

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION GENERAL HEARINGS

LICENSE COMMISSION BOARD MEMBERS:

Richard V. Scali, Chairman
Robert C. Haas, Police Commissioner
Daniel Turner, Deputy Chief

STAFF:

Elizabeth Y. Lint, Executive Officer

- held at -

Michael J. Lombardi Municipal Building
831 Massachusetts Avenue
Basement Conference Room
Cambridge, Massachusetts 02139
Monday, July 26, 2010
6:07 p.m.

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P R O C E E D I N G S

MS. LINT: License Commission General Hearing, Monday, July 26, 2010. It's 6:07 p.m. We're in the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Basement Conference Room. Before you are the Commissioners: Chairman Richard Scali, Commissioner Robert Haas, and Deputy Chief Dan Turner.

Do you want to start with the continuation from the last hearing?

MR. SCALI: Let's do the one with Officer Arcos, if we could, yes.

MS. LINT: Appeal: Tewodros Bekele, Hackney license No. 29241, driver of Medallion No. 78 due to a citation issued by Officer Arcos for refusing a fare. An appeal hearing was held on June 3, 2010, before Elizabeth Lint, Executive Officer. At that time, testimony was heard from Officer Arcos and Mr. Bekele, and the \$300 fine that had been imposed was upheld due to the lack of documentation in the file stating that Mr. Bekele was allergic to dogs, as is required by the Rules and Regs of the Hackney Division of the Cambridge License Commission.

MR. SCALI: Mr. Bekele, do you want to come up? And Officer Arcos. Have a seat, sir.

OFFICER ARCOS: My name is Antonio Arcos. I'm a Cambridge Police Officer assigned to the Hackney Division.

MR. SCALI: State your name for the record, sir.

MR. BEKELE: My name is Tewodros Bekele.

MR. SCALI: We're going to start with Officer

Arcos' report and then Mrs. Lint can follow up with her report, and then you'll have an opportunity to respond and ask questions as well.

MR. BEKELE: Okay.

MR. SCALI: We'll start with you, Officer.

OFFICER ARCOS: On May 25, 2010, the Hackney office received a complaint from a Dave Levy. He resides with his family in Wisconsin and he was visiting in Cambridge.

The incident happened on May 19, 2010 at 3:50 p.m. at the Marriott Residence Inn located at 6 Cambridge Court in Cambridge. He stated the taxi refused to pick up my wife, daughter, and myself, because my wife is deaf and travels with a certified hearing dog. It's a violation of the ADA to deny access to public transportation. He would like to see this office to investigate and to correct the problem. And he would like to see the driver undergo sensitivity training regarding Americans with Disabilities Act.

Then he proceeded to write a report

stating that on May 19, 2010, at 3:50 p.m., the doorman at the Residence Inn called for the next cab in line to pick up myself, my wife, and my daughter. The cab, Cambridge license No. 78 pulled up and told the doorman that he would not accept the fare as he did not want to have my deaf wife's certified hearing dog ride in his cab. The doorman told him he was obligated under the law to take us, but he drove off. The driver was black and spoke with an accent.

The doorman was able to call another cab off the street, not waiting in line at the hotel. The next cab in the line would not pull forward to get us and we were fortunate that the doorman was able to flag down a passing cab that did pick us up.

Then I conducted an investigation. I identified the driver of Cab 78 as Mr. Bekele. I called the reporting party and confirmed his written complaint and then called the driver who was identified to be one Tewodros Bekele, and conducted an interview.

During the interview Mr. Bekele told me that he denied service to her because she had a large dog and he's allergic to dogs. There is no documentation in our file indicating that Mr. Bekele is allergic to dogs. Mr. Bekele was advised that his actions could be interpreted as a violation of Civil Rights and he could be charged with a crime. Mr. Bekele was issued a hackney fine for \$300. He was informed that he had seven business days to appeal the fine. He did so, and the appeal took place on May 19, with Mrs. Lint in this office.

The appeal hearing was held on June 3, 2010. At this time, I testified and Mr. Bekele also testified. A review of the file showed that he has been driving a cab for three years with no violation. There's no documentation in the file of allergy to dogs, which is required by the Rules and Regulations of the Hackney Division of the Cambridge License Commission. She found that he refused to take the fare because he did not want to take the dog, and therefore, she upheld the fine of

\$300.

At this time he was advised that he had seven days to appeal to the Commission and that's why we're here today.

