ate everythi ng you' re sayi ng and I  
8           trul y bel i eve that you woul d mai ntai n your  
9           commi tments, but I thi nk there are two maj or  
10          unknowns that you can' t control for.   And I  
11          brought thi s up much earl i er on by putti ng  
12          yoursel f i n a box that you' re goi ng to  
13          conti nue to fi ght yoursel f out of all the  
14          time.   I don' t thi nk you want to be i n that  
15          posi ti on.   Cl earl y, I don' t thi nk the  
16          Commi ssi on wants to be i n that posi ti on.  
17          Agai n, I woul d real l y be di sappoi nted i f you  
18          came back here and you sai d, okay, we' re  
19          goi ng to sti ck to 55.   I don' t thi nk you' re  
20          prepared to do that.   But I' m not prepared to  
21          vote on a Vari ance above 55 and wi thout

1           assurances that you can actually maintain  
2           that level. And we're not as the Chief  
3           maintains, us being back here and doing this  
4           all over again.

5                        So, Mr. Chair, I'm ready to vote.

6                        GERALD REARDON: There's nothing  
7           more that, you know, that I would like to see  
8           to have both sides coexist and in terms of  
9           how we work together and how the sound level  
10          is. You know, how you wound up getting  
11          approved in that lot is a question for a  
12          different set of people other than us and we  
13          can't adjudicate how you wound up, you know,  
14          being in that position in the first place.  
15          And I'm not casting any disparage on anyone  
16          just why you're there. But I was amazed what  
17          the difference was at the street level and  
18          the roof level way back when we did it. It's  
19          loud. And, you know, I deal with radio  
20          engineering decibels all the time. Two to  
21          two and a half is probably not all that much

1 discernable. Two is I mean, depending on  
2 what the frequency is. I mean this is hardly  
3 lower. I'm looking, hoping to try to find a  
4 way out that would be somewhat acceptable to  
5 both sides or somewhat unacceptable to both  
6 sides if there's movement in that, you know,  
7 we try to make some progress here. But, you  
8 know, 55 is a stretch, too. I don't see how  
9 we can go much over 55 and still not wind up  
10 with nothing on the horizon that, you know,  
11 we're just postponing as I said earlier, the  
12 inevitable that we're back here.

13 RICHARD SCALI: And I guess if you  
14 can say well, I'm going to be changing this  
15 unit and that unit, we're going to be  
16 upgrading. I know you've had a long-term  
17 plan before and maybe you reached the end of  
18 that current plan. But if you're going to  
19 consolidate some more, or at least you know  
20 you can make it a couple of decibels with  
21 upgrading some systems or moving the systems

1 or putting them on the other side. All of  
2 that may be necessary to maintain.

3 JOHN WEIDENBRUCH: With Tocci being  
4 the independent expert if you will, and I  
5 know there may be a question if they're truly  
6 independent. With them being the expert, we  
7 have worked with them and we've asked what  
8 else we can do? And the problem is there's  
9 nothing else that's on the table right now.  
10 We talked about a while ago the extensive  
11 wall. And we know there's, you know,  
12 significant resistance to that. And we are  
13 not proposing the further erection of, you  
14 know, a wall beyond what is there right now,  
15 but the problem is, again, we have asked the  
16 experts what else can we do? And there's  
17 just not anything on the table. So we  
18 completely appreciate -- we don't want to be  
19 put in a box, and the concern is that the box  
20 is there.

21 ROBERT HAAS: Right.

1 JOHN WEIDENBRUCH: And --

2 RICHARD SCALI: My concern has  
3 always been that we balance the both. Sides  
4 and to kind of keep more control over it here  
5 is letting outside legal sources decide  
6 what's going to happen because that's where  
7 it's going to go if we don't maintain some  
8 kind of conditions or control here. But, if  
9 that's the way it has to go, it has to go. I  
10 mean, the only thing I can suggest to the  
11 Commissioners is that we perhaps issue 56 but  
12 I'm not sure that's even what you need.

13 JOHN WEIDENBRUCH: The other thing  
14 to offer is, again, we will do the periodic  
15 readings. As much as we, I'm sure we all  
16 enjoy being at these meetings together, we  
17 have other scheduled meetings for you to  
18 evaluate, to assess how we are continuing to  
19 make sure that things are not slipping, we  
20 would be -- we would welcome that as well.

