

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION
DECISIONMAKING MEETING

LICENSE COMMISSION BOARD MEMBERS:

Richard V. Scali, Chairman
Steven Williams, Deputy Superintendent
Daniel Turner, Deputy Chief

STAFF:

Elizabeth Y. Lint, Executive Officer

- held at -

Michael J. Lombardi Municipal Building
831 Massachusetts Avenue
Basement Conference Room
Cambridge, Massachusetts 02139
Thursday, January, 29, 2009
10:00 a.m.

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P R O C E E D I N G S

MS. LINT: License Commission
Decisionmaking Hearing, Thursday, January 29, 2009
at 10:10 a.m. We're in the Michael J. Lombardi
Municipal Building, 831 Massachusetts Avenue,
Basement Conference Room.

MR. SCALI: Sir, please no talking if
you could. It echoes up here if you talk. Thank
you.

MS. LINT: Before you are the
Commissioners: Chairman Richard Scali, Deputy
Chief Dan Turner, and Deputy Superintendent Steve
Williams.

The decisions are from January 6 and
January 20 Hearings.

MR. SCALI: Good morning everybody.
Let's go to January 6. I think the first item we
have on the agenda that we did not decide was
Anise.

MS. LINT: The Disciplinary?

MR. SCALI: Yes. Is Anise here?

MR. SPELIOS: They are. They just stepped out. I'm Peter Spelios, the landlord at that location. If you wouldn't mind, they're actually --

MR. SCALI: Are they talking?

MR. SPELIOS: They're trying to come to a resolution.

MR. SCALI: We'll give you a second call on that.

MR. SPELIOS: Thank you.

MS. LINT: We have the Disciplinary for the alcohol establishments who failed to attend the mandatory meetings.

MR. SCALI: There was a list that we had on those, Mrs. Lint.

MS. LINT: Yes.

MR. SCALI: How many people were there? Oh, I think I have them here. Two of the 21 or 22 came on January 20 and we placed those matters on file.

MS. LINT: We have 18 left.

MR. SCALI: Any comments,

Commissioners on those that failed to attend our mandatory meeting?

MR. WILLIAMS: No.

MR. SCALI: Commissioner's concerns?

MR. WILLIAMS: No.

MR. SCALI: Every year it gets to be more and more people not attending the meetings, so we just need to make sure that they do attend. We put a lot of effort into those meetings. So I would say that if this is their second or third offense, we could have Mr. O'Neil find out if they are repeat offenders, then there would be some other repercussions, but if they're first-time offenders, I would say we place these matters on file.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: If memory serves me, in the past, did we not have an administrative fee -- require them to pay an administrative fee for the mailings, the notifications? Didn't we assess them something a couple of years ago?

MS. LINT: I believe that was actually for failing to complete the renewal process on time, but there is no reason why you can't assess it. It's an administrative fee; there's a lot of work that went into all of that.

MR. SCALI: And the administrative fee is \$25?

MS. LINT: Yes.

MR. TURNER: I just feel that we have 18 establishments that have not only not attended one of the three meetings, now they have not attended two hearing requests, and we're just going to place it on file. Well, that's really no incentive.

MR. SCALI: They were all here. They came.

MS. LINT: The only one that didn't come was from the Lynch Post.

MR. TURNER: Okay, I misunderstood.

MR. SCALI: They were all here.

So is your motion for an administrative fee?

MR. TURNER: An administrative fee for the Lynch Post, \$25 fee, administrative fee upon renewing their license.

MR. SCALI: They have already renewed their license for 2009, so it would be a fee that we would just assess now, a decision, for those who did not attend the hearing.

MR. TURNER: Correct.

MR. SCALI: But those that did come into the hearing, you're saying we place on file?

MR. TURNER: Right.

MR. SCALI: So if it's a first-time offense and they did attend our hearing, they would be placed on file. That's moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. WILLIAMS: Aye.

MR. TURNER: Aye.

MR. SCALI: Aye.

If they did not attend our mandatory meeting and the hearing, an administrative fee of \$25 will be assessed. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. WILLIAMS: Aye.

MR. TURNER: Aye.

MS. LINT: And if it's a subsequent failure to attend?

MR. SCALI: If it is a second or third offense, or whatever, I would propose a \$50 administrative fee.

MR. WILLIAMS: Second.

MR. SCALI: Seconded. All in favor?

MR. TURNER: Aye.

MR. WILLIAMS: Aye.

MR. SCALI: Thank you very much. That makes more sense to those of us who were here and calling them in over and over again, and having to go through the phone calls and mailings that cost the City money.

MR. SCALI: The next item has to do with Three Aces Pizza.

MS. LINT: Which they've asked to continue to the March 5 Decisionmaking Hearing.

MR. SCALI: So I guess they are still in negotiations; is that what it is?

MS. LINT: I believe so.

MR. SCALI: Still in negotiations with Harvard. And they're still closed?

MS. LINT: They are closed, and they will remain closed.

MR. SCALI: Motion then to continue to March 5, you said?

MS. LINT: Yes.

MR. SCALI: March 5. Discussion?

MR. WILLIAMS: Just as long as the status remains the same until then.

MR. SCALI: Moved.

MR. WILLIAMS: Second.

MR. SCALI: All in favor?

MR. WILLIAMS: Aye.

MR. TURNER: Aye.