I just want to mention that during the hearing he produced a printout from last January indicating that he had general allergies, and it didn't mention anything about dogs. It mentioned something about hay fever.

MR. SCALI: And that was after the fact?

OFFICER ARCOS: After the fact, yes.

MR. SCALI: That was not in his file?

OFFICER ARCOS: Right, that was the day after he received the fine. Also, when I called him to hand him the notice for this hearing he produced another form dated July 16 that he has severe allergy to dogs, and I provided a copy.

MR. SCALI: That's in here?

OFFICER ARCOS: Yes. The Rules and Regulations said that we should be notified before obtaining the Hackney license that a person is

allergic to animals. And if they are, the taxi they drive should have a partition.

MR. SCALI: So the gentleman that complained, did you talk to him in person, or was he was from out of town?

OFFICER ARCOS: On the phone. He doesn't reside in Massachusetts; he resides in Wisconsin.

MR. SCALI: In Wisconsin, and he submitted the written complaint to you, and then you spoke to him on the phone.

OFFICER ARCOS: Yes.

MR. SCALI: Any questions of Officer Arcos?

MR. HAAS: I just want to be sure I understand. They initially flagged down the first cab and he refused the fare. Did you say there was a second cab?

OFFICER ARCOS: He was top cab. The doorman didn't -- the second cab in line saw him leaving without the parties so he refused to go forward to the front of the hotel; that's why the

doorman stepped out into the street and flagged down a passing by taxi.

MR. SCALI: How did they know it was this gentleman that refused? Did the doorman report this or did the complainant?

OFFICER ARCOS: The complainant.

MR. SCALI: Wrote down the name and number of the cab?

OFFICER ARCOS: Yes.

MR. SCALI: So no one spoke to this gentleman there at the hotel that day?

OFFICER ARCOS: The doorman.

MR. SCALI: The doorman spoke to him?

OFFICER ARCOS: Yes. He's basically the one who told the person directly that he wasn't taking them.

MR. SCALI: So he told the complainant?

OFFICER ARCOS: Yes.

MR. SCALI: I guess we're just trying to make sure it's the right person; that the complainant wrote down the medallion number and he

knew the name of the taxi driver as well.

OFFICER ARCOS: He admitted to me already that he was the one.

MR. HAAS: No other questions.

MR. SCALI: Questions?

MR. TURNER: No questions.

MR. SCALI: So Mrs. Lint, you had your hearing on June 3, and did you hear the testimony with regard to what Officer Arcos has stated?

MS. LINT: Yes, and he is absolutely correct. Mr. Bekele submitted to me a document from Mass. General that was after the fact, and didn't say anything about allergies to dogs. It just said hay fever. It was just I want to say maybe last Thursday or Friday that he came in and submitted another document saying that he had allergies to dogs. I know Officer Arcos inquired if he had a partition in his cab, and he doesn't, so it's still a violation.

OFFICER ARCOS: I took pictures and I put them in the folder so you can see.

MR. SCALI: And these pictures are of

the actual cab?

OFFICER ARCOS: Yes.

MR. SCALI: Oh, without the partition.
I see. Any other questions?

MR. HAAS: No questions.

MR. SCALI: Mr. Bekele, you now have an opportunity to respond as to what happened that particular day and you can ask questions of Officer Arcos through me, if you'd like, or you can just testify as to what you know happened that day.

MR. BEKELE: I'm a good driver. I never refuse no job. I never refuse like any kind of thing. The problem was there were three people and a big large dog, and I have problems, that's why. I didn't mean to refuse. I told them I cannot take, I have problem with my health, so he can have another taxi. There was taxis behind me. After that, I don't know.

MR. SCALI: Did you file with our office before hand, your allergy issues? Because I guess through Officer Arcos, he's saying it's not in your file so there's no way that we would know

that beforehand.

MR. HAAS: I learned like I cannot refuse no job but I didn't know I have to put some information with my documents that I have a problem.

MR. SCALI: Where was the family going? Where was he going? Do you know where they were going that day?

MR. BEKELE: I didn't ask anything.

MR. SCALI: Do you know where they were going, Officer Arcos?

OFFICER ARCOS: No.

MR. SCALI: There was no destination?

OFFICER ARCOS: No.

MR. SCALI: I'm wondering whether it was a short fare. You don't know?

MR. BEKELE: No.

MR. SCALI: So you're telling us that the sole reason why you refused was because you're allergic to dogs?

MR. BEKELE: Yeah, I have bad allergy.