21 RICHARD SCALI: Okay.

1                   GERALD REARDON: Well, without  
2 anything on the horizon and you're telling me  
3 it was 55, 56 which I'm not saying I was  
4 going to agree to, but without anything on  
5 the horizon, again, I don't want to sound  
6 like a broken record. Where do we wind up?  
7                   And the other thing for all the parties  
8 involved, if it gets denied and it goes to  
9 court and it gets egregious then nothing has  
10 to be done until such time it gets  
11 adjudicated. In terms of the neighborhood,  
12 you know, they're looking for a solution.  
13 And, you know, dragging this out and having  
14 no control because it's going to be under  
15 litigation for whatever is not a good  
16 solution for them either. So I mean I'm sure  
17 they're probably not even overjoyed about the  
18 55. But I'm just trying to find something  
19 here that makes life tolerable for everyone  
20 involved. I mean because in terms of our  
21 dealing with Idenix in terms of safety and

1 stuff, they're very, very conscientious, a  
2 great company to deal with. But at the same  
3 time we have responsibility sitting here to  
4 look at all the facts on both sides of the  
5 fence here, and it's, you know, it's an  
6 awkward and it's not a decision we take  
7 lightly. But I just can't see how, you know,  
8 55 is pushing it. Going over 55 I just don't  
9 see -- offers any relief. Especially in  
10 light of the fact that there's no big miracle  
11 that, you know, we need another six months  
12 that we'd be able to do turn around and  
13 something after the summer season we can  
14 consolidate, we have some plan. I just don't  
15 see any of that.

16 Yes.

17 ATTORNEY RICHARD JOHNSON: Well,  
18 Chief, can I respond to that comment?  
19 Because you suggested that maybe you need  
20 some sort of consolidation or other changes  
21 up there to make sure you go down further.

1 But one of the things we don't have is a  
2 sense as to what the current modifications  
3 are going to do on a long-term basis over the  
4 summer. And we had that one set of readings  
5 up there in May, and they seemed to be for  
6 the most part below 55 with the minor  
7 exception. And it may well be that what is  
8 going to happen is that it's going to be  
9 routinely at, you know, 54, 54 and a half  
10 which will maybe satisfy your concerns that  
11 enough has been done. And that's why I think  
12 the company has suggested that we, you know,  
13 do this with continual testing so that we can  
14 all look at the situation. And not maybe  
15 conclude now that unless we did something  
16 dramatic in the future, there is no  
17 permanent solution. Maybe we have found the  
18 permanent solution.

19 JOHN WEIDENBRUCH: And also  
20 identified it's more a seasonal issue. And  
21 as the summer ends and we get into the cooler

1 weather, that shall drop. And if we want to  
2 have a seasonal variance, we could, certainly  
3 you know, try and work with something of that  
4 sort as well.

5 RICHARD SCALI: Seasonal variance.

6 GERALD REARDON: If you're almost  
7 making 55 now I'd take the deal.

8 RICHARD SCALI: It sounds like the  
9 best offer you're going to get from us is 55  
10 with the other conditions we're offering. I  
11 think that's what's fairest to the neighbors.  
12 I'm just saying that it's seasonal, that  
13 means we're talking about the warmest weather  
14 in June and July and August as being the  
15 toughest months for you all. I mean, I guess  
16 if it means you shut off a machine or  
17 something in there that you don't really need  
18 during those warm months to meet 55 as  
19 opposed to going to court for two years, you  
20 know, I can't tell you what to do but it  
21 sounds like that's -- from what I'm

1           hearing -- I'm not sure about the  
2           Commissioner, but what you're hearing from  
3           the Chief that's the best we have to offer  
4           you at this point. So, if you can't do that,  
5           just tell us that and we're back to where we  
6           were.

7                         JOHN WEIDENBRUCH: I think, you  
8           know, the answer is now the decision is the  
9           Commission's to make and we live with the  
10          decision made by the Commission and we have  
11          to obviously assess what our options are and,  
12          you know, we go from there. I mean, and we  
13          very much appreciate the position that you  
14          are in. And we appreciate your -- the  
15          patience in working with us. And I think we  
16          acknowledge that we tried to do as much as we  
17          can. And it's not that we're reserving  
18          something in trying to get more out of this  
19          than we possibly can. We appreciate the  
20          position that we both are in.

21                         RICHARD SCALI: So I guess.

1                   ATTORNEY RICHARD JOHNSON: May we  
2 just take a moment though?

3                   RICHARD SCALI: Go right ahead. Why  
4 not? We'll give you three more minutes.

5                   ATTORNEY RICHARD JOHNSON: Thanks.

6                   (Whereupon, a discussion was  
7 held off the record.)

8                   RICHARD SCALI: Back on the record  
9 again. So updates.

10                  ATTORNEY RICHARD JOHNSON:

11                  Mr. Scali, the update is this: As  
12                  Mr. Weidenbruch said, the Commission should  
13                  go ahead and do what it thinks is appropriate  
14                  under the circumstances. If you think the  
15                  number is X, then say what you think it  
16                  should be and the company will have to decide  
17                  what it's going to do in that context.

18                  RICHARD SCALI: You're saying you  
19                  want us to consider the Special Variance  
20                  under the conditions we just mentioned to  
21                  you? Or are you asking us to not consider

1 those conditions?

2 ATTORNEY RICHARD JOHNSON: No, you  
3 should consider the conditions and a number  
4 that you think is appropriate. The company  
5 is not saying that it accepts those numbers  
6 because we don't know what the number's going  
7 to be and we don't know exactly what your  
8 conditions are going to be.

9 GERALD REARDON: The problem is is  
10 that if someone comes in here and is looking  
11 for a two o'clock opening, they just don't  
12 say -- I mean, you have to give us -- I know  
13 this is -- we're playing a game of volley ball  
14 here, but I think it's incumbent upon you to  
15 give us a number.