MR. SCALI: That's our Decisionmaking meeting for February, which will be March 5.

MS. LINT: Foreign Auto.

MR. SCALI: University Wine we did already; La Molisana has been done too.

MS. LINT: That's done.

MR. SCALI: Anise; they're not ready yet? Are they still outside talking? Okay.

MR. SCALI: Foreign Auto Sales, 445 Concord Avenue. Can you come up please? Just tell us who you are for the record, please.

MR. MOUSTAFA: My name is Saad Moustafa. I'm the owner.

MR. SCALI: You were here last time; right?

MR. MOUSTAFA: Yes, on January 6.

MR. SCALI: This is a little confusing, and I will tell you why. Our investigator, Ms. Boyer was out there, and there are discrepancies with the site. Number one, in the back of that building on 13 Fern Street there's a parking lot.

MR. MOUSTAFA: There is a parking lot.

MR. SCALI: Is that part of your business?

MR. MOUSTAFA: We park some cars there, yes.

MR. SCALI: But on your application you're saying you have no cars on the premises.

MR. MOUSTAFA: Because the office is

located on 445 Concord Avenue, and that's why we wanted the license. The parking lot is just a parking lot. Sometimes we park cars before we ship them out.

MR. SCALI: That's parking on the premises. That's parking in Cambridge.

MR. MOUSTAFA: That's true, but I didn't want to use the Fern Street because there is no office there. It's just an open space. It's a gated parking lot.

MS. SCALI: Why don't you read the report?

MRS. LINT: Why don't I read the report into the record: "Ms. Boyer indicates she checked 445 Concord Ave. location as listed on the application by Mr. Moustafa is the Cambridge Self-Storage building. There is already a business sign on the building stating "Foreign Auto Wholesalers. Sign listed a number and web address to check for automobiles."

She spoke with someone by the name of Alan, an employee at Cambridge Self-Storage, and

checked the files. Alan stated that "a lease had been signed in December of 2007." So Ms. Boyer is under the impression that the business has been in operation for a year prior to the application being submitted.

She also checked Foreign Auto Wholesalers by using the web address that was listed on the building sign. While searching the site she came across another business by the same name, Foreign Auto Wholesalers, located at 13 Fern Street in Cambridge. Thirteen Fern is the side street which runs along the 445 Concord Avenue building.

Further investigation of the website brought her to an auction in progress on EBay, which references the 13 Fern Street location as a pick up and delivery lot for Foreign Auto Wholesalers.

She went to 13 Fern and found a fenced open parking lot with a sign which read, "Foreign Auto Wholesalers, LLC Storage Lot."

On the EBay auction website it was

noted to contact Sam Jacobs for questions about vehicles at the 13 Fern Street location in Cambridge. She found while checking the applicant's former business address at 80 Pearl in Somerville that the phone numbers were the same for the contact for the Somerville address as well as this Cambridge address.

She noted the applicant submitted a copy of a Somerville license which had expired in December '08. She went to the 80 Pearl Street location in Somerville, and there was a sign on the door which stated, "Post Office, please resume delivery for Foreign Auto Wholesalers." Eighty Pearl is a residential property not a commercial property.

She then spoke with a representative from the Registry of Motor Vehicles whose concern was that Mr. Moustafa does not have his business license at the moment with either Somerville or Cambridge, and therefore, he would have to forfeit his Dealer plates.

That's essentially the information she

turned in.

MR. MOUSTAFA: Some of the information is incorrect because we just renew the license with Somerville, and I'm supposed to pick it up today. The Dealer plates are active, so there is no issue there.

The reason I want to move from Somerville to Cambridge is to move -- like you mentioned in the report -- from a residential area to a commercial area that's more accessible to me.

The storage lot located on Fern Street, it's like it says, it's a storage lot, a part of Cambridge Self-Storage Company. So instead of renting a space sometimes to park cars there. It's an open space; there is no office. The office is located inside the 445 Cambridge.

MR. SCALI: Yes, but if you are bringing any vehicles to Cambridge, and you have a Used Car Dealer license and you're storing them there, you have to have a license for that.

MR. MOUSTAFA: Our license is in Somerville but we have very limited spaces in

Somerville, like I said, two spaces.

MR. SCALI: I understand.

MR. MOUSTAFA: It's a storage facility. We don't have --

MR. SCALI: It's parking for used cars. You're parking used cars there.

MR. MOUSTAFA: I don't have For Sale sign on any of these cars.

MR. SCALI: You're not understanding what I'm saying. If you're applying for an office only with no vehicles in Cambridge, that means no vehicles in Cambridge. On 13 Fern Street, you're having people come and pick up vehicles there at 13 Fern. So you need to put that on your application if that's what you're doing.

MR. MOUSTAFA: It's a mistake for me not to detail that. It's a two separate facility. One is just a storage, the other one is just an office.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: The problem I'm having

with 445 Concord Ave. is it's a storage building. It's not a business-use building. It's an S-use building. It's not an office building. It's a self-storage facility. How can you have an office in there?

MR. MOUSTAFA: There is so many businesses inside the building.

MR. TURNER: There's offices in there?

MR. MOUSTAFA: There is I think a facility of storage, there is employees there on the Birch Street side entrance. As you can see 445 is taking the whole block. The Birch Street, there is so many companies there inside that building.

MR. TURNER: The last time I was in there it was just a self-storage, like a U-Haul Self-Storage building.