MR. SCALI: Do have you drive your own

cab?

MR. BEKELE: Yeah. It's not my own cab but I rent.

MR. SCALI: You lease it?

MR. BEKELE: I no lease, I rent a day.

MR. SCALI: By the day?

MR. BEKELE: Yeah.

MR. SCALI: Is there a partition in the cab that you rent?

MR. BEKELE: It doesn't have it.

MR. SCALI: According to our rules unless there is something on file that says that you are allergic to dogs or allergic to animals in some way filed by you by a doctor, it's considered to be a violation. And that's what Officer Arcos and Mrs. Lint are saying; that there is no way that we would know that or that the customer would know that, therefore, if someone has a service animal, you are required to take them. I'm not hearing anything that's helping you at this point.

MR. BEKELE: I didn't mean to refuse nobody. I didn't mean to refuse. I helped them.

I told them to take another cab or van. I didn't mean to refuse or anything because I have a problem with my (inaudible). That's my problem. If I have them and take them and something happen, who's going to take responsibility for me? Nobody.

MR. SCALI: Any questions?

MR. HAAS: No questions.

MR. SCALI: Yes, I see your hand. I just want to finish with our table of people and then we'll call outside comments.

MS. LINT: Mr. Chair, I would just add that what I found particularly disturbing is number one, the document that he brought as evidence was after the fact. If you have severe allergies, it seems to me that you would have documentation of that.

The other thing that I found very troubling is that these were visitors to our city looking to take a cab ride and were refused with a service animal, and I just don't think it makes the city look very good or the taxi industry.

MR. SCALI: Did you go to our taxi

school?

MR. BEKELE: Yes. I take class but I didn't learn that I have to put information with my document.

MR. SCALI: That section is very familiar to me and that's one of our main focuses that if you have an allergy, you must file that with us beforehand. When did you go to school; what year?

MR. BEKELE: Maybe four years ago.

OFFICER ARCOS: Three years ago.

MR. SCALI: So either you weren't listening that day or you forgot. Does anybody from the public want to be heard? I see this lady right here and then we'll take this person here as well.

MS. PODGERS: Hi everybody.

MR. SCALI: Tell us your name for the record.

MS. PODGERS: My name is Kathy Podgers and I'm a trained community access monitor, trained by the Mass. Office on Disability. I hope

that I've worked very positively both with the Cambridge police and the police commissioner, and with Elizabeth Lint, and I've testified before. I'm here accompanied by my trained service animal. I have severe physical disabilities, which you can't see.

I want to share some information and I also want to make some comments so that this gentleman can understand the seriousness of what happened.

First of all, when you deny a ride to a person with a disability because you think you're refusing to have the dog, the service animal, the fact is, you're not giving a ride to the dog, you're giving a ride to the disabled person. So that's the person who's injured.

Secondly, this issue has already gone to the United States Supreme Court. It's already been decided that if you have severe allergy to dogs, which is very unusual by the way. So people that are allergic to animals, one out of ten is allergic to the dog and nine out of ten are

allergic to cats.

One reason people might have allergies and associate it with dogs is pets might be outside, and most service animals are kept cleaned and trained and in the house, and they're not running around getting pollen from trees on them. So it might not even be the animal that they're allergic to, but it might be pollen from trees or something.

So I just wanted to share the issue of dogs and allergies. And what was decided in the court system in the United States of America is that you can't be a taxi driver even if you have a serious allergy, if you're going to discriminate against people with disabilities. So if you want to be driving, you can have the partition, but you can't get to select your passengers. That's a decision.

So you have the Civil Rights Act of 1990, Public Law 101-336, otherwise known as the Americans with Disabilities Act, but then what's happened is people have brought lawsuits and there

have been decisions and that's why -- and this is partly for the people here - that's why the License Commission has these rules. Then I happen to be the person, I'm very sympathetic. I understand some people don't like dogs. And I also understand they make up lies to cover themselves after they discover this isn't the right way to do it.

So I worked with the police officer here and he actually passed out a copy of the ADA flier and he had everyone sign their name who received it and I believe you do have information in your training. In fact, I just spoke with Elizabeth maybe seven months ago because one in four times that I attempt to take a taxi in this city, I am refused based on -- I'm accompanied by my trained service animal, even though I hold up my little sign and information, which I'm not required to by law, and even though I tell them that I will file a complaint against them if they refuse to take me.

