

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION GENERAL HEARING

LICENSE COMMISSION BOARD MEMBERS:

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

STAFF: Elizabeth Y. Lint, Executive Officer

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

DATE: Tuesday, November 1, 2011

TIME: 6:08 p.m. to 8:44 p.m.

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P R O C E E D I N G S

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

This is the License Commission General Hearing, Tuesday, November 1, 2011 at 6:10 p.m.

We're in the Michael J. Lombardi Municipal Building, 831 Mass Ave, Basement Conference Room.

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

APPLICATION OF RJ GOURMET

MS. LINT: We're going a little out of order tonight. First, we'll take the application of RJ Gourmet, LLC d/b/a RJ Gourmet, Mike Fiore, manager has applied for a common victualer license to be exercised at 441 Cambridge Street.

Said license, if granted, would allow food and nonalcoholic beverages to be sold, served and consumed on said premises with an occupancy of 20 (15 seats with 5 standing). The hours of operation will be 6:00 a.m. to 7:00 p.m., Monday through Saturday.

COMMISSIONER MICHAEL GARDNER: Anybody here for that? Please come forward. Say and spell your name for the record.

And for purposes of the audience, there was some brief colloquy up here before the meeting formally opened essentially to discuss the schedule in question as Mrs. Lint has described.

So you can take a seat, if you want.

MIKE FIORE: Okay.

CHAIRMAN MICHAEL GARDNER: So please tell us a little about your plans and business.

MIKE FIORE: And the plan for the business is to have a coffee shop, coffee center

and pastries. There's no open flame, there's no stove, so it would just be pastries and coffee.

CHAIRMAN MICHAEL GARDNER: I think I saw on the menu bagels. How would that be -- would the bagels be heated? What is the situation there?

MIKE FIORE: Toasting of bagels, yeah.

CHAIRMAN MICHAEL GARDNER: And describe for us briefly your experience in this kind of business in the past.

MIKE FIORE: I worked for the Middle East in Cambridge for about four years. So I don't have any direct coffee shop experience. But I worked in the restaurant there on the managerial side.

So, my experience is more with that than specifically with the breakfast coffee places.

CHAIRMAN MICHAEL GARDNER: And tell us about your arrangements for trash pickup and disposal and deliveries.

MIKE FIORE: The company that's been recommended to me, and I've heard the most about, is Go Green. It seems like they're -- what they do is they come and they look at your business and fit you with what you need, your bin sizes you need and the scheduling that would most fit what you're doing.

So, that's the one that I've heard the most about and would probably be starting with.

CHAIRMAN MICHAEL GARDNER: Where is the trash pickup -- where will your receptacles be?

MIKE FIORE: There is an area in the back that would make sense to me at least. I'd want to hear what they would say about where the best place for the bins would be. That's where I would place them.

CHAIRMAN MICHAEL GARDNER: What was in this space before?

MIKE FIORE: For two years I believe it was a BMX biking apparel place. And there was a

woman, I think in the past year or so, who began work structurally, I think, with some of the permitting stuff to turn it into a cafe. So, she put in a bar. She put in a service counter. She put in commercial sinks. And she got sick, unfortunately. So, the place, when I looked at it, was set to be a cafe.

CHAIRMAN MICHAEL GARDNER: Do you anticipate mostly takeout or...?

MIKE FIORE: I anticipate, to begin with, having it be a sit-down. And, eventually, I would like to have that option, if I applied -- you know, I am planning on applying for the fast food permit separately, but to begin with, it's going to be a sit-down restaurant.

GERALD REARDON: Are you planning on doing any baking on the premises?

MIKE FIORE: No baking. Toasting bagels would be the only heating of food.

GERALD REARDON: Just coffee machines?

MIKE FIORE: Coffee machines, yeah.

GERALD REARDON: Okay.

ROBERT HAAS: So I'm just -- did it actually open as a cafe or it just never got a chance to get open?

MIKE FIORE: It never opened, yeah. It was open as BMX place and then the woman, she -- I don't know how far long she got with you guys or if she did at all. But, yeah, she did a lot of work on the place structurally to make it into a cafe, but it never opened as one.

ROBERT HAAS: Do you see any problems with parking or vehicle traffic?

MIKE FIORE: I don't. It's all metered parking on Cambridge Street there, so I don't think there would be problems with that.

CHAIRMAN MICHAEL GARDNER: Let me expose my ignorance.

Ms. Lint, do you need a different license to be able to buy coffee and walk out of the

building with it than to buy the coffee and sit down?

ELIZABETH LINT: No.

CHAIRMAN MICHAEL GARDNER: So the license that he's applying for would allow him to sell take-out coffee?

ELIZABETH LINT: Yes.

CHAIRMAN MICHAEL GARDNER: You are aware of that?

MIKE FIORE: Yes.

ROBERT HAAS: So when you said something about fast food, you plan on changing your business plan or...?

MIKE FIORE: When I went to the Zoning Department, he gave me the outlines of what would be allowed under the license that I'm applying for, and he said that a lot of it had to do with having china as opposed to paper plates and having -- the figure he gave me was 80 percent of the food and drink needed to be consumed on the

premises to fall under the license that I would have, which is how I'm intending to open.

ROBERT HAAS: So, you are not planning on changing your plan, you're just going forward?

MIKE FIORE: No. I mean, if I applied for that license and got it --

ROBERT HAAS: Right.

MIKE FIORE: -- at some point I could see wanting to have the option of not having to adhere to that. But to open, it would be, you know, that's what I'm intending to do.

CHAIRMAN MICHAEL GARDNER: How much staff do you anticipate having?

MIKE FIORE: To start, it's going to be me and two other people, so probably, you know, five people in total.

CHAIRMAN MICHAEL GARDNER: Other questions?

ROBERT HAAS: No other questions.

GERALD REARDON: No other questions.

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

So how big a leap do you think this is for you in terms of your experience?

MIKE FIORE: I think it's a pretty big leap. I've been -- there's a company called Barismo that's in Arlington that -- they do -- not only do they -- they're a wholesale coffee roaster, but they do consulting too, so there's someone -- the guy who owns the company kinda comes in and he tells you how much coffee he thinks you'll need.

He kinda fits the equipment and tells you what the best plan would be, which I'm leaning heavily on him and his experiences to do that.

So, that partnership, I think, is going to kind of ease that transition for me, but admittedly, right, I don't have a lot of experience in the coffee world.

ELIZABETH LINT: I have letters of support. Councilor Toomey writes in support of the application. He says that "The Cambridge Street corridor continues to improve with empty storefronts being filled with new kinds of businesses. A new cafe is a welcomed addition for the space. Many residents have expressed a desire for a cafe in the area. So, I feel it will be very well received in the neighborhood."

There's also a letter from the East Cambridge Business Association in support of the application and they say "As members of the business community in East Cambridge, we have heard time and again that there was a desire by the residents to see a cafe open along Cambridge Street in East Cambridge. A cafe will help draw additional foot traffic to the area. Many other businesses in the vicinity could benefit from an increase in foot traffic. It is encouraging to see the vacancies along the street becoming home

to new independent businesses, and we hope the addition of RJ Gourmet will help continue this trend."

CHAIRMAN MICHAEL GARDNER: So I'm inclined to make a motion to approve, subject to a six-month review, just based on the level of experience you have so far.

ROBERT HAAS: You have notices and things?

MIKE FIORE: So there were 11 in total, ten.

ROBERT HAAS: I got back ten.

GERALD REARDON: To be clear, you haven't had your final signoff in terms of inspections or anything as of yet?

MIKE FIORE: I have not. I don't know -- I don't know if you want to see it -- but I'm enrolled in First to Serve, Inc. I'm two weeks right after my classes. I have the receipt to show that, if you want to see it.

CHAIRMAN MICHAEL GARDNER: So I'd make a motion to approve the application subject to the completion of all of the additional and appropriate signoffs and subject to a six-month review of the operation of the establishment.

GERALD REARDON: Seconded.

ROBERT HAAS: Seconded:

CHAIRMAN MICHAEL GARDNER: A motion having been made and seconded, all those in favor signify by saying "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: None opposed.

Wish you well.

MIKE FIORE: Thank you very much.

CHAIRMAN MICHAEL GARDNER: Good luck with your business.

APPLICATION: ONA II CAMBRIDGE, LLC

ELIZABETH LINT: Application, ONA II, LLC

care of Cabot, Cabot & Forbes has applied for a garage license with additional flammables for storage for 251 autos, 2510 gallons of gasoline in the tanks of autos only and 40 gallons of miscellaneous Class 1 at 70 Fawcett Street.

CHAIRMAN MICHAEL GARDNER: Good evening. If you both would state and spell your names for the record and your affiliations.

JAMES RAFFERTY: Good evening, Mr. Chairman, and members of the Commission. My name is James Rafferty, R-a-f-f-e-r-t-y. I'm an attorney at the law firm of Adams & Rafferty located at 130 Bishop Allen Drive.

I'm appearing this evening on behalf of the applicant, Cabot, Cabot & Forbes. And seated to my left is John Sullivan, S-U-L-L-I-V-A-N and he's a manager with Cabot, Cabot & Forbes.

CHAIRMAN MICHAEL GARDNER: Thank you. So could tell us how this is different from what exists now?

JAMES RAFFERTY: Nothing exists now.

This is an application for a garage and gasoline license for the -- for a parking garage to be constructed at this location as part a multifamily residential project. The site currently on Fawcett Street is -- contains a one-story light industrial building that's been vacant for about four years.

Cabot, Cabot & Forbes recently acquired the building. The Planning Board about four months ago issued a special permit to allow for the construction of 428 dwelling units in two buildings.

The application this evening is for the garage in the first phase of the project, and the application or the license reflects the number of vehicles in the garage multiplied by ten gallons as is the policy of the Commission. So it's for the storage of that hazardous fuel.

The construction building permit is

pending at the Inspectional Services Department.

The first step in the project would be the demolition of the existing structure.

Interior demolition has been completed. Exterior demolition could start within a few weeks.

And, hopefully, we proceed to construction from that point.

This is a license necessary to make the garage operational. It obviously won't be ready within six months typically associated with approval here, but construction lenders like attorneys to write opinions that say all necessary permits and approvals have been obtained to authorize the construction.

So, we oftentimes apply for this license at this stage of the process before there's a closing on the construction financing so that we can check this box as well.

So it would be likely more than a year of construction before this garage would become

operational. It's solely accessory parking for the residents of the multifamily building.

COMMISSIONER MICHAEL GARDNER: Do you know how many residents this garage is scheduled to accommodate?

JAMES RAFFERTY: I know how many parking spaces are in the garage.

JOHN SULLIVAN: 260 units in this building, 251 parking spaces.

JAMES RAFFERTY: 251 parking spaces in the garage, so the license reflects the 251.

GERALD REARDON: So could you give me an idea of what the 40 gallons of miscellaneous is anticipated?

JOHN SULLIVAN: Lawn mover, snowblower. I sat down with Lieutenant Bonkowski and he kinda came up with that number.

GERALD REARDON: Is there going to be a diesel generator as part of the construction?

JOHN SULLIVAN: No.

GERALD REARDON: Total height is what?

JOHN SULLIVAN: Total height of the building? Five stories.

GERALD REARDON: The magical 68-1/2 feet and all that?

JAMES RAFFERTY: Well, we did early on meet with Fire Prevention and Deputy Bonkowski, who was very helpful, because it is this new eighth addition construction where it's not masonry or steel, but it's wood frame, but it's permitted.

So we have -- I think we pretty well vetted this, not just the garage, but the entire structure with Fire Prevention and Captain Cahill was closely involved in the review.

ROBERT HAAS: Is this below grade or...?

JOHN SULLIVAN: Below grade.

JAMES RAFFERTY: Technically at grade.

JOHN SULLIVAN: At grade.

JAMES RAFFERTY: It's just a few feet,

you enter it, but the building is built on the podium of the garage. It's bermed up in a way that it's not perceived as above grade, but probably goes down maybe a foot or two.

JOHN SULLIVAN: 7 feet.

ROBERT HAAS: So it's not going to be an underground garage. It's going to be -- they're like going to construct half this garage area as parking --

JOHN SULLIVAN: You drive in and you go down a ramp maybe seven feet.

JAMES RAFFERTY: It's kind of half a story, not a full story.

ROBERT HAAS: You said this is Phase I. There's more? There's another parking --

JAMES RAFFERTY: There's a second building approved under the special permit. But we're not seeking the building permit nor the license for that garage at this time, but that would contain an additional 220 --

JOHN SULLIVAN: I think it's under that. It's like 180. There's 168 units in that building, approximately maybe 150 parking spaces, a similar ratio that we have in Building 1.

CHAIRMAN MICHAEL GARDNER: And it's in two phases, so there's this and then there will be the second phase will be over --

JAMES RAFFERTY: Well, it's a two-structure project. We're permitted to phase construction. At this point the expectation is that -- you know, they're seeking the building permit and this license for the first building. The likely thinking is prior to the completion of this building, construction will commence on the second building, so...

But the Planning Board special permit permits a phasing schedule. So you'll get to see us a second time on this.

GERALD REARDON: Make a motion to approve.

ROBERT HAAS: Is this condominiums or is it apartments?

JAMES RAFFERTY: At the moment it's contemplated as rentals.

ROBERT HAAS: Rentals.

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

(No response.)

Seeing none.

GERALD REARDON: I make the motion to approve the application for 251 autos, 2510 gallons of gasoline in tanks and 40 gallons of miscellaneous Class 1 at 70 Fawcett Street, Phase I.

CHAIRMAN MICHAEL GARDNER: Is that subject to signoff on all other approvals?

GERALD REARDON: All appropriate permits and paperwork as required.

JAMES RAFFERTY: Mr. Chairman, may I be

permitted an inquiry? In light of the understanding that we're not going to be ready to have the license issued within six months, could this approval be for a year and not have to come back?

CHAIRMAN MICHAEL GARDNER: I was going to raise that issue in a minute. See if we got a second.

Do you have any issues --

GERALD REARDON: No.

CHAIRMAN MICHAEL GARDNER: -- with respect to granting the license with the expectation that it would be completed within a year as opposed to --

GERALD REARDON: No. I was going to ask counsel what they thought the expectation of that construction would be.

JAMES RAFFERTY: I think the reality is probably a little more than a year, so if the Commission were so inclined, I think 18 months.

I think we're fine coming back in a year probably is fine.

It's just very certain it won't be six months and highly unlikely would be a year, but whatever period of time beyond six months the Commission is comfortable with, we would appreciate.

CHAIRMAN MICHAEL GARDNER: I would offer the amendment to your motion if you're so inclined, Chief, to say that we hold the permit for a year, and then subject to reporting back by letter at least with respect to the status --

GERALD REARDON: Okay.

JAMES RAFFERTY: Thank you.

CHAIRMAN MICHAEL GARDNER: -- in 11 months or so.

ROBERT HAAS: Seconded.

CHAIRMAN MICHAEL GARDNER: Motion having been made and seconded to approve the license for construction of this garage for 12 months with a

report back on status within 11, all those in favor signify by saying "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Aye.

None opposed.

Good luck with your process.

JAMES RAFFERTY: Thank you very much.