MR. SCALI: So there's no separate space?

MR. TURNER: I didn't see other offices.

MR. SCALI: Is there a separate office in there?

MR. MOUSTAFA: When you go in the Birch side, there is some entrances part of that building, and there is companies there. I don't know if they just store their --

MR. SCALI: What do you have? Do you have a desk in there?

MR. MOUSTAFA: I have an office with a desk and some files, and computers. That's basically it.

MR. SCALI: How long have you been there?

MR. MOUSTAFA: I've been there since December of '07, just an office to do some files.

MR. SCALI: That's a year without a license.

MR. MOUSTAFA: I took a business license out at the City Hall.

MR. SCALI: That's a d/b/a certificate; that's not a Used Car Dealer license. That's a year without a license.

MR. MOUSTAFA: No. That's to clarify, I did not sell cars out of the Cambridge office at

all. This was an office for me to just put my files there. All the vehicles --

MR. SCALI: It's an office only without vehicles.

MR. MOUSTAFA: Without vehicles, correct.

MR. SCALI: That's a used car dealer office. Whether you have vehicles there or not, and you're doing business out of that address, it needs a license. How is that not; if you're doing business out of there, whether you're doing it by EBay, or going to the auctions, and you're using that address in Cambridge?

MR. MOUSTAFA: Just for the storage area for the customers to come and pick up their vehicle. The car is already pre-sold.

MR. SCALI: You can't. Maybe I'm not speaking English correctly.

MR. WILLIAMS: Any kind of interaction that you have out of that office is a business; it's running a business. If you sat there and just did -- you know, if you didn't do any kind of

interactions out of that office, it might be applicable. But you just said you're doing -- it's a place where people can come.

MR. MOUSTAFA: Just to clarify that. I understand your position. The vehicles -- say I use EBay as an example. The car sells on EBay. Sometimes the customer lives in Texas or California. The shipper comes in and takes the car off the lot and takes it to the customer to deliver. Sometimes the customer is in Rhode Island, New Hampshire, or even Massachusetts. They come to the 13 Fern Street to pick up the vehicle.

MR. SCALI: You need a license for that. You need a license to do that. It makes no difference where the customer is. If you bring vehicles there, and you're storing vehicles there, and people are picking up or you're shipping from there, whatever it is, you need a license to do that.

MR. MOUSTAFA: Sir, I did not know that, honestly. I thought it's a storage area. I can store some cars there. I did not need a

license just to store them because there is no For Sale sign, there is no says this is a used car dealership. It's a storage facility, that's it. I did not know that.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: If Ms. Lint can re-read, in Andrea's report I believe there was mention of a sign.

MR. SCALI: There are signs there. There are signs stating your business name on 445 and on 13 Fern, stating your business is there.

MS. LINT: 445 says, Foreign Auto Wholesalers, 13 Fern --

MR. SCALI: Says Foreign Auto Wholesalers.

MS. LINT: Foreign Auto Wholesalers LLC Storage Lot.

MR. SCALI: Your signs are there. They've been there for a year.

MR. MOUSTAFA: I did not know that I need a license for the storage lot. I apologize

for that.

MR. SCALI: I think you have your license in Somerville, you should stay in Somerville. That's what I think you should do.

We have a moratorium on Used Car licenses right now anyway. So I don't think that this is needed in Cambridge at this point in time. I would say probably best to go back to Somerville, do your business there. You've already been operating for a year illegally where you are now. Do you have a lease there?

MR. MOUSTAFA: Yes.

MR. SCALI: How long is your lease?

MR. MOUSTAFA: Every year it gets renewed. Do you want me to take the sign off?

MR. SCALI: I'm just one vote. I've got to hear from the Commissioners about what they think is applicable here.

MR. TURNER: Mr. Chair, I have no problem with a motion to deny at least until we get I think an understanding of what is happening at this location, and a proper application filled out.

MR. SCALI: For the 13 Fern?

MR. TURNER: Correct.

MR. SCALI: If he wants to reapply on that.

MR. TURNER: And also I would like to check with the Building Commissioner and get an official use of this building, if in fact offices are permitted to be in there. We need to look at that as well.

MR. WILLIAMS: The other thing I would like to know is was there a lapse in the Somerville license? You just said you renewed. When was that?

MR. MOUSTAFA: I filed a renewal in November, and it goes through a committee. I pay the fee and that's it.

MR. SCALI: Usually Used Car licenses are renewed in May.

MR. MOUSTAFA: No, sir. It's good until December, the end of every year. And I file it a month before and sometimes with the meeting it exceed into January, which we have.

MR. SCALI: Any further discussion?

MR. WILLIAMS: No.

MR. TURNER: No.

MR. SCALI: The motion then is to deny this application with the caveat that you can reapply with the correct information if you should choose to, including the 13 Fern location.

MR. MOUSTAFA: When I reapply, which address do you want me to use?

MR. SCALI: You have to apply for both.

MR. MOUSTAFA: Two applications.

MR. SCALI: Right, and if you're storing vehicles at 13 Fern and you're using 445 as an office, that's two addresses on one application, if you want. I mean, you're storing vehicles. It's related to the same business; right?

MR. MOUSTAFA: Right.

MR. SCALI: Just that the site is around the corner.

MR. MOUSTAFA: Right.