So this one in four is already an epidemic of violations. This isn't like one in 20

times I take a taxi. This is constant and with one of the main taxi companies, the white cabs with the black lettering on it. I think it's the Ambassador.

So at least one out of two times when I call for a pick up at my house, the cab will not show up and I have to wait an hour or 45 minutes because when they find out where they're going to, of course they know it's me and they know there's a dog.

So on one hand, the decision has already been made all the way up to the Supreme Court that you can't discriminate against people who are disabled whether or not they're accompanied by a trained service animal.

And two, this is an ongoing problem in Cambridge and I sympathize with Elizabeth because I constantly made the point that the City of Cambridge is a destination; people from all over the world come here. And it's appalling because I can go right over the river from Cambridge in Boston and sometimes a Boston cab will take me when

a Cambridge cab has just refused me because I have a dog with me, and it's embarrassing and it's frustrating.

I think the bigger issue is I'm right here with a trained service animal, which happens to be a dog and this gentleman who claims he has this severe allergy to dogs has not triggered any severe symptoms.

MR. SCALI: I was going to mention that to you, actually.

MS. PODGERS: Just because you might sneeze or experience a rash or something, you would have to have in order for it to be qualifying to refuse to be near the animal, you would have to have that anaphylactic, whatever. You'd have to be choking and unable to breathe.

The two most common reasons to refuse a person with a disability accompanied with a service animal is A, I have an allergy, and B, I'm I'm afraid of the dog. The other reasons are all kinds of lies.

MR. SCALI: Can we kind of narrow it

down because we have another person who wants to comment here as well so I want to make sure we get to everybody.

MS. PODGERS: There are two things going on here: The gentleman really needs to step up and accept responsibility for the way he has treated Elizabeth and the License Commission, because you guys are the ones that basically are dealing with the people with disabilities who call and complain. I'm sure that you've been really fair with the drivers, I know you have. So that's the first issue. And the second issue is this really is a serious ongoing issue of lying. Thank you.

MR. SCALI: Ma'am. Good evening, just tell us your name. I've forgotten your name. I'm sorry.

MS. THURMAN: Kate Thurman. I work here at the Cambridge Commission for Persons with Disabilities. I want to first point out that today is actually 20th Anniversary of the passage of the Americans with Disabilities Act. There's a big

celebration going on in Boston so it's very exciting.

Just to echo one thing that Kathy mentioned is that service animals are trained professionals and people with disabilities need to get around just like anybody else does. I also would also like to mention that I actually teach taxi school; I teach the disability section. I was not here three years ago or when it was you said you took the course but we do speak a lot about allergies and the requirement to have a partition and documentation on file.

This has been law for a long time now and ignorance of the law is no excuse for refusing to accept somebody with a service animal.

MR. SCALI: Thank you very much. You work with Mr. Muey; right? Are you the director there now?

MS. THURMAN: I'm the Disability Project Coordinator.

MR. SCALI: I wasn't sure of your title.

MS. SCALI: As well as the person saddled with the Special Events Committee.

MR. SCALI: Thank you very much, Kate. Does anybody else want to be heard in this matter? Any other questions?

MR. HAAS: No other questions.

MR. SCALI: Anything else you want us to know, Officer Arcos?

OFFICER ARCOS: Yes. This time Commissioners, he filed paperwork with us now that he has severe allergies to dogs, I would like to take his medallion off the road until he properly installs a partition.

MR. HAAS: Are you the sole operator of that cab?

MR. SCALI: You lease it day to day; right?

MR. BEKELE: Yeah.

MR. SCALI: He doesn't have control over the cab, Officer. I understand your point and if it was his medallion and his vehicle, and he was the sole person using it, we could order him to do

that, but he doesn't have control of the vehicle accept that he leases it day to day. So he should be leasing or renting a vehicle that has a partition in order to protect himself if he has an allergy.

MS. PODGERS: Or he should seek a second opinion.

MR. SCALI: Whatever that may be to protect himself. But I do understand your point, it just would be hard to order that.

MR. TURNER: Through you to Officer Arcos, is there a restriction that could be placed on his medallion, not medallion, but on his license that restricts him to a partitioned --

OFFICER ARCOS: He can't have it both ways. That's why we have that on the Rules and Regulations. So if we get another complaint that he's refusing, it will be on our part, a lack of imposing the Rules and Regulations by installing appropriate partition, and then that's how we want to avoid any more complaints on the same matter.