APPLICATION: ALL ASIAN FOOD CORPORATION

ELIZABETH LINT: All Asian Food Corporation d/b/a Beijing Tokyo Teriyaki Cafe, Derek Chan, manager has applied for a common victualer license to be exercised at 3 Cambridge Center, MIT Coop Food Court. Said license, if granted, would allow food and nonalcoholic beverages to be sold, served and consumed on said premises. The hours of operation will be 7:00 a.m. to 7:00 p.m. seven days per week.

DEREK CHAN: Good evening. How are you

doing?

COMMISSIONER MICHAEL GARDNER: Good,
thanks.

If you could just state and spell your
name for the record.

DEREK CHAN: Derek Chan, D-E-R-E-K. Last
name Chan, C-H-A-N.

CHAIRMAN MICHAEL GARDNER: And tell us
about your plans, sir.

DEREK CHAN: Well, I just, you know,
currently, you know, the restaurant, the fast
food restaurant is in operation. So basically
I'm taking over. And right now, I'm currently
serving all the Chinese and Japanese sushi.
Those are all fast food takeout.

So I would, you know, try to make it more
organic and natural and send out coupons, stuff
like that, to promote my business.

CHAIRMAN MICHAEL GARDNER: So I think I
walked through this space a couple days ago and I

saw one of the spaces was boarded up. That's not it?

DEREK CHAN: No, no.

CHAIRMAN MICHAEL GARDNER: There's an ongoing operation right now?

DEREK CHAN: Yes, yes. The one that you see, you know, like the Chinese one and the Japanese sushi one called Beijing Tokyo Teriyaki Cafe. That's the one I'm taking over. The one next to it is boarded up, you know, it's a pizza place. That went into bankruptcy.

CHAIRMAN MICHAEL GARDNER: So, I'm not sure, is this a transfer of a license?

ELIZABETH LINT: We don't transfer. It's a new license for that new location.

CHAIRMAN MICHAEL GARDNER: So you have bought the business, is that my understanding?

DEREK CHAN: Well, yeah. Well, I'm a partner with that. My other partner he go back to China, so he's no longer interest, so I'm

buying it from him.

CHAIRMAN MICHAEL GARDNER: Tell us about your experience.

DEREK CHAN: I have 30 years' experience in the fast food restaurants, you know, both Chinese restaurant and also Japanese, you know, type restaurant in the past, you know, 30 years. And also when I was young, I was working in Kentucky Fried Chicken and McDonald's and stuff like that. So I am very familiar with the operation.

CHAIRMAN MICHAEL GARDNER: So prior to the change that you're proposing here, have you been involved in the operation of the business in its earlier form?

DEREK CHAN: I have been there five years.

CHAIRMAN MICHAEL GARDNER: You have been in that space five years?

DEREK CHAN: Yes, five years, yes. A

partner, you know, with other owner.

CHAIRMAN MICHAEL GARDNER: And just briefly, how is the business going to change under your new vision?

DEREK CHAN: Well, I think I will definitely make it more organics and natural and special Chinese food. A lot of people complain about a lot of grease and sodium. I would try my best to reduce those for health and that will improve the food. I think a lot of people in these days are interested in green and natural and organic. That's my goal, you know, to do that. I think it's not only the business, but health, you know, for the general public is very important.

CHAIRMAN MICHAEL GARDNER: Complaints about the other operation at all?

ELIZABETH LINT: No.

CHAIRMAN MICHAEL GARDNER: Are there regular inspections from --

ELIZABETH LINT: Yes.

CHAIRMAN MICHAEL GARDNER: -- ISD?

ELIZABETH LINT: Mm-hmm.

ROBERT HAAS: Are you currently trans fat free?

DEREK CHAN: I'm sorry?

CHAIRMAN MICHAEL GARDNER: Are you currently trans fat free in terms of your --

DEREK CHAN: Yes. We make the oil, yes.

GERALD REARDON: So does your lease change with MIT on this at all, or are you all set with them in terms of --

DEREK CHAN: I'm all set with them.

CHAIRMAN MICHAEL GARDNER: Other questions?

ROBERT HAAS: No other questions.

GERALD REARDON: No questions.

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

Seeing none.

ROBERT HAAS: I make a motion to approve the application.

GERALD REARDON: Seconded.

CHAIRMAN MICHAEL GARDNER: A motion having been made and seconded to approve the application for this license, all those in favor signify by saying "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Aye.

None opposed.

So good luck with your new plan.

DEREK CHAN: Thank you so much.

APPLICATION: NPPE CORP D/B/A KELLARI

ELIZABETH LINT: Application continued from September 20 and October 18, 2011, NPPE Corporation doing business as Kellari, Penny Kokkinos Hamourgias, manager, has applied for a

new alcoholic beverages as a restaurant license and entertainment license at 288B Green Street with a seating capacity of 150. Proposed hours of operation are 11:00 a.m. to 2:00 a.m. Tuesday through Sunday and closed on Mondays.

Applicant is also applying for an entertainment license to include dancing by patrons and live musical instruments and/or vocalists with amplification.

CHAIRMAN MICHAEL GARDNER: Thank you.

Well, Mr. Panico, could you identify yourself for the record?

VINCENT PANICO: Vincent Panico,
P-A-N-I-C-O. I'm the attorney for the petitioner.

I believe at the last meeting, Mr. Commissioner, we were requested to deliver evidence of the capacity of the site and also a willingness of the Greek American Political Club to transfer 50 of their seats to the new

restaurant.

Also, I think the announcement for this hearing says that the 2:00 a.m. license is being requested, and I think at the last meeting we pretty well indicated that.

CHAIRMAN MICHAEL GARDNER: We formally have it still as a 2:00 a.m. We have had a conversation. We'll be making a motion about what to do.

So what's developed since the last meeting we had, which was on October the 27th; is that right?

VINCENT PANICO: Just those two documents were requested and they have been delivered, as far as I'm aware.

ELIZABETH LINT: Correct.

CHAIRMAN MICHAEL GARDNER: What are the documents, Ms. Lint?

ELIZABETH LINT: One is the architect's drawing, which indicates the capacity and the

other is a letter from the Greek American indicating their willingness to give up 50 of their seats.

CHAIRMAN MICHAEL GARDNER: In reviewing the hearing from, I think, October the 18th, Mr. Panico, I noted that I believe as -- perhaps the president of the Greek American Club had said that they never seat more than 50 people on the first floor of the club -- we understand that to be the middle floor -- and they were willing to give up 50 seats for downstairs.

In general -- my generalized view was if they only seat 50, I don't understand why they need 257 seats, but...

ELIZABETH LINT: That's not the -- we have it all corrected now.

CHAIRMAN MICHAEL GARDNER: So, please summarize for us what the license is showing.

ELIZABETH LINT: The floor that the club is on has a capacity of 100. It's the top floor

that has 257, when there are tables and chairs,
and 340 when there are no tables and chairs, and
the basement, according to the architect's
drawing, could handle 189, I believe.

VINCENT PANICO: Yes.

CHAIRMAN MICHAEL GARDNER: So what's on
-- should we grant a license of 150 for this
business --

VINCENT PANICO: Basement.

CHAIRMAN MICHAEL GARDNER: -- in the
basement with 50 seats coming away from the club?

ELIZABETH LINT: Uh-huh.

CHAIRMAN MICHAEL GARDNER: What will be
the maximum floor by floor that would be approved
by that action?

ELIZABETH LINT: It would be 150.

CHAIRMAN MICHAEL GARDNER: In the
basement.

ELIZABETH LINT: 150 and then 257.

VINCENT PANICO: I'm not sure that number

for the first floor of the club is accurate.

ELIZABETH LINT: That's what I have.

CHAIRMAN MICHAEL GARDNER: We're joined at the table by...?

BERNARD GOLDBERG: Attorney Bernard Goldberg, 629 Massachusetts Avenue.

CHAIRMAN MICHAEL GARDNER: If you could, Mr. Goldberg, speak on the issue. We have this letter from the Secretary to the Greek American Political Club here.

Will you summarize for us what you believe that means with respect to the capacities floor by floor?

BERNARD GOLDBERG: It was my understanding -- I do agree with regard to Ms. Lint's capacity figures for the basement level, if you will, and for the second level. However, with regard to the capacity with regard to where the club is, it was my understanding that the capacity was 200.

CHAIRMAN MICHAEL GARDNER: Where the club is?

BERNARD GOLDBERG: Where the club is.

CHAIRMAN MICHAEL GARDNER: The middle floor or the dance?

BERNARD GOLDBERG: Well, no, below the dance floor.

CHAIRMAN MICHAEL GARDNER: The first floor?

ELIZABETH LINT: You are correct. You are correct. I'm sorry.

CHAIRMAN MICHAEL GARDNER: It was 200?

BERNARD GOLDBERG: Yes.

CHAIRMAN MICHAEL GARDNER: So there would be 150 in the basement, 150 on the first floor the middle floor, the club floor?

BERNARD GOLDBERG: Yes.

CHAIRMAN MICHAEL GARDNER: And 257 on the top floor?

BERNARD GOLDBERG: Yes. Standing. I

think there's a different figure for standing capacity.

ELIZABETH LINT: Correct.

CHAIRMAN MICHAEL GARDNER: 340?

BERNARD GOLDBERG: Yes.

CHAIRMAN MICHAEL GARDNER: So we could have 340 and 300, we could have 640 people there?

BERNARD GOLDBERG: Well, maximum, of course.

CHAIRMAN MICHAEL GARDNER: Yeah.

BERNARD GOLDBERG: Based upon the occupancy, yes. And the 300 and maximum on the third floor would be 347 -- 327, I don't recall, but -- yes, so you could have a maximum on the basis of the occupancy allowable of 600.

GERALD REARDON: Well, 257 seated -- I mean, 557 seated actually.

BERNARD GOLDBERG: Okay. Fine.

CHAIRMAN MICHAEL GARDNER: As I understood it, they're very seldom seated on the

top floor, it's all dancing?

BERNARD GOLDBERG: Well, it's all dancing. And, as I mentioned in the hearing of last week and the prior week, it's scattered and doesn't start until 8:30 or 9:00, and there are different people coming in exercising and then leaving, and another particular group coming in.

So I don't think it has ever reached the maximum of 257 at one time.

CHAIRMAN MICHAEL GARDNER: I don't think I ever heard the word "exercising" before. Is this a dance exercise? Please advise us.

BERNARD GOLDBERG: It's salsa-type of dance and I would assume that when the arms move and the legs move --

CHAIRMAN MICHAEL GARDNER: But it's dancing, it's not organized exercise.

BERNARD GOLDBERG: Well, it's not an exercise location as such.

CHAIRMAN MICHAEL GARDNER: Which, you

know, at least brings to mind classes and structured --

BERNARD GOLDBERG: No, no. It's not that. Although I do have instructions with regard to salsa.

CHAIRMAN MICHAEL GARDNER: And so the 200 -- they would be giving up 200 seats for the club that would be -- they would have 150 left?

BERNARD GOLDBERG: They'd be giving up 50.

CHAIRMAN MICHAEL GARDNER: I'm sorry. I apologize.

BERNARD GOLDBERG: They have 150 now.

CHAIRMAN MICHAEL GARDNER: Mr. Panico, the proposed hours of operation -- well, the days of the week that are proposed are Sunday through Saturday?

VINCENT PANICO: Tuesday through Sunday.

CHAIRMAN MICHAEL GARDNER: Tuesday through Sunday, yeah.

And the application was originally for 2:00 a.m. for all six of those days, and I understand that you -- you understand the policy of the Commission with respect to not granting 2:00 a.m.'s and generally even when we do, they are Thursday through Saturday or the Sunday before a holiday?

VINCENT PANICO: Yes.

CHAIRMAN MICHAEL GARDNER: Have you essentially amended your application or are you recommending a Tuesday through Sunday operation with a 1:00 a.m. closing --

VINCENT PANICO: Correct.

CHAIRMAN MICHAEL GARDNER: -- for all six days?

VINCENT PANICO: Correct.

CHAIRMAN MICHAEL GARDNER: What kind of start time?

VINCENT PANICO: Mr. Chairman, unless the -- I heard some magic words there, unless the

Board, in its wisdom, feels that maybe on Thursday, Friday and Saturday, but we had discussed the 1:00 a.m. and agreed to it.

CHAIRMAN MICHAEL GARDNER: Typically, we don't approve a new application to 2:00 a.m. for any days of the week --

VINCENT PANICO: That's fine.

CHAIRMAN MICHAEL GARDNER: -- until we have seen some track record. And it's 11 a.m. start?

VINCENT PANICO: Yes.

CHAIRMAN MICHAEL GARDNER: Other questions?

ROBERT HAAS: So, Mr. Goldberg, just so I understand now, with the proposed modification, you would have 50 on the first floor and then 257 still or what would it be per your license?

BERNARD GOLDBERG: The capacity would remain the same on the second level.

The first level has 2 hundred and they

would be reduced by 50, being a total of 150.

And the bottom floor would be 150.

GERALD REARDON: So we have the basement at 150, the first at 150 and the second at 257?

BERNARD GOLDBERG: Yes.

CHAIRMAN MICHAEL GARDNER: Or 340 if the seats are out.

BERNARD GOLDBERG: If, in fact, they have the standing room only.

ROBERT HAAS: So how do you regulate -- this is a little bit off base -- but how do you now regulate if you have got allowed capacity for liquor at 257 and you're going to allow for 340, how do you regulate the amount of people that will be drinking at any given time?

BERNARD GOLDBERG: Well, I don't know how you regulate it, except to make sure that they're all over the age of 21, and at no time is there, in my opinion, and based upon my knowledge of what goes on there, at no time do you have 257

people drinking at the same time.

As a matter of fact, I don't think many of them do drink while they are dancing. If they do drink, they may have a Coke Cola or a soft drink and maybe a beer, but so far as hard liquor is concerned, I don't believe they have a great many sales of hard liquor.

So far as the bottom floor is concerned, Attorney Panico is correct in the sense of they never rise at that 150 level so far as the membership is concerned.

And with regard to the bottom floor, the bottom level, I don't know what the capacity would be at any one time, except that they could have 150 people there for dinner.

ROBERT HAAS: So my question to you, Ms. Lint, is: With respect to the motion that the Board took for the American Greek Club, do they have to come back in now for us to adopt the change in their capacity for the liquor license,

or can we do that tonight?

ELIZABETH LINT: We can do that.

ROBERT HAAS: Okay.

GERALD REARDON: So the net sum here is there would be an increase of 100 seats.

BERNARD GOLDBERG: Yes, total capacity.

VINCENT PANICO: Chief Reardon, I had commented at the last hearing, these salsa dancers are a particular breed, and they're not drinkers, they go to dance, and many of them don't even drink. They just want to go there and dance.

So I don't think alcohol consumption is going to be a problem on the second floor.

CHAIRMAN MICHAEL GARDNER: Some of our concerns just related to the mass group of people who conceivably could be there, and then be leaving at near or the same time and its impact on the community, parking, noise in the late evening.

VINCENT PANICO: If it ever reached that critical mass, I strongly doubt it ever would.

ROBERT HAAS: I want to make sure there's enough controls in place, though, so that you can actually cap it at the appropriate number. So I'm not sure -- again, this is a little off subject, but I just want to make sure...