MR. SCALI: Ms. Boyer said it's almost

attached. From what she said, it's the same building basically, just around the corner.

MR. MOUSTAFA: It's across the street.

MR. SCALI: We'll allow you to reapply with the correct information.

MR. TURNER: Mr. Chair, on that motion?

MR. SCALI: Yes, Deputy Chief.

MR. TURNER: Perhaps a reminder about the moratorium would be a good point at this point.

MR. SCALI: You can reapply but I think our staff made it clear to you before that we do have a moratorium on Used Car Dealer licenses at this point in time. So there's no guarantee just because you reapply we're going to grant it to you. I guess we'll give you an opportunity to explain yourself.

MR. MOUSTAFA: Do I have a certain time to reapply?

MR. SCALI: Normally we make you wait a year, but I guess we're saying we're not making you do that, so you can reapply at our next

available hearing, if you so choose. In the meantime, I'm also going to say take down the signs and stop operation where you are there now.

MR. MOUSTAFA: All right.

MR. SCALI: That's moved.

MR. TURNER: Second it.

MR. SCALI: Seconded. All in favor?

MR. WILLIAMS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you very much.

MR. SCALI: Anise ready? Still talking?

MR. SPELIOS: No.

MR. SCALI: Do you want to come up? Going back to Page 2, Zing Bistro, Inc. d/b/a Anise at One Kendall Square applying for an inactive license. Hello, tell us your name for the record, please.

MR. TAI: My name in Lim Tai.

MS. HU: My name is Zing Hu.

MR. SCALI: Are you the owner?

MS. HU: Yeah.

MR. SCALI: So what's happening now? You're the owner; right? You sent this gentleman to our hearing last time. He's just the manager. He has no authority to make decisions for you.

MS. HU: He's also a shareholder.

MS. LINT: That was done without approval of the License Commission and the ABCC.

MR. SCALI: He's not a shareholder here. He may have done it at the Secretary of State's office but we never did it here. He has no

ownership authority. He never applied.

MS. HU: We return our alcohol license.

MR. SCALI: What?

MS. HU: Return alcohol license.

MR. TURNER: Are you surrendering it?

MR. SCALI: Are you surrendering the license; is that what you're doing?

MS. HU: Yeah.

MR. SCALI: So you're turning it in?

MS. HU: Uh-huh.

MR. SCALI: I assume you've made some agreement with Beal Company.

MS. HU: Yes.

MR. SCALI: Are there certain conditions to do that?

MR. TAI: Yes.

MR. SCALI: Can you tell me what they are?

MR. TAI: Yes.

MR. SCALI: So you're withdrawing your application for inactive and turning the license

in. Are there conditions? Maybe Mr. Spelios wants to come up and tell us.

MR. TAI: They had to pay us some money, around 22,000.

MR. SCALI: They're paying you money.

MR. TAI: Yeah, for the equipment and everything inside.

MR. SCALI: I'm not understanding what you're saying.

MR. TAI: The equipment in the restaurant.

MR. SCALI: They're paying you for the equipment in the restaurant?

MR. TAI: Yeah, \$22,000.

MR. SCALI: And letting you out of the lease?

MR. TAI: Yeah. They're out of the lease free; she'll owe nothing.

MR. SCALI: And you're satisfied with that?

MR. TAI: Yes.

MR. SCALI: The inactive status is

withdrawn, and the license is turned in.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: Was the license paid for,
for '09?

MS. LINT: I believe so.

MR. SCALI: Did you pay a fee?

MR. TAI: Yeah, I did.

MR. SCALI: You did pay a fee?

MR. TAI: I did pay a fee.

MR. TURNER: Would you consider
refunding the application fee where they haven't
used the license to date?

MR. SCALI: You haven't been open for
a while?

MS. HU: No.

MR. TAI: No.

MS. LINT: They have to physically
turn the license in.

MR. SCALI: We didn't give you a
license. Did we give you a 2009 license?

MS. HU: No.

MR. SCALI: We can refund their money, the renewal fee.

MR. TURNER: It costs more to go through the paperwork to do that.

MR. SCALI: It's not that quick for the City. It takes maybe four to six weeks to get your money back, but we can do that.

So motion to allow the license to be turned in and renewal fee to be returned. Moved.

MR. TURNER: Seconded.

MR. SCALI: Seconded. All in favor?

MR. WILLIAMS: Aye.

MR. TURNER: Aye.

MR. SCALI: Aye.

Thank you very much. Good luck.

MR. SCALI: Going to January 20, have we not taken care of the renewals?

MS. LINT: That was all set. It would be the bottom of Page 1.

MR. SCALI: Cafe of India; that was already continued to February 24.

Bambaci transferred to Bourbon. I know we got an e-mail about five minutes before we came down here from Mr. Brandon but I haven't had a chance to even read it. So I don't know if that is relevant to your discussion.

MR. RAFFERTY: I took out an equity loan for all the green cards that I have.

MR. SCALI: I have to honestly say, we never really intended it to be a money -- to notify all those abutters is a huge expense. I do know that.

MR. RAFFERTY: We think this case alone may cause the Postal Service to rethink their decision to suspend six-day-a-week service. Bourbon Coffee has subsidized the Cambridge Postal.

MR. SCALI: I'm starting to rethink

that rule. It may be a little overbearing.

MR. RAFFERTY: There has been a plethora of condominiums built in the immediate vicinity here, so I think we're over 300 green cards on this license.