MR. SCALI: I think it would be best

if we take into consideration what exactly it is we're voting on with regards to the violation, first, and then we can decide what to do from there in terms of what he needs to take care of in his own day to day operation of the taxicab.

Is there anything else you want us to know, Mr. Bekele? We've heard all of your points but I guess it's not looking real favorable from what I can see.

MR. BEKELE: I didn't mean -- like why should I have to refuse job. I didn't ask and I don't have a partition in my cab, why do I have to refuse a job? I'm looking for a job to make money outside. Why should I have to refuse people if I don't have a personal problem?

MR. HAAS: The fundamental issue quite honestly is that you had an obligation to notify this commission that you have an allergy and you should have had a partition in the cab.

MR. BEKELE: I'm asking the owner.

MR. HAAS: And the fact that you drove a cab without a partition, and you didn't disclose

that information until after the fact is a problem now. Basically what you've done is put yourself in a predicament because it seems to me you're not going to be able to lease or rent this cab anymore unless the owner decides to put a partition in it. You've put yourself in kind of a precarious position right now.

MR. SCALI: Is that the only cab you drive? Do you drive different cabs?

MR. BEKELE: I used to drive before, 250, and a little bit cheaper, I'm changing.

MR. SCALI: So Medallion 78?

MR. BEKELE: No, I drive 78 here.

MR. SCALI: That's the one that you lease out day to day, rent out day to day?

MR. BEKELE: Yeah. I used to drive 250 and 252.

MR. SCALI: Okay. Anything else you want to know?

MR. HAAS: No.

MR. SCALI: Motion to take the matter under advisement.

MR. HAAS: Motion.

MR. SCALI: Moved and seconded. All
in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: We're scheduled to vote on
this on August 5, at 10:00 a.m. You're welcome to
be here if you want to. You don't have to be here.
It's a Thursday morning, August 5. We vote here in
this room at 10:00 a.m.

MS. LINT: Informational matter:
Bourbon Coffee North America, Inc. d/b/a Bourbon
Coffee, Mathew Hodges, Manager, holder of an All
Alcoholic Beverages as a Restaurant license
(approved but not yet issued) due to the restaurant
not being opened. The License Commission's six
month approval to be open and operating expired on
June 14, 2010.

MR. SCALI: Good evening. Just tell
us your name.

MR. HOPE: Attorney Sean Hope, 130
Bishop Allen Drive, Cambridge, Massachusetts.

MR. SCALI: And you are here for
Bourbon?

MR. HOPE: Yes, on behalf of Bourbon.
Mr. Matthew Hodges was on a flight from DC to
Boston this morning and got delayed, so although he
may have touched down now I don't expect him to be
here in time for the hearing. We spoke at length
before he got on the plane and so I feel like I
have all the information necessary.

MR. SCALI: It really would be helpful

if he were here, or someone from the company were here because they are essentially the ones that have the right to this particular license at this time, which is I guess expired according to Mrs. Lint.

MR. HOPE: That's the first thing I want to address. There is a renewal fee of \$1,580, which is not paid. I informed them today when I found out and that will be paid immediately. We're talking about a license that actually cannot be sold right now because it's delinquent, so we wanted to clarify that first.

MR. SCALI: The issue we have is when someone transfers a license and then they never open, and they don't pay their fee, the license fee, there really is no license. Granted, I know someone's going to say you've got property rights and all that but. . . What are their plans? This property has been sitting empty for years and now we've got this license that they never opened and they supposedly claim to own but have not paid the renewal fee. What are you recommending that they

do?

MS. LINT: They did pay the first half.

MR. SCALI: Which was due in January or December?

MS. LINT: Yes, the first half was paid.

MR. POPE: So when we got the approval that was part of the payment, but obviously at this point it's become apparent that that space is not going to work for Bourbon Coffee.

Recently over the last couple of months we've been negotiating with the landlord a lease termination. They had signed a 10 year lease and I think they really weren't aware that the 11,000 square feet wasn't really going to be -- it was more than they needed and they knew that. I think the idea was a Mass. Ave. location with a lot of foot traffic. As the Commission knows that part of Mass. Ave. doesn't quite generate the foot traffic that Porter and Harvard did, but they pushed forward. They spent a certain amount of

money getting the CV, a liquor license, and actually having architects to get ready to build out the space, and it became apparent that that space wasn't suitable.

The landlord was very helpful in allowing them to -- saying look, if you're not going to lease the space, we don't want to end up in litigation over chasing you after rent. So what we've recently done is agreed to terms that would allow them to leave the space. We're really been working over the last two weeks and we hope soon to be able to find someone to move into the space and to take over that license.