BERNARD GOLDBERG: I would think it would be difficult to control, although Attorney Panico has indicated to me that they're going to have signs, if I'm not mistaken, signs indicating that be aware of leaving and not making any noise to disturb the public.

So far as the club, I very seldom do I know that they have 150 based upon their membership and it's scattered throughout the city as well as the other communities, and the capacity has never reached a massive, what's suggested, based upon 150 capacity. I can't say that certainly, but it's there.

CHAIRMAN MICHAEL GARDNER: Mr. Goldberg, I just ask the question, if you know, who is responsible for managing ID checks and body counts for the Salsa Club?

BERNARD GOLDBERG: Well, they have a manager at the Salsa Club as well as a manager downstairs, assistant manager, on the interchange to make sure that they're not in violation of the legal limit.

And they -- my understanding, is that at this moment in time over the past two or three years, they have not had an incident of serving liquor to a minor.

CHAIRMAN MICHAEL GARDNER: Any history there, Ms. Lint?

ELIZABETH LINT: None at all and there's been no issues with over capacity either.

CHAIRMAN MICHAEL GARDNER: Any other questions?

ROBERT HAAS: No questions.

GERALD REARDON: I guess the standing room only thing on the second floor bothers me. That's -- I'm more inclined to hold the capacity to what is here.

BERNARD GOLDBERG: What they do, Chief, is they have the capacity and they remove the tables, so there's nobody sitting down, and as a result of which, my understanding, they've never reached 300-and-some-odd people. So they don't have anybody sitting down, so...

GERALD REARDON: I guess, counselor, I understand they move the tables and that number goes up.

I guess I would be more happy with a finite number, period, that someone could put their finger on and say "This is the maximum, this is the limit, we shut people off" versus this moving target because, you know, that number of bodies on a second floor and stuff, you got egress issues, and my job is to make sure that

people are safe and having a good time.

And a lot of times, they're not thinking about being safe, they're thinking about having a good time and we have crowd control issues with the law now. Crowd control managers that have to be in place. It's much easier, you know, to deal with a finite figure than...

BERNARD GOLDBERG: Well, I tend to agree with you in that regard, and it was given to them by the Building Department.

However, if that's a sticking point, and I understand that it may be, then I would be inclined to talk them and give up -- still standing they would have a finite number of 257, which is a large number of people.

GERALD REARDON: A large number of people, yes.

BERNARD GOLDBERG: I can certainly do that and try to take care of it as soon as possible, and if it's conditioned upon that, then

that may be an opportunity to vote today subject to that condition.

ROBERT HAAS: I think the other thing that I have some reservation that kind've couples with the Chief is that you got two numbers here, one allowable number of people that potentially drink and then a second number, I don't know how you regulate that.

To the Chief's point, I think if you just have one number that we can work with and it's consistent with the number of, I guess, people that could be consuming -- potentially consuming alcohol at any given time, I think it's a lot easier both for the club to regulate and better for us to understand in terms of capacity of that club.

I'm always -- I always have trouble when we start to bifurcate that. You can have so many people drinking, but you have so many other people who are not drinking, and I don't know how

you possibly -- we had this conversation about the restaurant, too.

Granted, I don't think all 150 people in the restaurant at any given time are all going to be old enough to consume alcohol. I don't think you'll ever reach a point that you will just have all adults. I think there will be families coming and -- but, you know, we give you an assigned number and then we hold you to that cap.

Again, I think I'm pretty much in agreement with the Chief's position on that.

GERALD REARDON: What I've advocated for since I have been on this Board is that, you know, maximum capacity for a room and so forth.

I would much rather have that capacity, which is, for example, 257 number versus the potential on the other one.

And even if there wasn't alcohol being served, it's a large number of people to deal with on the second floor.

And, again, you know, we hope that we never have an issue, but the issue for us is to make sure that people are not considering the safety portion when they're having a good time. I want to make sure there's enough room to get out there and they're not crowded.

So, I guess, you know, that would -- I would make a recommendation that if you make a recommendation back to us, I think that would be more acceptable at least personally to me.

CHAIRMAN MICHAEL GARDNER: And if I could, Mr. Goldberg, is the salsa club run under the auspices of the Greek American Political Club?

BERNARD GOLDBERG: Yes.

CHAIRMAN MICHAEL GARDNER: You're counsel for that organization as well?

BERNARD GOLDBERG: Yes. And I would certainly be amenable to conditioning it on the basis of 257 rather than the 327 is it, Ms. Lint?

ELIZABETH LINT: 340.

BERNARD GOLDBERG: That's reducing it by a considerable amount.

CHAIRMAN MICHAEL GARDNER: So let me try to make two motions and see --

ROBERT HAAS: Do you want to ask about public comment?

CHAIRMAN MICHAEL GARDNER: I do, yes. Thank you very much.

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

Seeing none, is there anything either of you would like to say before we try to get to the decision making point of this?

BERNARD GOLDBERG: No. I think Attorney Panico and I are amenable to changing the terms as suggested in this application and amenable to the seating capacity on the second floor where the dancing is and reducing it rather than having the standing.

CHAIRMAN MICHAEL GARDNER: So I am proposing to make two motions.

One deals explicitly with the Greek American Political Club and its licensure. The other will then deal with the new application for the Greek restaurant, and although they won't necessarily be contingent upon each other, I will try to state them in a linked way.

As part of our consideration for the application of NPPE, doing business as Kellari for a restaurant at 288B Green Street, I would move that an existing, no value, no transfer license held by the Greek American Political Club for 340 standing seats for the second floor operation, which is now a salsa dancing establishment, be reduced to a total of 257 allowable seats or occupants for that top floor establishment.

And further, that the current license of 2 hundred seats for the Greek American Political

Club, which operates on the first floor of the building, be reduced to 150 seats.

ROBERT HAAS: Second that motion.

CHAIRMAN MICHAEL GARDNER: Mr. Panico?

VINCENT PANICO: Should that motion also carry the transfer to the basement use of 50 seats or should that be a separate issue?

CHAIRMAN MICHAEL GARDNER: I'm intending to make a separation motion about that because they're different entities, but I have tried to make it clear that my motion is made in consideration of that application.

Any further discussion?

ROBERT HAAS: I second it.

CHAIRMAN MICHAEL GARDNER: The motion having been made and seconded to reduce the number of seats for the Salsa Club and the first floor operation of the Greek American Political Club, all those in favor signify by saying "aye."

Aye.

ROBERT HAAS: Aye.

GERALD REARDON: Aye.

CHAIRMAN MICHAEL GARDNER: So none
opposed.

We appreciate your flexibility in trying
to make this work on behalf of the Greek American
Club.

So I would now make the motion, subject
to all of the appropriate paperwork and training
and alcohol serving, et cetera, being completed,
that we approve the application for an all
alcohol beverages as a restaurant and license and
as an entertainment license for 288B Green
Street, NPPE Corporation doing business as
Kellari be approved for 150 no value, no transfer
of seats with hours of operation from 11:00 a.m.
to 1:00 a.m. Tuesday through Sunday. Closed on
Mondays.

And that this approval is conditional
upon all of the -- a number of conditions which

Mr. Panico represented to us at the first hearing we had on this matter long ago, including issues about the egress, the Franklin Street gathering of crowds, et cetera.

So that's the motion.

GERALD REARDON: Seconded.

CHAIRMAN MICHAEL GARDNER: Any further discussion?

ROBERT HAAS: No discussion.

CHAIRMAN MICHAEL GARDNER: I guess, in general, I would have liked to have seen more than 50 seats come out of the Greek American Political Club because it seems to me that there's really surplusage anyway on the first floor, but that not having happened, I think we're enthusiastic about the opportunity for this restaurant to proceed.

So all those in favor signify by saying "aye."

Aye.

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: None opposed.

Motion is granted.

I see Mr. Panico has a question.

VINCENT PANICO: Did we mention common victualers anywhere along the line?

CHAIRMAN MICHAEL GARDNER: We mentioned restaurant license, so, I certainly intended to include the common victualer license, but I believe that's what Wikipedia tells me what it is.

ROBERT HAAS: I just want to make sure because we kinda referenced the conditions that -- the applicant offered to put. I just want to make sure we itemize that and you have an opportunity to look at before we conclude to make sure they're satisfied with those conditions.

This has gone over three different hearings. I just want to make sure we capture

everything.

ELIZABETH LINT: I'll take it right out of the transcript. I would just add that that's \$30 owed for background checks that we still haven't received.

VINCENT PANICO: I will see to that tomorrow.

ROBERT HAAS: TIPS training.

CHAIRMAN MICHAEL GARDNER: I put that in my motion.

Well, at least during my tenure, this sets the record for the number of meetings we've had to have to reach a decision, but appreciate your cooperation and flexibility.

VINCENT PANICO: Thank you for your patience.

DISCIPLINARY: SNOWY JOEY FROSTY ICE CREAM

ELIZABETH LINT: Disciplinary matter, Snowy Joey Frosty Ice Cream, Frank Sacchetti,

manager, due to selling at a location that has not been approved by the License Commission as well as using a truck that has not been inspected by the License Commission or ISD.

FRANK SACCHETTI: Good evening.

CHAIRMAN MICHAEL GARDNER: Good evening. If you could, sir, just state and spell your name for the record and then we'll ask Ms. Lint to summarize our concerns.

FRANK SACCHETTI: Frank Sacchetti,
S-A-C-C-H-E-T-T-I.

CHAIRMAN MICHAEL GARDNER: Ms. Lint?

ELIZABETH LINT: We had been contacted by Kristin Fernandes of Inspectional Services on Thursday, May 26th, and she advised us that on May 19, 2011 she found a Snowy Joey Frosty Ice Cream truck with Mass Plate No. P25-233 parked on Broadway in the spot that's designated for Marty's B Mobile Meals truck. She spoke with the operator of the vehicle, told him to leave the

spot, he wasn't licensed for that spot nor was that particular truck licensed for Cambridge.

Then on May 25, 2011, the truck was parked and selling from that spot again. She again asked the operator to leave. He said he had license to operate in Cambridge. The truck that's licensed in Cambridge has a Massachusetts plate of P19700 and has a route in North Cambridge in West Cambridge.

Ms. Fernandes later spoke to the owner of the truck, Mr. Sacchetti, to explain why the truck couldn't be in that spot.

On September 13th, she again saw the truck that's not licensed in the city on Broadway in front of the high school.

The route goes nowhere near the high school. I do have the stops that he's allowed to make, but it's not at the high school nor can this truck be in the city.

CHAIRMAN MICHAEL GARDNER: Mr. Sacchetti,

do you understand the charges that have been leveled with respect to your business?

FRANK SACCHETTI: Mm-hmm.

CHAIRMAN MICHAEL GARDNER: Can you tell us what you've got to say about it?

FRANK SACCHETTI: In the springtime the truck that was licensed in Cambridge, the motor seized on it, so it was in -- out of commission for a couple weeks.

And I had let another driver of mine take another truck into Cambridge while the truck was being repaired. That truck was licensed the previous year in Cambridge, and I licensed a different truck in 2011, you know, with the intent to use this particular truck in Cambridge permanently. When the truck broke down, I had sent the other truck in.

The truck had a new driver. I gave him the route. He was going by the high school, I guess, and saw the spot and decided to pull in.

He told me what happened. I asked him not to go back there. I guess he went back there a day or two later. And that's when the -- I spoke to the lady from the Board of Health.

CHAIRMAN MICHAEL GARDNER: I think I understand that about May 19 and May 25th, but what about September 13th?

FRANK SACCHETTI: September 13th I had a new driver. The same thing happened. He ended up somehow going to the high school. I asked him not to do it again and he did not.

CHAIRMAN MICHAEL GARDNER: How many trucks does your business operate in total?

FRANK SACCHETTI: I have three trucks.

CHAIRMAN MICHAEL GARDNER: Is there any reason you shouldn't seek to license all three of them for Cambridge?

FRANK SACCHETTI: I probably will license the three of them next year, so in case there's any incidents like this, I will -- this will

avoid any kind of problem as far as that goes, and I'll make it clear with the drivers on the particular routes that they have to stay within them.

CHAIRMAN MICHAEL GARDNER: I guess what I don't understand is the idea that somebody just happens to be driving by and sees this as a good spot and it happened three times.

It's almost like it seems to me someone would say "Hey, you know, you want to know where you generate a lot of foot traffic? It's in front of the high school during these hours." I don't know who is telling who that, but doesn't sound like a random event to me.

FRANK SACCHETTI: Well, I think they were driving and I think they just stopped and decided -- thought it was an okay spot to stop.

I guess it has a vending sign out front or something like that, so they assumed being licensed that it was okay to stop there, so...

CHAIRMAN MICHAEL GARDNER: I guess I would think that the drivers you have ought to be experienced enough to know one fundamental piece of business, this truck has a route and that's the route, and you give the driver the route and that's the route because that's the job, and so, whether they ever driven in Cambridge before or not, they got the route and know where they're supposed to be. Correspondingly, they know where they're not supposed to be.

It sounds like these drivers either didn't get that instruction or I don't know what else.

FRANK SACCHETTI: It's definitely my fault. No question about it, you know. I should have oversaw it a little bit better.

ROBERT HAAS: So, Ms. Lint, on all three occasions it was unregistered or I guess unlicensed truck, right?

ELIZABETH LINT: Yes.

ROBERT HAAS: Your truck was out of
commission for --

FRANK SACCHETTI: About two-week period.
The incident in September was a new driver who I
had given the route to.

CHAIRMAN MICHAEL GARDNER: With the truck
properly licensed for Cambridge?

ELIZABETH LINT: No.

FRANK SACCHETTI: It was the other truck.

CHAIRMAN MICHAEL GARDNER: But it wasn't
a breakdown this time?

ROBERT HAAS: That was going to be my
question.

FRANK SACCHETTI: No, it wasn't. It was
-- he just happened to take that truck. I asked
him to take the other truck. He took the wrong
truck that day.

GERALD REARDON: Is this the same driver
on all three occasions?

FRANK SACCHETTI: No, separate driver in

September. The other kid had gone back to college, so I had to hire a new employee.

I have been in the business for about 40 years and something like this never happened before.

It's just getting busier and busier all the time with different things, and it got away from me a little bit and I apologize.

CHAIRMAN MICHAEL GARDNER: Well, I guess if it's nothing like this has ever happened in 40 years, it seems a little weird to have three instances in 40 years concentrated in such a short time period and sort've makes you wonder what's up here.

FRANK SACCHETTI: Mm-hmm.

ELIZABETH LINT: Mr. Chair, if I may, I would say it's not correct. It's the first one that happened.

If memory serves me correctly,
Mr. Sacchetti had a truck in the city before it

was every licensed, and we had to track him down to get him to come in, and then he did have a hearing and then he didn't pick up the license for the longest time, so it's been ongoing.

CHAIRMAN MICHAEL GARDNER: So I guess Ms. Lint is telling us we have a history.

FRANK SACCHETTI: I don't recall that.

ELIZABETH LINT: Oh, I recall it.

FRANK SACCHETTI: I think I had a license, didn't I, at the time or...

CHAIRMAN MICHAEL GARDNER: Do we have any precedential history here, Ms. Lint, with respect to similar types of violations and levels of penalty?

ELIZABETH LINT: Not since I have been here.