MR. SCALI: I don't think we anticipated that many condominiums.

MR. RAFFERTY: I don't think we had a single person from any of those.

I saw that e-mail as well. I would say it would appear to be a letter of support, "considerable enthusiasm for the project not only on its merits but because of the weariness all feel over the extended period this important building has fallen into." It said unanimous support.

The first paragraph -- I didn't get much beyond it but it said, "unanimously agreed to support it." So my first suspicion was, you know, who wrote this under Mr. Brandon's name. I thought there might be a need to authenticate it, but it would appear to be legitimate.

MR. SCALI: You don't think Mr.

Brandon wrote this?

MR. RAFFERTY: When it said we unanimously support something; we think it's a good idea, I said my first instinct was it must be written by someone else pretending to be Mr. Brandon, because in my experience with him he doesn't support many things. But it would appear to be authentic. That's a failed attempt at humor.

MS. LINT: I got it.

MR. SCALI: I'm a little slow this morning.

MR. RAFFERTY: I noticed the Deputy Chief has had his mouth covered for the last two minutes so I suspect that he was way ahead of you, Mr. Chairman.

MR. SCALI: So are you saying you agree with these conditions?

MR. RAFFERTY: No. I didn't say that at all. Well, I don't disagree. I think what we said at the hearing -- you know, I'm a firm believer that the conditions that matters are established here by the Commission, not by other

groups or entities. What I said at the hearing was that there were certain conditions around deliveries and other things that the Commission saw fit to attach to the prior license, and if the Commission saw fit to do so in this case, we would abide by them. Of course, we would follow the wisdom of the Commission.

We did share with our client the conditions that were on the Bambaci license, and I think in general the ones around trash and delivery, and respect for residential neighbors is fine. There were a few conditions in there around signage and policing this issue with the lot. There's been a two-year hiatus in operation there, so I'm not sure that that's particularly relevant at the time.

You may recall there's an abutting business who also holds a license up there and there has been some concern expressed about patrons in the past of the predecessor business using the lot in a way that the abutter felt wasn't appropriate. There's been no history now for two

years obviously, so I'm not sure that I would think that that's an issue that the Commission needs to weigh in on at this time. We have no rights to park on any abutter's parking lots and we're not seeking to do so.

We expect to enter into a respectful relationship with our fellow licensee and work together to address issues if problems arise. As I said, for two years those patrons have been parking in this lot because the lot has been empty. If there's a need to modify parking behavior, I suspect it may flow in the other direction based on what's taken place the last two years.

MR. SCALI: I think a lot of the conditions from Marino's are not relevant to you because it's a different operation. I think what's going to happen though is you're going to be busier morning and afternoon, which is probably a good thing, and probably about equal or less in the evening, which may be the busier time for the abutting business. The wood stove thing is not going to happen, and there's no entertainment, and

you're not going to be having the function room downstairs at this point in time.

MR. HODGES: I think that's part of the issue that arose with the previous tenant was the late hours in the function room downstairs. I think that's what irritated some of the neighbors.

MR. SCALI: The latest you're going to be open is 11:00 p.m. anyway.

My only concern about this parking issue is the parking lot is not huge where you are. It's not huge. And there are patrons that are going to be coming in and out of that lot from the side street and from the Mass. Ave. area. I'm assuming -- I'm not saying I'm sure about, but I think in the morning, you're going to have probably a lot more traffic coming in because you'll be serving breakfast and probably people going in for coffee and that kind of thing. It may be very busy during that period of time.

I really don't know what the answer is in terms of Mr. Tevan's issues. I know that he wants to protect his parking and his access to his

building and all of that.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: If I can just speak on this. First, I'm pleased to finally see some activity happening up there, and I'm pleased to see some of the corrections to prior complaints from the neighborhood that are going to occur at the facility.

There was testimony raised that I am concerned about. It had something to do with the seating and the parking, and an ISD stipulation that was placed upon the license. Did we look into that at all? Was that a valid issue that was raised?

MR. SCALI: It is valid and Mr. Rafferty corrected the capacity depending on that Zoning issue.

MR. RAFFERTY: By way of accuracy, the way the issue was presented was not correct. What is correct is like with any licensee, the level of capacity must satisfy the zoning requirements for

parking. And in this case, when there was an increased capacity, there was additional parking supply available. That supply is no longer available, but as Mr. Scali noted, the license carries a certain capacity with it. We're not looking to exercise the full capacity.

If at some point in the future, we either obtain the necessary Zoning approval by waiver, or acquire additional space to park in, and the demand is warranted, the issue would come before the Commission. For the moment, there's nothing that ISD has said about this license. It's just that for the capacity that we have listed we satisfy the parking requirement.

MR. TURNER: Thank you very much for that clarification. I just wanted to make sure that we did discuss that. For my own edification, there used to be the lot that would be down in back of Tyler Court, I believe. There was I guess a fenced off section of that whole parking lot that used to be for Marino's; is that still there?

MR. RAFFERTY: No. My sense is that

when they owned the Marino Health Center there that that was parking for the health center.

MR. TURNER: Oh, for the health center. Maybe that's where I got confused.

MR. RAFFERTY: And it would spill over. In night time, the health center wasn't operating. I think they directed patrons or maybe even had a valet.

MR. TURNER: I recollect seeing signage there from Marino's.