16 ATTORNEY RICHARD JOHNSON: We said  
17 we think the number should be 57.

18 RICHARD SCALI: So here's your  
19 choice. Denial of a Special Variance or as  
20 I laid out, 55 decibels only for Idenix.  
21 Readings taken from the lot line vertically

1 up on the roof line for one year, with review  
2 to be done in one year and that you maintain  
3 and make sure that the equipment is kept up  
4 and a plan is in place to lower the decibel  
5 level if possible over the next year. So  
6 those are your two choices.

7 ATTORNEY RICHARD JOHNSON: From your  
8 standpoint it's going to be either/or.

9 RICHARD SCALI: Well, you've applied  
10 for one thing. If you're saying you're  
11 keeping it as you're applying for, then we're  
12 saying we're -- I think -- I'm saying that  
13 what's on the table are those two choices for  
14 me. And then the Commissioners can vote as  
15 they please. But those are the choices that  
16 I'm considering. So if you're saying for us  
17 to vote -- if you're saying you don't want us  
18 to consider the Special Variance with those  
19 conditions as I laid out to you, then that's  
20 fine. If you're saying you only want us to  
21 consider 57 or 60, then that's fine too.

1 JOHN WEIDENBRUCH: I think we would  
2 like you to vote in the way that -- the way  
3 you've articulated with the conditions  
4 applied to it.

5 RICHARD SCALI: You want us to  
6 consider that?

7 JOHN WEIDENBRUCH: Yes.

8 GERALD REARDON: And then we're  
9 talking 55?

10 RICHARD SCALI: 55.

11 JOHN WEIDENBRUCH: That's what has  
12 been proposed.

13 RICHARD SCALI: I'm not saying  
14 you're going to get that. I'm just saying  
15 you want us to consider that.

16 JOHN WEIDENBRUCH: Yes.

17 RICHARD SCALI: So, the proposal  
18 then is to make a motion that the Special  
19 Variance be granted with the following  
20 conditions:

21 That it be at 55 decibels.

1 That it be for Idenix only.

2 That it be for a period of one year  
3 starting from now.

4 That readings be done all during the  
5 period of time by Idenix.

6 That we do through Ms. Boyer a reading  
7 before the expiration of the period at the  
8 end of the -- before July 1st next year.

9 That Idenix continue to make a plan to  
10 consolidate, maintain, change, remove units  
11 on the roof to lower the level.

12 Did I miss anything, Mrs. Lint?

13 UNIDENTIFIED AUDIENCE MEMBER:

14 Clarify where the measurements be taken.

15 RICHARD SCALI: Measurements taken  
16 from the lot line, vertically up from the  
17 point of disturbance which would be at the  
18 roof line and not at Mr. Linguist's window.

19 And I think that's my motion. Any  
20 discussion? Clarifications? No further  
21 discussion?

1 So that's a motion. Moved.

2 GERALD REARDON: I'll second it.

3 RICHARD SCALI: Seconded.

4 All in favor?

5 (Scali and Reardon, Aye.)

6 RICHARD SCALI: Opposed?

7 ROBERT HAAS: Opposed.

8 RICHARD SCALI: Two to one approved  
9 with the conditions as outlined. And of  
10 course that is appealable to Superior Court  
11 if you should so choose not to accept that.  
12 60 days.

13 Mrs. Lint?

14 ELIZABETH LINT: Yes.

15 RICHARD SCALI: From the point of  
16 you receiving in writing the decision. All  
17 right.

18 ATTORNEY RICHARD JOHNSON: Thank you  
19 very much.

20 JOHN WEIDENBRUCH: Thank you.

21 PETER LINGUIST: 60 days applied to

1 the neighborhood.

2 RICHARD SCALI: Is that the same?

3 ELIZABETH LINT: I believe so.

4 RICHARD SCALI: I'm not sure whether  
5 it's a petition of -- I'm not sure how that  
6 works, but there may be legalities on that.  
7 There's a petition of 25 people, but I'm not  
8 sure.

9 PETER LINGUIST: Can you let me know  
10 on that?

11 RICHARD SCALI: I think you should  
12 all consult your legal counsel as well.

13 Thank you all very much.

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1                   ELI ZABETH LINT:  Woul d anyone l i ke  
2                   to move to adj ourn?

3                   RI CHARD SCALI :  Anythi ng el se before  
4                   us, Mrs. Li nt?

5                   ELI ZABETH LINT:  Nothi ng el se.

6                   RI CHARD SCALI :  Moti on to adj ourn?  
7                   Seconded.  Moved, and all i n favor?

8                   (Aye. )

9                   (Whereupon, at 11:25 a.m. , the  
10                  meeti ng adj ourned. )

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## C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS  
BRI STOL, SS.

I, Catherine Lawson Zelinski, a  
Certified Shorthand 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, skill and ability.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 8th day of July 2010.

\_\_\_\_\_  
Catherine L. Zelinski  
Notary Public  
Certified Shorthand Reporter  
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My Commission Expires:  
April 23, 2015

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