CHAIRMAN MICHAEL GARDNER: What assurances do we have, Mr. Sacchetti, that these three anomalies, in fact, are fully over, not gonna happen again?

FRANK SACCHETTI: I think the best way for me to handle this is designate a certain -- a particular person for the Cambridge route and make sure he understands physically taking the routes to the streets and knows where the stops are so this is avoided in the future.

CHAIRMAN MICHAEL GARDNER: Is your business only ice cream?

FRANK SACCHETTI: Yes.

CHAIRMAN MICHAEL GARDNER: Do you operate year-round or what's the --

FRANK SACCHETTI: No. Usually we're off now. We, usually by October 15th, we're done. Start probably early April. It's very seasonal. Short season.

GERALD REARDON: Where is your garage located?

FRANK SACCHETTI: My commissary is in Watertown.

GERALD REARDON: I mean, the route is all

North Cambridge and the high school is completely opposite the direction.

FRANK SACCHETTI: Yeah. I think they were on their way over to North Cambridge and probably thought it was a good idea to make some extra money or something like that.

CHAIRMAN MICHAEL GARDNER: Are the drivers on some sort of contingent fee or...?

FRANK SACCHETTI: Yes. They're on commission.

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

Anything else you would like to say?

FRANK SACCHETTI: No. Again, I would like to apologize for the inconvenience for everyone and I will not let it happen again.

ROBERT HAAS: Ms. Lint, did we take any formal action with regard to your memories of the earlier events at all.

ELIZABETH LINT: No.

ROBERT HAAS: So, there's nothing in the file right now?

ELIZABETH LINT: No.

CHAIRMAN MICHAEL GARDNER: What earlier events do you mean?

ROBERT HAAS: Well, the operating without the license, then coming in and not picking up the license. We took no action in regard to either of these?

ELIZABETH LINT: No.

CHAIRMAN MICHAEL GARDNER: I will ask the Commissioners what their view would be of both a combination of a relatively lenient and also severe action, which would be a warning with a notation that a further violation would place the license itself in jeopardy.

GERALD REARDON: I second that.

ROBERT HAAS: I second it.

CHAIRMAN MICHAEL GARDNER: I'm just

putting it out as a hypothetical as we try to figure out to make decisions here in a public forum.

Well, I would make the motion that the applicant receive a warning that states that there were three separate violations and that the second two violations occurred after notice of the first and that given the repeat nature of the offenses that the Commission state in its warning, its intent should there be further violations, to -- that any future action would involve revocation of the license.

ROBERT HAAS: I think we're sustaining or pulling the violations that we found, that the violation is held -- so, you're placing the matter on file making notations of the violations and that any future violations will place the license in jeopardy?

CHAIRMAN MICHAEL GARDNER: I'm saying I'll issue a warning, which is different than

placing it on file.

I think Mr. Sacchetti, to his credit, admitted the violations, so I think we found the violations.

ELIZABETH LINT: Could I suggest, Mr. Sacchetti, that if they want to stop at the high school perhaps they should speak with Traffic and Parking, find out if it's a viable spot and then come before us and add it to the route?

FRANK SACCHETTI: Yes, I will do that, absolutely.

GERALD REARDON: That's not before us tonight.

FRANK SACCHETTI: But I will do -- that is fine. Thank you.

ROBERT HAAS: I second your motion.

CHAIRMAN MICHAEL GARDNER: So the motions having been made and seconded, is there any further discussion? All those in favor signify

saying "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Aye.

None opposed.

Mr. Sacchetti, thank you for coming in.

Please make sure that we don't have to see you again except in the context of some amended application.

FRANK SACCHETTI: Sounds good to me.

Thank you.

DISCIPLINARY: FRESH POND DONUTS, INC.

ELIZABETH LINT: Preliminary matter continued from October 18, 2011, Fresh Pond Donuts, Incorporated doing business as Dunkin' Donuts, Nicholas Leo, property owner, at 199 Alewife Brook Parkway due to a report received by the License Commission from the Fire Department alleging that they're in violation of

527 CMR 25.05.

CHAIRMAN MICHAEL GARDNER: Good evening.
I think we will hear from the Fire Department in
a moment, but why don't you please state and
spell your name for the record, and identify who
you represent and who is with you.

ATTORNEY HOPE: Good evening, Mr. Chair,
members of the Commission. For the record
Attorney Sean Hope, S-E-A-N H-O-P-E of Hope
Legal Offices in Cambridge. Tonight we have --

VINCENT LEO: Vincent Leo, V-I-N-C-E-N-T,
L-E-O.

NICHOLAS LEO: Nicholas Leo,
N-I-C-H-O-L-A-S L-E-O.

CHAIRMAN MICHAEL GARDNER: And you're the
owners?

VINCENT LEO: Of the Dunkin' Donuts, yes.

CHAIRMAN MICHAEL GARDNER: All right.
And we have a representative from the Fire
Department?

THOMAS CAHILL: Yes.

CHAIRMAN MICHAEL GARDNER: Could you perhaps move your chair up and just come forward and identify yourself?

THOMAS CAHILL: Thomas Cahill, Cambridge Fire, C-A-H-I-L-L.

CHAIRMAN MICHAEL GARDNER: Mr. Cahill or, sorry, Captain? Captain Cahill, could you just identify your responsibilities in the Cambridge Fire Department and your connection with this matter?

THOMAS CAHILL: My responsibilities are code enforcement.

CHAIRMAN MICHAEL GARDNER: And tell us -- what division are you assigned to?

THOMAS CAHILL: Fire prevention.

CHAIRMAN MICHAEL GARDNER: Tell us about your involvement with the Dunkin' Donuts.

THOMAS CAHILL: Okay. On April 7, 2011, it was brought to our attention that a jersey

barrier was located in the travel lane on the property which the public has access to.

We made multiple visits to the site with fire apparatus and determined that the barrier was an obstruction which restricted, and in some cases, eliminated any opportunity for apparatus positioning, which we felt created a life safety hazard. It impeded the ingress and egress and the maneuverability of the apparatus that's in the parking lot and this was reiterated on many occasions during conversations and certified letters that I have with Mr. Vincent Leo.

Mr. Leo made it clear that he had a dispute with his neighbor, Trader Joes, and we made it equally clear that the dispute really had nothing to do with why we needed the barrier removed.

Even the proposed curb cut in the drawing that Mr. Leo provided to our office, I let him know that that would not impede our travel. We

could jump a curb if we needed to, but the approximately 6,000-pound block of concrete obviously eliminated any opportunity to maneuver the apparatus in the event that we needed it.

Mr. Leo's son wrote an email on October 16 that they were not aware about -- they didn't know about removing and replacing, however, we had the following correspondence, we had one meeting on site, three certified letters, two phone conversations that I had with Mr. Leo, five voicemails, which were never returned after April 17th, which is when we really -- when we outlined the fines that were going to be incurred.

And I made one call to the partner of Mr. Leo's son at another store where I indicated that in addition to the fines, we were going to consider involving Dunkin' Donuts corporate to assist us. Maybe they had some leverage to help.

The barrier was moved that next day.

This was into September that this finally happened.

Mr. Leo in that time had accrued \$1,200 in fines. We had a couple different options in the fines, and I went with the lesser of the two, which was \$50 for every 48-hour period that they were not complying.

What I did was to help, if you don't mind, I broke down the timelines of the phone calls, the conversations, the meetings that we had.

I have the certified letters that I sent to Mr. Leo. And all of that is outlined in there, in addition on the last pages, the drawing that Mr. Leo had provided to us and I highlighted the area that's in question.

You will see where he had actually drawn the jersey barrier in itself. It wasn't on the property line. It was in the parking lot and that was our biggest concern.

There was an email that Mr. Leo's son had sent on October 17, that suggested it was the first time that he heard of any of this.

And I would argue if you go to the letters that were sent, the certified letters that were sent on April 7, April 17 and July 27, not only were our concerns addressed, but also the possibility of fines.

In addition to that, on October 16, I received a letter that was forwarded from Ms. Lint where Mr. Leo Jr. had said that "I feel together we have worked diligently to accomplish this," and I argue that that didn't happen.

I don't think an effort was made on Dunkin' Donuts' part. There was a considerable amount of time that was put in on the Fire Department's part to finally get this accomplished, and I don't believe that had it not been for the fines and for the suggestion of going to Dunkin' Donuts corporate that this

barrier would be removed at this point.

CHAIRMAN MICHAEL GARDNER: So if I understand it, April 7th is when the Department notices the jersey barriers and it was removed some time in September?

THOMAS CAHILL: It was removed September 7. It was almost six months.

April 7 we had the initial meeting with Mr. Leo. That was with my deputy chief Funcanetta (phonetic) -- he couldn't be here tonight -- and that really set the tone.

It wasn't -- it was a conversation that didn't go well. We were accused of being a corrupt department. And it really set the tone for the next five and a half months, which has been a struggle, to say the least, to get this resolved.

CHAIRMAN MICHAEL GARDNER: So, is it your view that essentially the owners of this business did not cooperate with the Fire Department in

taking expeditious action to remove what you notified them was a public safety hazard?

THOMAS CAHILL: I don't think that they took any action at all. It took five and a half months to get this accomplished, and I believe the only reason we got it accomplished was because of the next step we were taking, in addition to the fines is contacting Dunkin' Donuts corporate, and when that was made on September 16, that that was the next step and September 17 the barrier was removed.

And then approximately 30 days later there was some -- Mr. Leo Jr. had come into our office and he couldn't make the original hearing, I believe it was on the 18th of October, so it got bumped to this point right now.

But, no, there was no cooperation at all. And his email on the 16th, more than once, references the cooperation, and I think that five and a half months is proof enough that there was

no cooperation.

And I believe that it was negligent that it took five and a half months for these guys to acknowledge what we deemed a public safety hazard.

CHAIRMAN MICHAEL GARDNER: Any questions for Captain Cahill from the other Commissioners before we turn to Mr. Hope?

GERALD REARDON: Captain, do you know on April 7 how we got this?

THOMAS CAHILL: We received a phone call from a citizen, didn't leave a name, said that they were concerned about the maneuverability of the parking lot.

GERALD REARDON: Did we also get something from ISD?

THOMAS CAHILL: ISD notified us on a couple different issues. There were issues regarding a crosswalk, that the handicap accessibility was being impeded by a dumpster

that Dunkin' Donuts has on their property, and, yes, ISD and Traffic and Parking were involved at the same time and the phone call from the citizen. And then we followed it up with --

MR. REARDON: Was Michael Muehe involved, Commissions of Disability as well?

THOMAS CAHILL: Yes, he's involved. Ms. Lint, Mr. Wayne Amaral, our office, and I also had Superintendent Albert from the Cambridge Police involved throughout the process.

CHAIRMAN MICHAEL GARDNER: That would be Deputy Superintendent Jack Albert?

THOMAS CAHILL: Yes, I'm sorry. Deputy superintendent.

CHAIRMAN MICHAEL GARDNER: Could you just summarize, what, if any, issues that the Commission on Persons with Disabilities may have had with this or these access issues?

THOMAS CAHILL: Their issues were the -- were further down.

If you refer to the drawing that I have on the last page, you will see I highlighted that line, and their issues were a curb cut, and this is a drawing that Mr. Leo Sr. had sent me in the mail, and that curb cut farther down by the word "barrier," there's a dumpster which is on that crosswalk and that's what Mr. Muehe's concerns were that the people on the sidewalk were restricted from getting into the crosswalk as a result of the dumpster.

CHAIRMAN MICHAEL GARDNER: If you know, is the dumpster still there or has that been moved?

THOMAS CAHILL: It's still there.

CHAIRMAN MICHAEL GARDNER: So, at least, as you understand it, from Mr. Muehe's concerns, those concerns have not been abated; is that right?

THOMAS CAHILL: I don't know if those have been addressed since the 17th. It may have

been moved. It's still in that vicinity. I don't know if it has been moved enough to make Mr. Muehe --

CHAIRMAN MICHAEL GARDNER: To allow access.

THOMAS CAHILL: Exactly.

CHAIRMAN MICHAEL GARDNER: Any questions?

ROBERT HAAS: No questions.

CHAIRMAN MICHAEL GARDNER: Mr. Hope, do you have a copy of Captain Cahill's summary?

ATTORNEY HOPE: I do not. First, I would like to thank the Commission for allowing us an opportunity to explain some of these events and circumstances from our vantage point.

Primarily just to the point, we feel that we're here tonight on the disciplinary action, as well as the fines that were levied, are the results of a representation made by Linear Properties.

This representation, and it may be

part -- I'm not sure what the plan that they have, but these representations were made in the form of a building permit in 2008.

GERALD REARDON: Who is?

ATTORNEY HOPE: Linear Properties is the owner of the abutting parcel. L-I-N-E-A-R. That's the owner of the parcel that abuts.

There's a Trader Joes, there's a CVS, that's Linear Properties.

In 2008 they applied for a building permit. That building permit, along with that, came with the plan.

The plan showed an access and egress on two points to the abutting property owners. That plan, and all the signoffs were there, alluded to the fact that there was some sort of a legal right easement or access to those two properties. That doesn't exist.

That representation was false, and I believe and we believe also permeated through

several organizations or departments within the city because there were signoffs. And if you look -- and I'll get into this in some detail -- but if you look at the plans, which I have a copy for, it says that they will coordinate with the property owner to move a sign and the dumpster.

So they presented plans to the Building Department that says we're going to coordinate with my client's property to move a sign and a dumpster.

That never happened.

If you look at the deeds, there's no easement, there's no agreement. There's nothing. So that was one piece.

I would like to say before we get going, this is not a simple matter of a property owner failing to install a CO2 detector, or just being stubborn and not wanting to adhere.

There's a legitimate property dispute or

actually, a property issue. There's no rights for Linear Properties or any of those tenants to access the property. But there's a good faith dispute, and throughout this process -- and I do have a copy of all the correspondence that we received via mail, not all the email, that speaks to the fact that my client, throughout that process, was trying to preserve what he felt was his property rights. He wasn't trying to disrespect the Fire Department or cause a fire or a safety hazard.

To the mistake and to the confusion that was caused by Linear Properties, I do want to hand out -- what we have is a copy of our correspondence because I think it does speak to how some of this confusion continued.

But before I get into specific details, I want to say again -- and we talked about this as well -- Chief Reardon, both the Leo family, they've owned several Dunkin' Donuts throughout

several years. They have been successful. They have run their Dunkin' Donuts and they have benefited from the Fire Department as well as the Police Department and all the municipal services for actually servicing their property.

And so they understand the need for the different municipalities to do their job. So there was no disrespect meant by them not complying immediately with the order.

CHAIRMAN MICHAEL GARDNER: Do you deny that representatives of the Fire Department were referred to as corrupt officials?

ATTORNEY HOPE: No, I never --

CHAIRMAN MICHAEL GARDNER: Well, ask your clients.

You know, I'm just asking in terms of your representation that no disrespect was meant. I would like to know what you say about that allegation.

ATTORNEY HOPE: And to clarify, no

disrespect was meant by not moving the barriers immediately. This was a property dispute.

Now, I do know that my clients had felt like because there was a building permit signed that authorized access to the property where there was no legal authority to, they did feel that they were the victims.