MR. RAFFERTY: Right, and that had been the case.

MR. TURNER: It's been so long since I've been in there.

MR. RAFFERTY: We have heard interestingly from a near abutter who said, "Oh, I have spaces," and all that. But at the moment, given the anticipated demand and the existing parking supply, the feeling is that like most restaurants on Mass. Ave. that the off-street supply there is better than many places, and it should be adequate.

MS. LINT: Mr. Chair, I did receive another phone call from Mr. Tevan who wanted to express his frustration. It's his opinion that the problem with the parking is that it's not so much pulling in, but when they pull out that they have to cross over his property. That is pretty much what his concern was.

MR. SCALI: There's an easement for that; am I correct?

MS. LINT: That's correct.

MR. RAFFERTY: Mr. Tevan ought to go to the Land Court because we did provide at the hearing a copy of the survey that clearly spells out where the easement is. In fact, there are cross-easements. We have an easement on his property and he has an easement on this property, not for parking but for egress and access.

It's clearly depicted on the plan so there are no rights to park. He doesn't have rights to park on our property, we don't have rights. But there is what would be commonly referred to as a "shared driveway." You pull into

the right for him, to the left and the rear is for the restaurant.

MR. SCALI: Are there signs up there now for the parking?

MR. HODGES: I think he has an old sign on the side of the building but it's not especially clear at this point.

MR. RAFFERTY: There was the requirement of signs because of the issue, and we were coming right on the heels of an active restaurant, and he had issue. But whatever signage is there is from two years ago from Marino's. I'm not sure it's particularly appropriate.

I think this happens all along commercial corridors. There are people that have parking lots and you have to respect your abutter, and they need to work together. Until such time as an issue is before the Commission, with all due respect, it would seem a bit premature for the Commission to weigh in with anything beyond -- you know, Traffic and Parking regulates parking lots, the DPW controls the sidewalks. If there are

issues, we'll deal with them.

MR. SCALI: I think for the customers' point of view nobody certainly wants to get a ticket or be towed or anything like that.

MR. RAFFERTY: Right, exactly.

MR. SCALI: I see parking lots all over the state. In my own town where I live, you go into a parking lot it says parking for Dunkin' Donuts here, parking for the pizza place here, parking for the Family Dollar Store over here. So I don't think that's a big burden. I just think if you want to label -- I would recommend you label your spaces and he label his spaces, and then the customers have to know.

MR. RAFFERTY: My only point is that seems like good management practices. I'm not sure it needs to be imposed by the License Commission.

One of the more prominent examples is the Changsho Restaurant on Mass. Ave. has a parking lot that abuts it that is not part of that, and they do their customers a service by posting on their doors as well, "If you park next door, you

will be towed." And there's that famous sign, perfunctorily. Mr. Banker owns that lot and you try going in for a Pu Pu platter and parking there, your car won't be there when you come back.

MR. SCALI: I've seen that.

MR. RAFFERTY: They have a parking lot across the street. So you're right, it's not in the interest of the business owner for his customers to have that. Now, why -- Mr. Tevan could employ those methods and we should do the same. His customers should be alerted not to park in our spaces as well. At the moment, I have no reason to think that the self-interest of both licensees won't lead them to that conclusion without being required to do so by the Commission.

MR. SCALI: I think it might be good to have that information on file for anybody in the public that wants to know that we are concerned about the public's use of the space. I think it's protection for you as well to make sure that there's no one from Norton's Beverage using your spaces.

MR. RAFFERTY: Would you be making the same recommendation to Mr. Tevan, that licensee?

MR. SCALI: I certainly would make a recommendation. I couldn't impose it without a hearing on him obviously, but I certainly would make a recommendation to him that he label his spaces.

MR. RAFFERTY: Provide adequate spaces for his customers not to park in our spaces.

MR. SCALI: Definitely.

MR. HODGES: From our perspective for our clients, it would be if you're pulling in to park, it's nice to have the sign right there that says, don't park here if you're Bourbon Coffee.

MR. SCALI: Right.

MR. HODGES: We can put the sign on our side that says please park here, but unless his spaces are marked, then people will pull into those spaces and may not see our sign.

MR. RAFFERTY: He may have a sign -- the more I think about it -- parking only for Buy Right Liquors.

MR. SCALI: I think he does. It's not Buy Right, it's Norton's.

MR. RAFFERTY: It's certainly easy enough to see any signage up there thanks to the illumination that's provided by those thousand-watt bulbs that Mr. Tevan has graciously beautified north Mass. Ave. with.

MR. SCALI: Probably retroactively historically allowed, or something.

MR. RAFFERTY: I think there's a little more time needed to make those historic, but probably heading in that direction. It's well illuminated at night thanks to his sense of aesthetic.

MR. SCALI: Safe, very safe. Any discussion on this, Commissioners?

MR. WILLIAMS: No.

MR. TURNER: Mr. Chair, other than the fact that I agree with Counsel that we shouldn't be placing restrictions on this license as to the parking, because we don't know what is going to happen in the future, other than I hope Counsel has

informed his client that there is the potential of a problem there, and that hopefully things get worked out in an amicable manner.

And of course, if it doesn't then they can certainly come forward to us with any issues that would involve the license at that time.

MR. SCALI: I'm going to respectfully disagree with you and make a motion eventually to put the signs up. Discussion?