And in the correspondence, which I have a copy of, they asked for an opinion from the City Solicitor, they wanted to know under what authority did Linear Properties and their tenants, not the Fire Department, have access to what is -- I guess what's shown on the plan as an egress and ingress.

GERALD REARDON: At this point I want to make it clear, after going by the place, and I frequent place, I can understand what the potential issues are.

And we, at no time, try to get involved with the dispute between the two property owners.

And if the Leo family has an issue with them,
that's fine.

But what happened is you got the big
gorilla on the street involved and created a
problem, and I think it was reflected many times
that this is not the way to do it, but to deal
with us. This has to get by. And we don't want
to characterize the fact that there may be an
issue here.

But just the access thing had to be done
in a different manner, and we don't dispute the
fact that there may be an issue for them to carry
on.

And we understand, you know, they have
been good business people in the neighborhood and
this is something we didn't want to get involved
with.

So, I mean, I want that to be clear and
that our intervention was in no way siding with
anyone, either party in this thing whatsoever.

And I believe there was a number of options in just moving the barrier to get us out of the action, which would still not in any way jeopardize their ability to deal with their abutter in whatever means they chose to.

ATTORNEY HOPE: So one -- there was the feeling that by moving the barrier up until a solution was proposed, which was the moveable temporary sawhorse, once that was proposed, they complied with it.

I understand that Captain Cahill said he felt it was the fact they were going to call corporate, but I do think -- and what I didn't hear was the timeline of when they said, you know what, instead of doing -- moving that barrier, you can use our sawhorse, because when it was suggested, that was done. This really was an issue of preserving property rights.

And once there was -- I want to back up for a second, and with all due respect, the fact

that there was an access/egress, there are basic property rights that every property has against its abutter.

This was a parking lot and before Linear Properties bought it, there was access and egress. The fact that this is now a parking lot that is extremely full now, the intensity of the use has changed.

As property owners, they wanted to define the scope of cars coming through, which they have a right to do.

CHAIRMAN MICHAEL GARDNER: So are you still asserting that they had the right to put the jersey barrier up?

ATTORNEY HOPE: According to the Fire Department, they did not have a right to put the jersey barrier up if that was a valid right-of-way or public way or any way.

By property rights, they could put a building, all the way up to the -- you know,

subject to zoning. This is not any kind of legal passageway. It is something that they have used, but there's no legal authority for anyone to travel there.

Now, when you allow somebody to do something, it's a revocable license. You can revoke permission. They could put up a fence and the jersey barrier wasn't the appropriate thing to do.

But if you look across the way over by Whole Foods, they put up a fence in between their property. Now, obviously, cars were not driving through there.

And I do understand when people start using a way, it does trigger fire and safety to say, "Wait a minute, if someone is using it, then maybe we have to enforce it."

But I think when they put the jersey barrier there, what they were saying is, as property owners, we're no longer allowing you to

use this as a public way.

CHAIRMAN MICHAEL GARDNER: How is this different from somebody boarding up the second means of egress from a building because, I don't know, they're concerned about employee theft and so they lock the door?

How is this any different if the Cambridge Fire Department tells you there's a public safety problem with having this barrier here, please move it and the response is, you're a corrupt official doing the handmaiden work of Linear Properties, or whatever it was, and the barrier stays up for five and a half months?

You know, the Coconut Grove happened not so far away from here, not that long ago, so what's the difference?

ATTORNEY HOPE: The difference is, if you have two means of egress and there's two required means of egress, then if you block one of these egresses, you wouldn't be just in violation of

fire, you'd also be in violation of building codes and several other codes.

CHAIRMAN MICHAEL GARDNER: So from your point of view, it's a more serious thing to nail up or lock a building, right? That's it?

ATTORNEY HOPE: There's no inherent property right to block an exit of a door.

There are building codes and there are building code rules and regulations you have to follow. This is an inherent property right.

I mean, if you sold a property tomorrow and someone wanted to build and put something there, they would have --

CHAIRMAN MICHAEL GARDNER: There's no inherent right to this license, is there?

NICHOLAS LEO: The egress you're talking about, though, is required. This is not a required egress.

CHAIRMAN MICHAEL GARDNER: This is the Fire Department telling you they needed required

access.

Am I right, Chief?

GERALD REARDON: You would have to get -- if they were going to put the wall up, we wouldn't let you to put a up fence there because you need access to two sides of a commercial property.

So if this was something else, we would have made you put in something in the front. It's apples and oranges at this point.

So we have to have access to two sides, it was there and now it got blocked. We simply wanted you to take that out of the way.

Again, just for the record, I don't for one minute take a side of who's right and who's wrong, but, you know, we could bring Wayne Amaral from Traffic in who was there in the very beginning and suggested even the rubber hoses or a flowerpot that could be knocked over and moved as long as we can get across it.

And the point is, that we didn't want to go down this road. I can't believe we're at this stage of the game over this.

NICHOLAS LEO: Nobody wants to go down this road and --

GERALD REARDON: And, again, we're not siding or trying to say that you don't have an issue, and we're not siding with your neighbor or saying what's right and wrong.

But the issue about the property rights between the two, is something that is separate and distinct from us.

THOMAS CAHILL: May I add one more thing?

GERALD REARDON: Please.

THOMAS CAHILL: We don't have -- the issue is not -- we realize and we understand that there's -- there are issues with the Trader Joes and with your parking lot.

We don't have any issue at all with the proposed plan. If you were to put that curb

there, we don't have a problem with that. It's literally 6,000 pounds of cement --

VINCENT LEO: So what if there's cars parked there?

THOMAS CAHILL: Let me finish, please. It's 6,000 pounds of cement, which is planted in the middle of this area that we can't move.

You referenced that had you known before that maybe you could've come up with an alternative to the cement that you may have considered it.

On April 14, Mr. Leo Sr. offered to do it as long as we paid for it. He said he would put bollards in, that he would put removable planters in, that he would put sawhorses in if we paid for it. He wasn't paying for it.

So this was seven days after this originated on April 7th, and it literally took five and a half months to get to the compliance state where we're at right now.

There's no issue involving Trader Joes.
It's the block of concrete in a drivable area.

CHAIRMAN MICHAEL GARDNER: Mr. Hope, you had made the representation that it wasn't the threat of a call to incorporate, it was the fact that now they had this idea that they had other alternatives that resulted in the move in September.

You've heard both Captain Cahill say in his testimony here this evening and in the document that he's provided to you that, in fact, that alternative was proposed within a week of the original notice. What do you say to that?

NICHOLAS LEO: I actually --

ATTORNEY HOPE: First, let me say I wasn't made aware of that conversation. So if that conversation happened, I would like my client to speak directly to that.

NICHOLAS LEO: Actually, I met with Captain Cahill, I guess it was on September 8,

2011. I went over there to discuss it. I wasn't involved in this issue prior to that.

CHAIRMAN MICHAEL GARDNER: Perhaps we should hear from somebody else about April 14th.

NICHOLAS LEO: That day I spoke with him and, you know, obviously, we thought we would move the barrier and not put anything there.

And then that day we talked about the, you know, Harvard Square, and that's when it occurred to me, obviously, the biggest issue is whether it's removable or not, and the very next day -- actually, it wasn't two weeks later -- it was the very next day.

CHAIRMAN MICHAEL GARDNER: So, you weren't involved in April.

So, Mr. Hope, do you have anybody to counter what Captain Cahill and your representations were about the --

ATTORNEY HOPE: The only person who could speak to that would be Vincent Leo. That's who I

think Captain Cahill said he was speaking to.

CHAIRMAN MICHAEL GARDNER: We don't need to hear from Nicholas on that matter.

VINCENT LEO: What did you need to hear, I'm sorry?

CHAIRMAN MICHAEL GARDNER: The question -- you heard your attorney say that you really didn't understand what to do here until September when somebody told you you could do the removable barriers, and that explains the five and a half months, that it wasn't the threat of a call to corporate, it was the fact that now you had a new idea.

But what Captain Cahill had said is that you had that idea seven days after the initial meeting, and, Mr. Hope, your counsel, said he wasn't aware of that. He turned it over to somebody else who wasn't aware of it. You apparently may have been aware of it.

VINCENT LEO: Okay. Let me just clarify

a couple of things, okay?

Captain Cahill made a statement, okay. When he met with me, I showed him this plan, okay. And I showed them this sidewalk that was approved on this site plan by all of the departments.

And as Captain Cahill just stated, it's very easy to run over a sidewalk. Well, is it easy to run over a sidewalk and parking spaces on the opposite side of it because that's what was proposed and approved, okay.

What they did, okay, it should be -- it's completely unlawful. They put notations in their plan, okay, addressing other property owners to do things, okay, without any authority. We have a pylon sign, it's grandfathered. Why would I even think about moving it, okay?

We had a dumpster enclosure that's completely on our property. I don't know what Captain Cahill is talking about with this

obstruction of handicap access. It's completely accessible and we're in our right, we're on our property.

Now, on their plan as an egress proposal that was approved by all of the departments, okay, was remove the sign, remove the dumpster, and we're going to get the fire trucks to egress out of that point into nowhere.

There's no exit there. You're behind our parking area. There's no curb cuts.

So this whole thing was a complete scam, you know, from Linear Properties and that's what I tried to express to Mr. Cahill. And he agreed with me. He said, "I'm just doing what I'm being told to do. I agree with you. But this is what I have to get done," okay?

CHAIRMAN MICHAEL GARDNER: Did he suggest to you on April the 14th that there was an alternative to the concrete barrier that you could do that would satisfy him and you responded

to him "I won't do that unless the city pays for it"?

VINCENT LEO: No, I don't recall exactly what day it was.

It was a lot deeper into this conversation, okay? My --

CHAIRMAN MICHAEL GARDNER: Did you have that conversation with him at any point before September?

VINCENT LEO: At some point in time, I said, "Can the police -- I mean, can the city provide movable barriers?" Okay, and he said, "I will get back to you and let you know."

CHAIRMAN MICHAEL GARDNER: Captain Cahill?

THOMAS CAHILL: Absolutely not. The city wasn't paying for that.

CHAIRMAN MICHAEL GARDNER: Thank you.

Mr. Hope, do you have anything else you want to say?

VINCENT LEO: Can I just finish my point, sir?

CHAIRMAN MICHAEL GARDNER: I'll leave that to your attorney.

ATTORNEY HOPE: Sure. Go ahead.

VINCENT LEO: The points that are here in question, okay, is these -- the law or the -- whatever they call it --

ATTORNEY HOPE: The fire regulations.

VINCENT LEO: -- the fire regulations that is being referred to, okay, it has no clarity about two pieces of separately owned property having access, okay.

If I want to build a house and I'm building a house next-door to you, and I put on my plan that you're to remove your front porch so I can have access across your front lawn, okay, and it gets approved, would you like that? How would you feel? This is how I'm feeling.

CHAIRMAN MICHAEL GARDNER: I understand

that you have a deep-seeded dispute with your neighbor and I hope --

VINCENT LEO: No, no. But, sir, it's not -- we don't have a dispute with our neighbor. I don't even know who our neighbor is. I know it's a big corporation.

I went to a hearing, I was completely against this parking lot design because it didn't make sense.

I brought up the fact that fire trucks would not have access. I brought up the fact that snow would be a nightmare. I brought up all these points.

They said, "Listen, we have three other egresses or ingresses and this is what's acceptable for the city and this is the way it's gonna go," okay?

And as far as this whole sidewalk thing, okay, this was never revised. They never went back to the city and said, "Hey, can we take the

sidewalk out and can we remove all these additional parking spaces so we can have an ingress and egress between the two properties?" And did they come to the property owners and say, "Hey, can we get a right-of-way from your property to do this?"

None of that was done.

CHAIRMAN MICHAEL GARDNER: Did you accuse any members of the Fire Department of being corrupt officials?

VINCENT LEO: I did not.

CHAIRMAN MICHAEL GARDNER: So, to the extent that somebody reported that you said that, that would be a lie?

VINCENT LEO: Yes.

ATTORNEY HOPE: Can I make a statement? And I think it's an important to look at the plans, and I'm not trying to rehash. I understand the issue is not for -- the Fire Department is not choosing sides. I think it's

important to know -- I have copies for each of you -- I wanted you to look at the actual plans.

In 2008, the Building Department approved closing what is now an access or ingress, meaning they approved as those having as parking spaces so there was no need to actually have an access that way. The commercial retail there is preexisting.

I did look at the fire code regulations and it is a requirement for commercial retail to have two accesses to the property. Fire -- if you look, I think, on the third page of the building -- of the building jacket, there's a signoff from Traffic and Parking, Fire, as well as DPW and Zoning that would allow for this second egress to be blocked off.

My point is, for this existing commercial retail, there was no requirement to have the second access or egress because they wouldn't have approved this plan that allowed that to

be -- allowed it to be blocked off.

So where the highlighted portion is on the plan, that is where the access and egress shows parking space, right.

And they allowed that as an approved plan to be blocked off. The only other access to the property is coming down Alewife Brook Parkway, from Alewife Brook Parkway to Fresh Pond.

So the city approved a plan that would only have one access into that parking lot and one access out.

So, my point is, I think the analogy that if you were going to block off a second rear door, I don't think that analogy holds because this plan shows you that it was approved by the city, that there was reasonable access for a fire truck to get in with only one access, the way that existed.

Now, to the point, that never happened. So those parking spaces weren't there, it was

a -- it was a place where people drove back and forth without permission. There's a property dispute about that.

But I think the point is this, that when you had that access, it did create the need for the Fire Department to want to make sure their trucks could get through.

But I think it's very different to say that by not moving the jersey barrier that they were creating what would be similar to blocking off a rear door.

They requested in the correspondence, and I have a copy of the correspondence, on April -- on May 1st -- this is a letter from Mr. Leo.

In this five months, there was constant contact via letter. If you look at these letters, these weren't you're corrupt officials. This is asking for some clarification, why do we have to do this?

And there was a response from Captain

Cahill citing 527 CMR 22500.

(Forwarding.) And I actually want to pass this to the Commission as well. These were correspondence back and forth asking for clarification.

What I don't know, and what I would like to know, at the point, besides that initial conversation where they said, "You know what, you can use these temporary barriers," I do think, as Nicholas pointed out, when they actually went down there and had a discussion, they removed the jersey barrier and put up the temporary sawhorse and that does solve the problem as far as the property owner is concerned.

I don't know what comment was made or not made early on in the process. But I do feel that these are -- they're proprietors, they understand they come before this Commission and they also have benefited from the municipalities. These are not people that are new to Cambridge. So I

don't think there was anything but their desire to preserve what their property rights were.

I do believe they should've contacted an attorney earlier. If they had contacted an attorney earlier in the process, I think a resolution and cooler heads would've prevailed. They didn't have the coolest heads. It wasn't on the Fire Department. There was several attempts to write them letters, to work with them. We're admitting all that.

But I don't -- when I look at the fine that was imposed, I don't think it's necessary or appropriate because they believe they were actually just preserving property rights. And to remove that barrier without anything else, would be saying to Linear Properties continue to have two-way traffic between our properties that you haven't paid for, that you haven't done anything about.

I just ask -- I understand there are

fines imposed. There's a safety hazard there.

But I would say in light of this, you know -- I guess the fines could've been higher, but I do think if you look at the track record of the Leos, and this is something -- you didn't want to go down this road, but, you know, these are properties owners being proprietors.

CHAIRMAN MICHAEL GARDNER: I guess, don't we have a right to assume that a licensee who has received the privilege of a license from the city, who gets a notice from the Fire Department that an action they have taken threatens the public safety, don't we have the right to expect immediate compliance or compliance within a short time period particularly when an alternative means, which, I think, as you just said, deals with the property rights access issue was readily at hand a week after the notice?

Don't we have the right to expect that out of a license holder?

ATTORNEY HOPE: With all due respect, I think short of abrogating what is constitutional rights under -- you know, if you have a property right -- and I'm not saying that this solution didn't aggravate that, but I do think as a licensee or a property owner if a municipality infringes on what you feel is your property rights for your property, then you do have a right to actually wait for redress, the call for a city solicitor, the call for some kind of due process.

I don't think this is a situation where it was apparent to my clients that they were actually causing a fire hazard. And we have pictures, the sign, the dumpster, everything was on their property. And I'm not saying it wasn't moved. I mean, they talk about a dumpster in the crosswalk. You can see plainly here there's a crosswalk and behind that there's a 20-foot grandfathered sign and the dumpster. The

dumpster is still there today. This is not the section where the jersey barrier is. But this is what -- this is the area they're talking about. Everything was on their property.

They should've contacted counsel. They should have done different steps. But this was not something where, you know, they felt like you would feel, you know -- and I understand Mr. Leo's analogy. If, you know, someone comes to your property and says "Hey, your fence on your property is actually causing a hazard," you would probably wait until you heard from someone, you know, with not even just some authority, but also someone who has a responsibility to take that probably right away, to explain it to you.

Now, it does sound like when Captain Cahill was there, I'm not going to allege that every conversation was a frank discussion the way those letters play out. I'm not going to say that.

I'm just looking at the amount of the fine, the fact that the issue is resolved at this point, and I don't know if --

CHAIRMAN MICHAEL GARDNER: Do you challenge the authority of the Fire Department to issue the fines they issued?

ATTORNEY HOPE: I do not challenge the Mass. General Laws that they cite that allows for -- on, first, the fire prevention regulations, 527, I don't challenge that, nor do I challenge Chapter 148, Section 1.06 that allows for enforcement of those fines.

What I do challenge is that there is not a legal access. If there was no legal access from Linear Properties to my client's property, then there would be no cars traveled there, there would be no requirement for fire access there. If there was a curb like has been said, if there was part of a building wall, if anything, you're not required to clear your property of existing

structures.

I think the problem was that there was allowed an access between two properties and when they went to remedy that situation, they did it inappropriately.

CHAIRMAN MICHAEL GARDNER: As I understand it, although the property rights issues between your client and Linear still exist, and you have given us an explanation for why the barrier was put up in the first place, as an effort to exercise those rights, as I understand it, what you have said, is you do not challenge the authority or appropriateness of the Fire Department's issuing those fines?

ATTORNEY HOPE: I do not challenge them if it were true that there was a valid access and ingress from the two properties, and there is no lawful access or ingress between those two properties. There was a mistake that was certified by a building permit.

On its face, if I looked at it, if the Fire Department looked at it, you would see an access and ingress and you would say this is not safe to drive a truck through. But what is not established is -- no one should be driving through that. It is the right of the property owner to decide whether to have anything there.

So if the property owner decided to put up not a jersey barrier, but a real barrier or build a building there, the Fire Department could not --

CHAIRMAN MICHAEL GARDNER: You heard the fire chief say that never would be allowed given what was on the ground in April of 2011, you heard that?

ATTORNEY HOPE: No, I didn't hear that.

I mean, in terms of the building code, there's no requirement that access has to be there. It's an existing property and we showed plans that show that access being blocked already

and approved, so then how --

CHAIRMAN MICHAEL GARDNER: I take your answer to be that you do challenge the authority of the Fire Department to issue the fine after all you said? Yes or no, please?

ATTORNEY HOPE: Only because I do not feel there's not a valid passageway for a car whatsoever, and it's my client's property and the decision to have that access way or not.

CHAIRMAN MICHAEL GARDNER: So do you have -- do you intend to pay the fine?

ATTORNEY HOPE: We were hoping that after explaining some of -- I guess the rationale and not the method that went, that there would be some idea of equity and fairness to recognize that this is a property owner, maybe not doing the right method, but protecting what he believed were his property rights.

As a suggestion, I don't know if the Commission -- there's a point to be made for when

a municipality writes you a letter and they say this is a health and safety issue, then you comply. That may be a benefit, not just to my client, but to everybody. I don't know, it's a suggestion, if there can be a donation made to the CLAB or some other, but I think this is different than someone thumbing their nose when they don't feel -- I think property rights are inherent in the City of Cambridge and in the country, and I think --

CHAIRMAN MICHAEL GARDNER: It looks to me like this is exactly thumbing your nose because you think you're right and you're just not going to take the word of the Fire Department that it's a public safety issue, that this 6,000-pound thing's got to be moved, and you can still protect your property rights by a less restrictive barrier.

ATTORNEY HOPE: I would like to clarify.
I --

CHAIRMAN MICHAEL GARDNER: Why isn't that the thumbing your nose?

ATTORNEY HOPE: I just want to clarify that I am not challenging Chief Riordan or the Commission or anyone's interpretation of the code.

My clients should have, if there was an initial offer to put the temporary barrier in, they should have done that. So there was a period of time, and if that is the factual case, and my clients aren't sure, then they should have done that.

What they represented to me was when they were given the option, they complied. So that may be different factual circumstances.

GERALD REARDON: Counsel, we can probably get something from Traffic to refute some of that, but this could have been straightened out in the first couple of weeks.

I can understand the frustration level

and the anxiety and the animosity that's going on, but it didn't involve us and we're not trying -- again, we're not trying to take sides and we're not trying to force you into caving in to your neighbor to their wishes. That's not the purpose.

We just need to solve the problem and we don't want to do fines. We have all kinds of violations in the city. For us to get to this point is crazy. And we certainly don't want to do fines, but once the fines get in place, we're not going to return them because we gave enough of an opportunity.

I understand the frustration and I think personally, my own personal -- that the frustration level here just boiled over into something where it probably shouldn't have.

And, again, you know, I don't dispute their property rights, and so forth, but the way they went about it from the time the parking lot

was done, there was the egress and ingress there, whether it was on the plans or not, I don't dispute that, but at that time, all of a sudden, out of the clear blue, it's getting blocked and that was not the case right after it was done.

So, again, I understand the frustration level here, but you have to understand that, you know, this should have been solved. We shouldn't be here.

ATTORNEY HOPE: Mr. Commissioner, can I just have a second? You asked point blank is the fine going to be paid and we said everything we needed to say and I just need a second.

CHAIRMAN MICHAEL GARDNER: Well, you want to let us come back to you, and we'll deal with the next order of business and then we'll reconvene?

VINCENT LEO: Let me just make a point. You know, Chief Reardon, it's like I have a lot of compassion about your passion to get access to

this property. What really grinds me, okay, grinds my axe is that how did this plan get approved? You know, we have cars parked in the opposite side, we have a sidewalk --

GERALD REARDON: Mr. Leo, I'll tell you something --

VINCENT LEO: No, no, and I understand that.

GERALD REARDON: And you know what, I don't dispute that. And I can't -- this Board here and what I do during the day, you know, doesn't necessarily transcend into all those actions that precluded this --

VINCENT LEO: And I understand that.

GERALD REARDON: -- to where you got today.

VINCENT LEO: And the point is as -- the property rights that he's referring to, this particular law that you're referring to, it's not talking about access between two commercial

properties, you understand, without a right-of-way. I mean, when they presented that to the town, that should've been rejected or it should've been said, "Well, show us validation that these people have agreed to take the sign down, or that these people have agreed to take this dumpster down." And where are we going after we pass this dumpster? It doesn't go anywhere. You know, all this is like -- this is what's going through my mind and it's driving me crazy.

GERALD REARDON: You know, I can tell it's driving you crazy.

VINCENT LEO: The reason why we're here tonight is that I wish that you could enforce something on the Trader Joe owners, on this particular shopping center because, I mean, the whole design is a train wreck. I mean, it's dangerous. In the snow, it's going to be crazy.

That's what I think should be addressed.

Forcing them to comply with what needs to be complied.

I mean, you know, I've agreed to comply with a barrier that can be moved, but, you know, we're still reserving our rights.

This particular development has really hurt all of our business. I have my colleagues next door from Circle Furniture here, I mean, they can tell how much it has damaged their business.

You know, the reason why we chose to take this route was after we met with Linear Properties, and they basically told us, screw, we got approved, we're not doing anything. This is what we were told.

So out of desperation our customers couldn't park, they couldn't back out. It was just a constant flow in and out of Trader Joe customers because everyone thinks that's the entrance. On their entrance, it's not even

marked "THIS IS AN ENTRANCE, PLEASE ENTER HERE."

It's not inviting. It should've been more inviting, it should've been marked, there's a lot of mishaps that have taken place.

CHAIRMAN MICHAEL GARDNER: Okay.

Mr. Leo, thank you.

I'm going to suggest we ask you to -- we'll suspend this part of the hearing. If there are members of the public that would like to be heard on this matter, we'll give them the opportunity to do that.

But why don't you take a few minutes to caucus with your clients and we'll go to the next order of business.

ROBERT HAAS: I have been listening to this back and forth, and I just want to make -- from my perspective, there's three discrete issues here. One is your property rights. This is not the forum for that.

The issue is -- whether the fire

department decided to enforce CMR, this is not the forum for that.

I think our concern right now is the fact that there was an official action taken that was in connection with your license and it took five and a half months to get resolved.

So I understand tangling stuff up, Mr. Hope. I agree with you. I think they should have gotten an attorney involved sooner than they did. But this thing dragged out and these things got intertwined with one another, but I think the only thing that this Board is concerned about is the cooperation of your clients with respect to the official action by a fire department and that's how narrowly I'm looking at this.

Whether or not you want to pay the fine, or something like, there's another forum for that. It's not here.

So my perspective is, to make it simple is, the notion that it took five and a half

months to reach a resolution. Whether you like the resolution or not, there was a public safety here and that's what we're taking into consideration.

CHAIRMAN MICHAEL GARDNER: Okay. Next matter.

APPLICATION: TOM TIPTON AND EMILY MAGLEBY

ELIZABETH LINT: Application, Tom Tipton and Emily Magleby have applied for an antique store license at 106 Prospect Street. Said license, if approved, will give permission to be a dealer in and keeper of a shop for keeping, purchase, storage or sale of secondhand furniture, bric-a-brac, art objects, painting, jewelry or antiques.

DEBORAH PRIESTLY: Hello. I am Deborah Priestly. D-E-B-R-O-R-A-H M. for Miriam, Priestly, P-R-I-E-S-T-L-Y, the co-owner of the Out of the Blue Art Gallery which is located not

at 26 Prospect Street, but 106.

ELIZABETH LINT: So, I'm sorry, I just read it wrong.

DEBORAH PRIESTLY: That's okay. It says 105.

CHAIRMAN MICHAEL GARDNER: Are you the applicant for the change?

DEBORAH PRIESTLY: No, I am not. I am a poet and artist and the co-owner of the Out of the Blue Art Gallery, and when I went away for two weeks to a healing kind've retreat, I came back yet to find that all of my paintings were in the basement of the gallery as well as about 30 other artists' paintings, which were previously on the walls, and the gallery was repainted on the outside in colors, which I have to tell you are horrible, and the inside of the gallery was painted in "autumn" colors.

CHAIRMAN MICHAEL GARDNER: Okay. Thank you. I do want to hear from you, but I would

like to first find out if we have a representative from the business who was an applicant for the change.

DEBORAH PRIESTLY: They seemed to have not appeared today.

CHAIRMAN MICHAEL GARDNER: So is it Chip --

DEBORAH PRIESTLY: Thomas Tipton.

ELIZABETH LINT: I would put on the record, Mr. Chair, that apparently the outside sign has already been changed and the operation of the business is different than what they're licensed for, so...

DEBORAH PRIESTLY: I wasn't informed of any of it.

ELIZABETH LINT: I would have Ms. Boyer look into this tomorrow and make sure it's not operating as a new venture without approval.

CHAIRMAN MICHAEL GARDNER: So they made the application for the change -- I'm trying to

get this clear with Ms. Lint --

DEBORAH PRIESTLY: All right.

CHAIRMAN MICHAEL GARDNER: -- they made the application for the change. The paperwork for the application is in order, I mean, there was an application done and they were given notice for the hearing this evening.

ELIZABETH LINT: Correct.

CHAIRMAN MICHAEL GARDNER: There's no one here on behalf of the applicant?

ELIZABETH LINT: As far as I know.

CHAIRMAN MICHAEL GARDNER: Making the call to the public, seeing none, and so now, ma'am, again, thank you for coming, and we've heard the beginning of your expression of concerns, you can elaborate further, if you'd like.

DEBORAH PRIESTLY: Yes. Well, the Out of the Blue Art Gallery has been around for almost 15 years. I have been with it for 14. I taught

art classes basically free to the community. And I've run a lot of the workshops, worked with all the schools in the area. I enjoy it. I enjoy outreaching. I have given a number of paintings to over 50 charities that are here in all different charities, AIDS, Haiti. Given paintings to the Cambridge Hospital, you know, and I enjoy doing that sort of thing and I enjoy outreaching to the community. That's what Out of the Blue Art Gallery is all about and has been about for 15 years, not about so much money, which I guess you could say is kinda stupid, but artists aren't always known for being the most smartest business people around.

But basically our goal has been to, you know, outreach, give everyone a chance, and I sort've live that mantra and I am an artist in that way, I'm a poet in that way and I enjoy it.

On a personal note being hurt when I came back and saw everything all, you know, switched

around and bamboozled, I just have to say that I don't think what is being done is not only not kosher, but it's doing a disservice to the community and we -- we've certainly been servicing young children from the age of five and adults.

CHAIRMAN MICHAEL GARDNER: Ma'am, are you an owner of the previous --

DEBORAH PRIESTLY: Yes, I am, I'm 50 percent.

CHAIRMAN MICHAEL GARDNER: I didn't hear that. You're at what percent?

DEBORAH PRIESTLY: 50.

CHAIRMAN MICHAEL GARDNER: So you're a 50 percent owner of a business, as I understand it, you indicate it has changed without your permission?

DEBORAH PRIESTLY: Exactly.

CHAIRMAN MICHAEL GARDNER: Are there other members of the public that would like to be

heard?

If you could just come forward and state your name and spell it for the record, please?

RICHARD ODOM: My name is Richard Odom,
O-D-O-M.

CHAIRMAN MICHAEL GARDNER: Your connection with this, sir?

RICHARD ODOM: I'm an artist also. I have been associated with the gallery for about 12 years even before it was at its present location. I've had my work exhibited through it. I also have a program, a CCTV where I showcase artists' work and have showcased them from the gallery, and we have had a connection, and when I heard that this was happening where one member was changing it without the consent of the other, and at the time the other was undergoing medical treatment, and she found out and she didn't want that. What I don't understand is how it could be approved without the permission of the other

owner?

CHAIRMAN MICHAEL GARDNER: All right.

Thank you.