MR. WILLIAMS: I think with regard to the signs that we can do nothing but help both situations.

MR. SCALI: A motion then to approve, and this is for the transfer of the license with 144 capacity, banked 66 seats, so that would be a total of 210, only using 144 at this time though, Sunday through Wednesday, 10:00 p.m. closing, Thursday through Saturday, 11:00 p.m. closing, and that the licensee place signs appropriate to the decor and all that labeling the appropriate spaces for your customers.

MR. TURNER: On the motion?

MR. RAFFERTY: Excuse me, we've got a Pledge and an Entertainment license as well.

MS. LINT: I was just going to say that.

MR. SCALI: Let's make a motion on this first, then we'll take a look at this.

Any other discussion on that?

MR. WILLIAMS: No.

MR. SCALI: Moved.

MR. TURNER: Mr. Chair, on the motion?

MR. SCALI: Yes.

MR. TURNER: I don't want to write this into the -- I know the Applicants have stated they're not going to use the basement function room. Should we note that the 144 capacity is for the first-floor only?

MR. SCALI: As part of the premises description there's no basement use.

MR. RAFFERTY: We only sought to license the first-floor.

MR. TURNER: Thank you.

MR. SCALI: That's moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. WILLIAMS: Aye.

MR. TURNER: Aye.

MR. SCALI: Motion then on the pledge of license, which is to Mr. Katis; correct?

MR. RAFFERTY: Correct.

MR. SCALI: Discussion?

MR. RAFFERTY: It's a pledge of stock, a pledge of license. I don't know if the earlier motion included the Entertainment license. It is only background music.

MS. LINT: That comes next.

MR. SCALI: Motion on the pledge, moved.

MR. TURNER: Second it.

MR. SCALI: Seconded. All in favor?

MR. WILLIAMS: Aye.

MR. TURNER: Aye.

MR. SCALI: On the Entertainment application, which is just background music below, at, or above conversation level, CD player.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: Seconded. All in favor?

MR. WILLIAMS: Aye.

MR. TURNER: Aye.

MR. SCALI: Welcome to Cambridge.

MS. LINT: 113 Richdale.

MR. SCALI: Oakdale/Richdale Garage, 113 Richdale Ave. I thought it was you. Funny how I didn't remember your name. Have a seat. Just tell us who you are for the record, please.

MR. LIU: My name is Ling Yi Liu with Oaktree Development.

MR. SCALI: Say your first name again.

MR. LIU: Ling Yi, and my last name is L-I-U.

MR. SCALI: And --

MR. RANDALL: Kevin Randall with Nauset Construction.

MR. SCALI: What happened last hearing? You sent this poor Matt in here to --

MR. LIU: I did.

MR. SCALI: You sent Matt. He couldn't answer any of our questions, didn't know what it was about. He didn't even know the owner's name; couldn't tell us the owner's name.

MR. LIU: He's been with our company for two years but it was a scheduling conflict. I

wanted to express my apologies for the scheduling conflict. So I misunderstood, thinking it was a formality of just --

MR. SCALI: Mr. Randall knows that's a big mistake. He's been here before.

MR. LIU: It was a communication problem between Kevin and I, and that's why we're both here.

MR. SCALI: You are the --

MR. LIU: I'm a principal in Oaktree Development.

MR. SCALI: What's your title?

MR. LIU: I am a partner. We have four partners. I am the partner in charge of Richdale.

MR. SCALI: Mr. Randall, you are --

MR. RANDALL: Well, my title at -- I'm the Vice President of Field Operations. I was on-site at Richdale.

MR. SCALI: How long has this garage been operating?

MR. LIU: Since July?

MR. RANDALL: July of '07.

MR. LIU: Or August of '07.

MR. SCALI: So a good year-and-a-half; right? How come no one applied before?

MR. LIU: Again, we understand that there has to be I guess a gasoline storage permit, and the miscommunication between myself and Kevin was I had thought it was kind of part of the building permit type things. So that was on the contractor side, which I understand now that that to be incorrect. So when Kevin from Nauset went to apply, I guess -- obviously it didn't get through.

My inexperience relative to this gas storage permit, I didn't catch it, and he didn't catch until about a month ago when we were made aware that the owner had to be applying for the permit, which was a hearing for the 24th.

MR. RANDALL: Yeah, and I thought that it was my responsibility and I kind of did a lot of the running around for this when I found out that we needed one of these.

MR. SCALI: You didn't know in '07 to

do that?

MR. RANDALL: Actually, I got --

MR. SCALI: You've been here long enough to know through all the hearings that you've had before.

MR. RANDALL: When I did find out that we needed it, I did take the initiative and I went to see Elizabeth, and got the information. Then I went around and got the different things I needed and then apparently found out we needed more information. So I did more of the leg work with running around to get the --

MS. LINT: My concern is I had definitely been in touch with someone at Oaktree -- and I don't have that information now -- a year ago. They kept telling me okay, okay, okay, we'll do it, we'll do it. So I don't know how poor Kevin got it dumped on him but someone at Oaktree knew.

MR. SCALI: Oakdale.

MS. LINT: Oakdale, sorry.

MR. LIU: It's Oaktree, actually.

MR. SCALI: You don't remember who you

spoke to?

MS. LINT: No.

MR. SCALI: Did you send letters or phone calls?

MS. LINT: Several phone calls.