RICHARD ODOM: And also, I just want to say, you know, this has been a very -- the gallery has been a very big service to the community and the name -- it takes a long time to build up a name, and now it's not only locally known, but it's nationally and internationally known. I hate to see it changed for no apparent reason.

CHAIRMAN MICHAEL GARDNER: Thank you very much.

GERALD REARDON: Just for the record, nothing has been changed. But we haven't approved anything.

RICHARD ODOM: Oh, great. Okay. Thank you.

CHAIRMAN MICHAEL GARDNER: Any there any other members of the public that would like to be

heard?

ROBERT HAAS: So as I understand it now, the applicant is trying to change the nature of the business, change the name of the business, and the ownership of the business with the consent of the other owner?

RICHARD ODOM: Correct.

ROBERT HAAS: I just wanted to make sure I got it right.

DEBORAH PRIESTLY: To put it mildly, I'm peeved.

RICHARD ODOM: She called him this morning and he said it wasn't happening, but I called city hall and they said, "Yes, it is."

CHAIRMAN MICHAEL GARDNER: Thank you very much.

I think on this matter we will send an investigator out to review it.

Can we put this matter on for our next hearing, Ms. Lint?

ELIZABETH LINT: Sure.

CHAIRMAN MICHAEL GARDNER: To carry it over for them which is November 15th at 6:00 p.m.; is that correct?

So, we will have this matter back on the agenda on November the 15th.

ROBERT HAAS: I want to ask you a question. If, in fact, we determine this business is operating, it's operating in a different name, prior to getting permission, is there any recourse between now and then, or I guess it's more a question for the chair, do we just allow them --

CHAIRMAN MICHAEL GARDNER: I don't know.

ELIZABETH LINT: I would issue a cease and desist.

ROBERT HAAS: We have the authority to do that, right?

ELIZABETH LINT: We do.

DEBORAH PRIESTLY: I just don't want to

hurt the community. I really enjoy working with the children and with the adults in art classes, my poetry venue, and I would like to have the different events that we do -- they're on a weekly basis -- not be hurt by any of this, if I can help it.

CHAIRMAN MICHAEL GARDNER: Let me propose a motion that this matter be reconsidered on November the 15th in light of the failure of the applicant to appear, and that before that time the License Commission staff investigate the matter to see if, in fact, there's been unilateral action taken without the approval of the Commission, and if so, that the Commission staff take appropriate action to preserve the status quo.

ROBERT HAAS: Second that motion.

DEBORAH PRIESTLY: Thank you very much.

CHAIRMAN MICHAEL GARDNER: Okay. Any further discussion?

GERALD REARDON: Nope.

CHAIRMAN MICHAEL GARDNER: All those in favor signify by seeing "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Aye.

None opposed. So, that's what we'll do, we'll take this up again on the 15th.

Thanks for coming in.

DEBORAH PRIESTLY: Thank you.

RICHARD ODOM: Thank you.

CHAIRMAN MICHAEL GARDNER: Mr. Hope, are you prepared to come back?

ATTORNEY HOPE: We'll be brief.

So, in light of the discrete issue pointed out by Commissioner Haas and Chief Reardon, we are going to pay the fine. It was important for us, for the record, for other matters, which I understand are not privy of this Commission, to establish our property rights, we

don't change that, but it's the purview of the Commission to look specifically for that issue, and if the fine is attached to that, then we're going to pay the fine.

CHAIRMAN MICHAEL GARDNER: Okay. Well, I think, as Commissioner Haas indicated, the actual enforcement of the fine is the responsibility of others besides us, however, I think we view our jurisdiction broadly enough that we definitely find cooperation with other city agencies to be -- particularly when it affects public safety, to be an important consideration for us in terms of the viability of the license.

And I, at least for one, am pleased that you have decided to accept the responsibility as indicated by issuance of the fines by the Fire Department.

I guess I would say in my limited tenure here, this really seems to me to be the most serious matter that we have attended to, both for

the potential public safety hazards and for the clear capacity and control of owners or managers of this business to take immediate remedial action. We hear about overcrowding, you know, we hear about incidents that happen in licensed premises, many of which in retrospect you can look at it and say, you know, if management had done this better, it might not have happened this way, but this is really different than that and that's quite troubling.

ATTORNEY HOPE: Briefly to your point, you're right, this is serious, and I think the fact that if you look at the history of being in Cambridge doing business in Cambridge, this is not the way they operate. They also realize they make their living in front of this Board. This is not something they take lightly, but I think this is the right decision to make.

I wish that we had sought a better solution earlier and it wouldn't have went this

far, but this is where it is. And I think we recognize that if there was a remedy, we were looking for it, but the way we went about it, wasn't the proper way.

CHAIRMAN MICHAEL GARDNER: Thank you.

ROBERT HAAS: So, I guess, Mr. Hope, what I'm looking is for some assurances that if something like this were to recur, would your clients have an appreciation that there may be other issues that are stake here, but when it comes to public safety, I think this Board with respect to its license would expect full cooperation and seek some other redress to deal with those other issues.

ATTORNEY HOPE: The lesson I hope they learn is, the first thing, call your attorney because if they called their attorney, there are ways to reach out and figure out which bodies are you going to get the result you want to get.

But even more to that, I think, as owners

and operators who haven't been butting up against any municipal departments, or licensing, I think this was a really discreet, isolated, important issue for both parties.

I wish the remedy was a lot better because then they would not have been pitted up against the city, which they do not want to be in a city, you know, they make their business and they have for a very long time and it was very unfortunate the way --

GERALD REARDON: For the record, we don't want to be pitted against our business owners.

I mean, this is not something we have enjoyed at all. In doing the right thing and trying to enforce this stuff is not popular at all.

And, you know, we try to bend over backwards to try to make it -- and I understand the situation, but it's -- whether I like it not, we have to do what we have to do and it's

unfortunate and that's what I've got to say.

CHAIRMAN MICHAEL GARDNER: So I'll try my hand at a motion here, which is recognizing that it is not the responsibility of the License Commission to enforce the payment of fines issued by the Fire Department, but, however, cognizant of the representations of the owners that they're accepting responsibility and paying the fines, given the totality of the circumstances, including the seriousness of the violations, I would recommend that a warning be issued to the owners concerning this violation, and that the warning include the notice that should there be any future serious public safety violations, or resistance to the valid enforcement of city regulations that the Commission would consider revocation of the license.

GERALD REARDON: Second.

CHAIRMAN MICHAEL GARDNER: Any further discussion?

ATTORNEY HOPE: For the record, I do think -- well, forget it.

ROBERT HAAS: So, Mr. Chair, I think your motion is well-guarded. I think it has sufficient caveats in there that with respect to seriousness and also consideration of revocation that there is not an absolute with respect that this party would take that matter into consideration in the future and make a determination based on the warning that's placed in the file.

CHAIRMAN MICHAEL GARDNER: That's right. My intent here is to put the license holder on notice as to how seriously we regard the continuing violation for five and a half months to take no punitive action with respect to the license as of now, but to be very clear, that in the future, having received such a warning, at least we're on notice, or we put you on notice that we would consider revocation as an

appropriate remedy.

Motion having been made and seconded?

ROBERT HAAS: Seconded.

CHAIRMAN MICHAEL GARDNER: All those in favor signify by saying "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Aye.

Motion carries with three in the affirmative and none in opposition.

And to both the Leo family and to Mr. Hope, we hope these matters are resolved from our point of view, and we would encourage you to the extent that there aren't, you believe, continuing infringements upon your property rights that you seek the appropriate means before the appropriate forum. Thank you.

I did promise the opportunity for members of the public to speak. I apologize for having forgotten to ask. I don't know what else to say.

RICHARD TUBMAN: Can I make two tiny little points?

CHAIRMAN MICHAEL GARDNER: Because I failed to do that, I would be happy to hear from members of the public. I apologize.

RICHARD TUBMAN: My name is Richard Tubman, T-U-B-M-A-N, and I'm the owner of Circle Furniture. We rent the space next to Mr. Leo's space, and all I want to say is that the problem exists because of the design of the neighbor's property and their solution is to use our property as a remedy to their problem.

We tried on multiple occasions to work with them to find a solution, they met with us and they indicated that they didn't perceive it as their problem and they didn't care. So, we did try.

Thank you.

ROBERT HAAS: Can I just -- I mean, because you -- I need to ask some questions. Is

there a remedy in terms of addressing some of the safety concerns of the parking lot, or is it just in limbo?

HAROLD TUBMAN: I'm Harold Tubman, co-owner of Circle Furniture. Limbo describes it. I understand the frustration of this Board and I understand the frustration of the Leo family. We live it everyday. Our business is declining. There's a safety issue, you're talking fire, I'm talking about driving through.

We hired a safety officer. We had a police officer in our parking lot all last winter. As soon as the snow builds up, it becomes impossible for people trying to get through.

I personally spoke to the Cambridge Police Department, tried to hire a Cambridge detail. They said, "We don't know what we can do with this situation. Go hire a private detail." That's how frustrating it is.

CHAIRMAN MICHAEL GARDNER: Has the putting of the more flexible barrier helped deal with the issue?

HAROLD TUBMAN: I would say no. I get out of my car and I'd be frightened walking across and I am. We used to have a strong Concord Avenue, which is safer to cross than that parking lot at times, because --

RICHARD TUBMAN: People perceive it as a public road when it's a parking lot.

ROBERT HAAS: I'm just wondering if Community Development might have a role in terms of trying to facilitate some kind of resolution to this issue, or is it completely outside of the scope of the municipality?

CHAIRMAN MICHAEL GARDNER: I'm wondering whether or not the License Commission might forward a copy of the relevant section of this evenings minutes to Community Development Inspectional Services and hoping to hear from

others who -- others might indicate that the representations made this evening with respect to the flaws or the lack of appropriate signoffs from abutters on the original design and with a review to see if, in fact, there are other issues that could be done.

ELIZABETH LINT: Traffic and Parking?

CHAIRMAN MICHAEL GARDNER: Yeah. The appropriate agencies along with a cover letter from the Commission indicating that although we had to deal with a particular aspect of the problem, it appears that the overall global issue remains unresolved.

ELIZABETH LINT: Yep.

GERALD REARDON: Could I ask you one more question? If that was blocked with permanent concrete, would that adversely hurt your business as well?

HAROLD TUBMAN: Originally I thought so, but, frankly, there's a safety issue beyond our

business at this point. We had one of the officers that I was referring to was hit by a car. You can check the police records for how many accidents have been in that lot.

ROBERT HAAS: We're currently looking at that now.

HAROLD TUBMAN: What?

ROBERT HAAS: We're currently looking at that now.

HAROLD TUBMAN: I mean, we're not saying anything, it's a frustration level. Before that other site -- and as a retailer, I'm thrilled that they fixed that up, it's better for us. But there was an egress out the back.

When I first saw those plans, I don't know how you plan to get a fire truck through whether you go through our property or not. It's frustrating. I encourage any of you to meet me there any morning and just walk through and give me a suggestion to get us out of limbo. It would

be great.

GERALD REARDON: I try to stay undercover, but I'm a frequent harsh old -- you can buy furniture while you get a coffee.

(Laughter.)

You know, again, as I said earlier, I understand all the frustrations, and if there's anything we can do in terms of making this a safer place, we still would be willing to help.

HAROLD TUBMAN: I mean, I wish I had answers, a great suggestion, but I'm not a traffic engineer.

GERALD REARDON: My question was if it was blocked with something that we could drive over and the normal car would drive over, would that adversely hurt your property?

You have a three-point turns. And it's easy to say a fire truck can go over a curb. If there's a car there, a fire truck is not going over a car. I don't want to beat a dead issue

here and we've talked about it and I understand all the issues. I wish I had a resolution.

NICHOLAS LEO: I think one thing that might help a little bit is if we get someone to put some signs out there, the neighbor or Trader Joes, and put some signs on Route 16 there that indicate that that is the mall entrance coming out after our property.

If you look coming down over the bridge, it says "MALL NEXT RIGHT," it's really indicating to go underneath the bridge to go to the Whole Foods Mall. They think that's the main entrance for the shopping center which it's not. We need signs up there, too.

GERALD REARDON: That's also DCR. They're a little harder to --

NICHOLAS LEO: The signs are set back on the property or something. Anything that gets people to steer away.

VINCENT LEO: Like I said to you before,

they didn't mark it. They should've had a turning lane onto their property so it wouldn't affect the traffic flow. And it's so uninviting. It's like you're pulling into a driveway, and I can imagine what it would be like to pull a fire truck in there.

GERALD REARDON: This is an unofficial comment. I hate going through that parking lot.

HAROLD TUBMAN: But that's the whole point. That's why our business is going down.

GERALD REARDON: Again, I'm sympathetic.

CHAIRMAN MICHAEL GARDNER: So a motion to forward a copy of the minutes with an appropriate cover letter to the appropriate city agencies, is there a second to that?

ROBERT HAAS: Second.

GERALD REARDON: Second.

CHAIRMAN MICHAEL GARDNER: All those in favor signify by saying "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Aye.

Thank you very much.

Captain Cahill, thank you very much for your participation this evening.

APPLICATION: BLUE MOON LIMO CORP.

ELIZABETH LINT: Application, Blue Moon Limo Corp., Ban Jimma, manager, has applied for a limousine/livery license at 33 Lincoln Way, Cambridge.

CHAIRMAN MICHAEL GARDNER: Good evening, sir. If you could just state and spell your name for the record and tell us about the plan.

BEN JIMMA: First name is Ben, B-E-N. And last name is J-I-M-M-A. I'm planning to open a limo business in Cambridge. And we purchased a car and we properly got all the licenses, but the Massport required to get a permit from our city to get a proper license to operate the car.

CHAIRMAN MICHAEL GARDNER: Did you say Massport?

BEN JIMMA: Massport, which is the Logan requirement. Each limo has to have a permit from the city where we live. So that's why we're here to get the license.

CHAIRMAN MICHAEL GARDNER: Could you tell us a little about your business plan and also where you will park the vehicle?

BEN JIMMA: Parking issue would be resident parking. I park in the resident area where I live, and we try to provide a quality service and more or less good price in comparing to other bigger companies, and we gonna market our company through internet and Google and marketing companies, so we pretty much small company. We just have one car for now.

CHAIRMAN MICHAEL GARDNER: What do you anticipate the -- either the bulk of your business or the various categories of the kinds

of business that you will be able to attract and do?

BEN JIMMA: I'm trying to attract more corporate accounts in the long room, but for now, we just go to residents in Cambridge or Boston areas providing service, car service.

CHAIRMAN MICHAEL GARDNER: Is it primary passenger service or are you looking for package delivery?

BEN JIMMA: No. Just person. That's -- delivery only requires us to deliver individual like, you know, person-wise, but we're not allowed to make -- my insurance doesn't cover the package.

CHAIRMAN MICHAEL GARDNER: So you're limiting your business to transporting passengers?

BEN JIMMA: Yes.

CHAIRMAN MICHAEL GARDNER: Tell us how the Massport or the airport runs fits into your

business plan?

BEN JIMMA: Massport required to have a million dollars coverage on the -- on the car and we have that, and we have the paperwork from our insurance and your company to be incorporated, that's another requirement. We did that. And the last step would be to get the permit from your city where you live.

GERALD REARDON: Where the car is garaged?

BEN JIMMA: Yes. A permit from your city. They want some kind of verification where the car is.

CHAIRMAN MICHAEL GARDNER: Your understanding of how the business would work you would be able to take people from Cambridge to the airport. What about airport pickups back?

BEN JIMMA: Actually once you have the permit from the airport, which is Massport, which requires us to get the sticker, and you can

pick -- you can't pick up unless you're permitted by Massport, which is, you know, the license we asking for right now. And from Cambridge, from Boston anywhere you can pick up once you have the proper license from your city.

CHAIRMAN MICHAEL GARDNER: What do you understand about the restrictions with respect to your capacity to pick up people in Cambridge to make runs to the airport or someplace else?

BEN JIMMA: Reservation have to be in advance. We're not allowed to work like a cab, we can't just pick up individuals from the street.

I have been in business for -- I work with different companies in this business, so I know how the reservation works and how advance you have to give notice to your client.

CHAIRMAN MICHAEL GARDNER: Could you describe some of your prior experience then?

BEN JIMMA: I worked with Planet Tran. I

worked with them about a year. And I currently have a part-time job with them. I'm still working on it. It's the same company. I think they recently moved from Cambridge to Everett. Yeah. So pretty much we have -- I work with them for quite some time.

CHAIRMAN MICHAEL GARDNER: And what will -- the employees of organization and drivers will include whom?

BEN JIMMA: Just me.

CHAIRMAN MICHAEL GARDNER: Just you. You will be doing all of it including the booking of appointments?

BEN JIMMA: Yes. Once we launch our website and we planning to work with marketing company to market our website and our company, everything will be done by me.

CHAIRMAN MICHAEL GARDNER: And you would be operating under the business name of Blue Moon Limo?

BEN JIMMA: Yes.

GERALD REARDON: Do you have access to parking inside or is it on the street?

BEN JIMMA: We can get a parking from the resident because I'm gonna use the car as a personal plus a business.

GERALD REARDON: I'm thinking when you get a livery plate whether or not you can get a resident sticker.

ROBERT HAAS: So you're going to be parking in the parking lot where you live, or are you going to park out in a public street?

BEN JIMMA: I can do both. I can get a permit. We have resident parking.

ROBERT HAAS: We had a problem with people parking in parking lots from -- we had that once before with one other gentleman.

GERALD REARDON: That was, I believe, 364 Fresh Pond Apartments.

ROBERT HAAS: We had a restriction if you

park your commercial vehicles inside a parking lot.

ELIZABETH LINT: Unless you have permission for them.

ROBERT HAAS: Have you gotten permission?

BEN JIMMA: I have a city sticker, too.

CHAIRMAN MICHAEL GARDNER: I guess the question is: Do you currently, where you live, have access to off-street parking?

BEN JIMMA: Yeah. I have a Cambridge sticker.

CHAIRMAN MICHAEL GARDNER: No. Off-street parking. So like in a driveway or in a parking lot, or is your parking limited to on street?

BEN JIMMA: Oh, it's on street for now. Once I get my license and all the paperwork is ready, I can submit to the management to get a resident parking.

GERALD REARDON: Inside?

BEN JIMMA: Inside.

CHAIRMAN MICHAEL GARDNER: Inside the structure of the property itself?

BEN JIMMA: Yes. So, like, you know, each apartment is allowed to park two cars or one car. So I have, you know -- I mean, I have permitted parking.

ROBERT HAAS: So you have no intentions of going to the hotels soliciting business at all?

BEN JIMMA: No. Everything would be set up to reservation. And I know how restricted the business is comparing to cabs because I know how it works.

CHAIRMAN MICHAEL GARDNER: What sort of driver's license do you need to do this?

BEN JIMMA: Just a regular license.

CHAIRMAN MICHAEL GARDNER: Class D?

BEN JIMMA: Yes.

CHAIRMAN MICHAEL GARDNER: And for

insurance purposes, you are required to have more insurance to deliver packages than you are for passengers?

BEN JIMMA: I'm not quite sure how that process works, and I'm not intentionally looking for delivering packages. My intention is to give service to people.

CHAIRMAN MICHAEL GARDNER: Have you reviewed the City of Cambridge regulations with respect to livery services?

BEN JIMMA: Yes.

CHAIRMAN MICHAEL GARDNER: Do you understand there's currently a \$40 minimum charge?

BEN JIMMA: Yes.

CHAIRMAN MICHAEL GARDNER: That can work in your business plan?

BEN JIMMA: Yes.

ROBERT HAAS: How are you going to advertise your business?

BEN JIMMA: We have website. We currently are working on building that. And we have on-line marketing company called One In One. It's a marketing company on line. And they do a lot of the on-line marketing and related to Google and other related search engines.

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

Anything else for you to add?

BEN JIMMA: No.

CHAIRMAN MICHAEL GARDNER: Other questions?

ELIZABETH LINT: I have some housekeeping. The Articles of Incorporation has his first name spelled B-A-N, so the Articles of Incorporation would be need to be amended and I also need the green cards.

Secretary of State's Office. And we also need the green card.

BEN JIMMA: I submit that to the office.

ELIZABETH LINT: I need the returned receipt.

CHAIRMAN MICHAEL GARDNER: There's some hard cardboard that comes back that indicates -- what you have shown Ms. Lint indicates that you bought the notices, but you're supposed to then after they're mailed, they're supposed to be returned, the proof of receipt of the documents.

BEN JIMMA: You mean from --

ELIZABETH LINT: Like this (*indicating*). This is what you will get back.

BEN JIMMA: I haven't received anything.

CHAIRMAN MICHAEL GARDNER: Do you know when you mailed them? How long ago you mailed them?

BEN JIMMA: Oh, it was -- I have the receipt.

ELIZABETH LINT: October 18th.

BEN JIMMA: 19, Wednesday 10/19/11.

ELIZABETH LINT: I have the 18th.

BEN JIMMA: Wednesday.

CHAIRMAN MICHAEL GARDNER: So are we --
is it appropriate for us to take action
contingent upon proof of receipt of the abutters'
notices or not?

ELIZABETH LINT: We have the receipts. I
think we all know sometimes people don't return
them and it's been quite awhile.

CHAIRMAN MICHAEL GARDNER: Pleasure of
the Commission?

ROBERT HAAS: It seems to me you have
taken all the prudent steps and it looks like you
have a good solid business plan. So I make a
motion to approve the application.

GERALD REARDON: Seconded.

CHAIRMAN MICHAEL GARDNER: Might I
suggest that we put a six-month review on this
just to see how things are going?

ROBERT HAAS: The only thing I'd ask is

that you just produce proof of your liability coverage so we have it on file.

BEN JIMMA: Yeah, I have it here. I have the insurance.

ELIZABETH LINT: Can you drop off a copy of it in the office?

BEN JIMMA: Sure.

CHAIRMAN MICHAEL GARDNER: Is a six-month review acceptable?

ROBERT HAAS: Yes.

CHAIRMAN MICHAEL GARDNER: So a motion having been made and seconded to approve the application subject to a six-month review, all those in favor signify by saying "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Aye.

None opposed. And also conditional upon whatever other paperwork Ms. Lint needs.

BEN JIMMA: Okay.

CHAIRMAN MICHAEL GARDNER: All right?

BEN JIMMA: All right. Thank you.

CHAIRMAN MICHAEL GARDNER: Good luck with your plan.

BEN JIMMA: I appreciate it.

RATIFICATIONS

ELIZABETH LINT: Ratifications:
Medallion 28, 23, 146, and 68 all are in order.

ROBERT HAAS: Make a motion to accept.

GERALD REARDON: Seconded.

CHAIRMAN MICHAEL GARDNER: A motion having been made and accepted and seconded to approve the ratifications, all those in favor signify saying "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Aye.

None opposed.

The ayes have it.

Is there any other business before the Commission this evening?

ELIZABETH LINT: No. I think this is the gentleman from --

CHAIRMAN MICHAEL GARDNER: Right. We see there are members of the audience here and certainly one of you looks familiar.

Why don't you come forward and state your name and business before the Commission.

TEREFE JIFERA: My name is Terefe Jifera, T-E-R-E-F-E J-I-F-E-R-A.

CHAIRMAN MICHAEL GARDNER: If memory serves, sir, you were here a number of weeks ago with respect to the possibility of a limo livery service of your own, do I have that right?

TEREFE JIFERA: Yes.

CHAIRMAN MICHAEL GARDNER: We had this matter on for consideration on the 18th?

TEREFE JIFERA: 27th.

CHAIRMAN MICHAEL GARDNER: 27th?

ELIZABETH LINT: For decisions on the 27th, so it's not on tonight.

CHAIRMAN MICHAEL GARDNER: We don't actually have you on the agenda for this evening.

Is this a matter that we can put on the agenda for the 15th? I believe we actually had some additional questions or...

ELIZABETH LINT: Well, we sent out a letter.

ROBERT HAAS: So the other issue, Mr. Chair, I don't think I was here during the initial hearing. I think it was on October 4th.

TEREFE JIFERA: On the 4th.

ROBERT HAAS: I think it was while Superintendent Burke was here. So I would like to try to schedule it when they can actually hear any final discussion.

CHAIRMAN MICHAEL GARDNER: I'm sorry you had to wait all evening long. We would like to deal with the issue in an expeditious or quick

way, but I think we do feel the need to schedule further.

Did you say you're in receipt of a letter from the Commission?

TEREFE JIFERA: Yeah, I did.

ELIZABETH LINT: Yeah. We sent a letter telling him you had more questions, but we didn't tell him to come today.

CHAIRMAN MICHAEL GARDNER: Well, we appreciate your diligence, but, unfortunately, we're not ready this evening for you.

So, we'll ask Ms. Lint to work with our -- the members of the Commission who heard the matter the first time and see whether or not we can --

GERALD REARDON: Was this one referred to the decision making?

ROBERT HAAS: No. I think it was continued. I think Superintendent Williams was here in my place.

ELIZABETH LINT: Yes. But we did continue it to the decision-making hearing, which was last week, and at that time there were -- when --

CHAIRMAN MICHAEL GARDNER: October 4th was the date, was that right? That's the day you were not here. Is that Williams or Burke?

ELIZABETH LINT: It was Burke and then --

ROBERT HAAS: Lieutenant Burke.

ELIZABETH LINT: -- he was here last week as well and it was continued because you had more questions.

ROBERT HAAS: But I believe it was continued that night to the decision making, wasn't it?

ELIZABETH LINT: Yes. Yes, it was.

CHAIRMAN MICHAEL GARDNER: Yes, it was. It was continued for them so we could think about it and decide.

ELIZABETH LINT: We certainly would not

have put it on today because it would have no way of knowing that he had received a letter and what the questions were that needed to be answered and so forth, so...

GERALD REARDON: I guess my point is, is it appropriate to get the questions answered at the decision-marking hearing and then -- because that's --

ROBERT HAAS: I guess it's kind of irrelevant. First of all, I'm not going to be here for decision making that week.

And I'm just wondering if it would be helpful, Mr. Chair, if you were going to have the applicant come back, I could make arrangements to have Superintendent Burke be here for the next hearing, get your answers, and at that point in time, you could every take action that night or you could then continue to the decision-making hearing and then Superintendent Burke would be filling in for me at that hearing as well.

CHAIRMAN MICHAEL GARDNER: That's on the 22nd?

ROBERT HAAS: Correct. It's a decision-making hearing.

CHAIRMAN MICHAEL GARDNER: Right. I think some of the concerns we had, had to do with the viability of your business plan. We did, I think, receive from you what we thought were some unsatisfactory answers with respect to what you understood or knew about what the restrictions were, both on pickup and also the issue about Massport and what you could do at Massport.

Chief, any other matters that you recall as being concerns?

GERALD REARDON: I think we just had concerns on the business plan.

And this is the one at 398 Rindge Avenue?

TEREFE JIFERA: 398 Rindge Avenue, yes.

GERALD REARDON: My recollection is that we had moved this to decision making, but I

believe you were looking for some clarifications on it, though.

I guess the point I'm making is, does it go back on a full hearing, or simply do we get the clarification prior to the decision hearing?

ROBERT HAAS: It sounds like you have to go through another hearing to get the decision making again anyway. So I'm just offering the opportunity to give the Commission or the Board the opportunity to have Superintendent Burke here, you here and the Chairman, get those questions clarified and you can take action that night, or if you need to, then continue it to the decision-making hearing on the 22nd.

GERALD REARDON: Understood.

CHAIRMAN MICHAEL GARDNER: So what we would like to do is reschedule this matter for November the 15th.

We'll make arrangements for Superintendent Burke to come.

The questions we've got for you are very similar to the ones that you heard us ask to the prior applicant who is also seeking for a limo livery service, and they revolve largely around our being satisfied that you understand the nature of the business and the restrictions on the business as it operates in Cambridge, and that you can represent to us you have a viable business plan to work within those restrictions.

Do you understand that, sir?

TEREFE JIFERA: Yes.

CHAIRMAN MICHAEL GARDNER: We don't have to take any action on this other than we'll request that Ms. Lint schedule this matter for November 15th at 6:00.

Again, our apologies that you had to wait so long.

TEREFE JIFERA: Thank you very much.

CHAIRMAN MICHAEL GARDNER: So we did at our last hearing have a conversation about the

possible letter to send to representatives of the general court and Ms. Lint did draft a letter for our review, it has been reviewed, I think, by all of us now and it's ready for signature so we could sign that as a ministerial act.

ROBERT HAAS: The only hold up is make sure the Chief feels comfortable --

CHAIRMAN MICHAEL GARDNER: Yes, right. I guess we can represent that Chief Reardon has reviewed it prior to this evening's meeting and has even signed.

Are there any other matters that need to come before the Commission at this point?

ELIZABETH LINT: I have nothing.

CHAIRMAN MICHAEL GARDNER: Motion to adjourn would be appreciated.

ROBERT HAAS: I make a motion to adjourn.

GERALD REARDON: Seconded.

CHAIRMAN MICHAEL GARDNER: All those in favor signify by saying "aye."

GERALD REARDON: Aye.

ROBERT HAAS: Aye.

CHAIRMAN MICHAEL GARDNER: Unopposed, so
the ayes have it.

Thank you. And we're adjourned at 8:44.

ATTACH TO THE LICENCE COMMISSION HEARING OF

11-1-11

ERRATA SHEET

INSTRUCTIONS: After reading the transcript of the Poles and Conduit Meeting of 11/1/2011, note any change or correction and the reason therefor on this sheet. DO NOT make any marks or notations on the transcript volume itself. Sign and date this errata sheet

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I have read the foregoing transcript of the License Commission Hearing of 11/1/2011, and except for any corrections or changes noted above, I hereby subscribe that the transcript is an accurate record.

CERTIFICATE

Commonwealth of Massachusetts

Suffolk, ss.

I, Jill M. Kourafas, a Notary Public in
and for the Commonwealth of Massachusetts, do
hereby certify:

This transcript of the License Commission
Hearing of 11/1/2011 is a true and accurate record
of the proceedings.

IN WITNESS WHEREOF, I have hereunto set
my hand this 9th day of November 2011.

Jill Kourafas
Notary Public
Certified Shorthand Reporter
License No. 149308

My Commission expires:
February 2, 2017

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