MR. SCALI: I guess no one really cares at Oaktree when they get a phone call.

MR. LIU: It could be, and again, an explanation isn't necessarily an excuse, but it could be the person you talked to was Kevin Nehrude, not Kevin Randall. He was my project manager for that project, but at that time he was leaving. He left in March of '08. So it could have fallen in those couple of months when he was essentially partly gone and transferring information. It does sound like that timeframe. Maybe exactly when -- between December and March he was at our place part-time already.

MR. SCALI: I vaguely remember it being a woman you spoke to.

MS. LINT: I thought it was a woman.

MR. LIU: If it's a woman then it's

Gwendolyn Noyse.

MS. LINT: That sounds right.

MR. LIU: She is the partner -- we have four partners. She was one of the partners. She has in general taken care of the permitting where I have taken care of kind of making sure construction and the whole project moves forward. Maybe that's what happened.

MR. SCALI: She knows licensing very well. She's been in the City for very long time.

MR. LIU: So it probably fell between the two of us.

MR. SCALI: Ms. Noyse knows the laws and the rules.

MR. TURNER: Mr. Chair?

MR. SCALI: Yes.

MR. TURNER: The only concern, one of the concerns I had, did Mr. Elansky pass along about the basement door?

MR. LIU: The door and the panic hardware that's required.

MR. TURNER: So you're aware of that?

MR. LIU: We are aware. I looked at it personally, and yes, I've asked Nauset to make that correction. It seems like there was a mistake in the hardware schedule and Nauset just put what the hardware schedule is. But obviously it needs panic hardware there and that's going to be done immediately.

MR. TURNER: Thank you. I have no issues.

MR. SCALI: Concerns, Superintendent?

MR. WILLIAMS: Just the fact that the business has been there for a year-and-a-half, and it's just coming forward now. That would be my only concern.

MR. SCALI: Do we have the power -- I think it's a fining process we have as part of the ordinance.

MS. LINT: I'd have to look at the ordinance.

MR. SCALI: There is a fining process. I think it's \$100 as I recall.

MS. LINT: Can you retroactively

assess?

MR. SCALI: Assuming we do approve the application, there would be retroactive fees from '07, '08. And '09 won't come up until May; right? Yeah, so it would be '07 and '08.

Any discussion?

MR. WILLIAMS: No.

MR. SCALI: I'll make a motion then that -- do you have abutter notifications?

MR. LIU: They were supposed to come in. We did notify and have it certified.

MS. LINT: I don't have them.

MR. LIU: I can have them delivered.

MR. SCALI: I need to see the affidavit signed that the abutters were notified.

MR. LIU: Right.

MR. SCALI: I'm going to make a motion that we continue this matter then until we see the abutter notifications.

MS. LINT: I don't have the affidavit.

MR. LIU: I know they were sent out. I saw them sent out.

MR. SCALI: You need the affidavit and the cards.

MR. LIU: Right.

MR. SCALI: Motion to continue to our February 24th. Is that our next hearing?

MS. LINT: February 10 is the next hearing.

MR. SCALI: But that's a busy agenda.

MS. LINT: It's very busy.

MR. SCALI: February 24 is our next hearing date.

MS. LINT: February 10.

MR. SCALI: Motion to continue to February 24, 6:00 p.m. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. WILLIAMS: Aye.

MR. TURNER: Aye.

MR. SCALI: We'll see you on the 24th. Make sure you do the abutter notifications. Make sure you get them in to us. If you haven't done them, you have to start all over again.

MR. LIU: Just give them to you?

MR. RANDALL: Should we give them to Ms. Lint?

MR. SCALI: The affidavit and the cards should go to either Chris or to Ms. Lint.

MR. SCALI: Thank you.

MS. LINT: I think that's everything.

MR. SCALI: Marco's Pizza we already did; right?

MS. LINT: Yes.

MR. SCALI: And ATO is continued indefinitely, Alpha Tau Omega. It's continued indefinitely.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. TURNER: Out of curiosity, we cancelled a bunch of licenses for not being present for the Disciplinary. Have we heard from any of those establishments?

MS. LINT: We heard from everybody. Some were closed. Corporate Cafe is out of business. There was an explanation on all of them.

MR. TURNER: So we're satisfied?

MS. LINT: We're good.

MR. SCALI: Ms. Armstrong was all set?

MS. LINT: Yes.

MR. TURNER: Thank you.

MR. SCALI: Any other items for discussion, Superintendent?

MR. WILLIAMS: No.

MR. SCALI: Motion to adjourn. Oh, first of all, I forgot to make the motion to accept the minutes. They were e-mailed to us this morning.

MS. LINT: Chris said there was no attachment so he was e-mailing Michelle. And I believe that's one of the e-mails that my inbox for some reason was not "inboxing."

MR. SCALI: We already voted the January 6 minutes in; right? So this would be for January 20.

MS. LINT: I think we need to do that at the next hearing.

MR. SCALI: Motion to adjourn. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. WILLIAMS: Aye.

MR. SCALI: Thank you all.

(Whereupon, the deposition was
concluded at 11:10 a.m.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY, SS

I, Anne Ouellette, a Professional Court 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 these matters.

I further certify that the proceedings hereinbefore set forth is a true and accurate transcription of my record to the best of my knowledge, skill and ability.

In Witness Whereof, I have hereunto set my hand this 3rd day of February, 2009.

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