Bourbon knows it's their license. Once the renewal fee is paid we are looking to try and sell it but we are working with the landlord because that is a space that's been vacant as you know even prior to Bourbon Coffee having a CV license there. We felt like if we could get a tenant to come in, in that space with that seven day license to take over the lease as well as the license that would be optimal for both the landlord

and Bourbon Coffee.

MR. SCALI: What is the delay in finding a tenant there?

MR. HOPE: It's really market factors. It's a very large space. I know that several restaurants have come and looked at it. They've been working. The landlord is losing money and it's one of these things where it's just -- I've encouraged them of course from the outside to maybe lower their lease terms and they've been working with their attorney as well as trying to find a suitable tenant. I think it's just the size of the space that's made it difficult in this economy.

MR. SCALI: It really has become an eyesore in the neighborhood. It's really sad that in North Cambridge that that property looks like that. I feel very badly for the neighbors that are around there that have to look at this on a day to day basis.

MR. HOPE: I do know there was an issue where the City was doing the sidewalks along in front of that portion, and at that time they

were parking dumpsters and different things in the rear of the property. I believe there was a complaint filed with Inspectional Services saying what's going on here, it's an eyesore. We've actually rectified that situation with Ranjit and Inspectional Services. I'm not saying it was totally the sidewalk construction, but I think that added to it. I think if you drive by now, they've cleaned up the front. The sidewalk looks great and they've actually done some tree plantings.

I'm actually here with the landlord here tonight, because he has some interest in it, if you wanted to ask any specific questions to Mr. Harry Davis. But I think our hearing is focusing specifically on the liquor license but I did know there was some issue with the upkeep of the property.

MR. SCALI: I don't think we have as much control over the property itself as we do over the license, so if there is no license that's going to be available, they'd have a tough time renting on the property. Bourbon has to be involved in

this. They just can't walk away and go back to Washington or wherever they are and forget about it, because what's happening is that no one is doing anything. It's just sitting.

MR. HOPE: It is actively being marketed. All parties are aware that the space is more marketable if there can be within a short period of time, a purchase, taking over a lease as well as trying to negotiate the sale of a license, and we've been trying to help them with that. As you know, it is Bourbon's license and it can be moved from the space, so time is of the essence for all parties to try and get this resolved.

MR. SCALI: I really feel that this happens, not all the time, but there's been occasions where there are people who buy these licenses, transfer them, and then they sit and do nothing, and they're sitting and sitting and sitting. My feeling is we should just revoke the approval on these transfers because they don't open. That is really what we should be considering; that if you don't open within the

six-month period of time, the license is gone, you lose it, and it comes back to us or it goes back to the original seller, which may no longer exist at this point I realize. Technically there really is no license if you don't open after six months.

MR. HOPE: I do think in this specific case with a little more time -- I mean I think there have been market factors which don't always apply in other cases that really have hampered the new tenant that would move into the space. I do think now because of the hearing all parties -- I mean the landlord has been working diligently and our client obviously wanted the space and got into a situation where they couldn't rent it.

I do think an extension of six months maximum time would really allow this to be able to find a new tenant and also be able to sell the license, which is really what Bourbon Coffee wants to do. Because of this location being on Mass. Ave. and key to that corridor, not that it's Bourbon's issue, but without a license at that space it would be much more difficult. I think

Bourbon is committed to trying to work with someone who wants to stay in that area, but if there were someone else who wanted to purchase that license in Cambridge, you know Bourbon --

MR. SCALI: There are people who are looking for licenses and we don't want them to have the issue of cap zones being a barrier. People can transfer from cap to cap.

MR. HOPE: I want to work with Mrs. Lint in terms of trying to find a suitable buyer. It would be great if we could get one that also wants to operate in that space, but that's something we can't control. I do feel if the Commission was to grant us an extension, we would work diligently to be able to get that license sold.

MR. SCALI: Questions, Commissioners?

MR. HAAS: They purchased the liquor license; right? This wasn't a license, this was --

MR. HOPE: It was a transfer, yes, so there was a license on that premises.

MR. SCALI: It was the Marino's

license and then it got transferred to Gary Strack, and then he never opened. And then it got transferred to Bourbon and they never opened.

MR. HOPE: I'm not sure of -- there was the previous attorney in that situation and that lease. I can't speak to that but I do know Bourbon is actually now, because they're interested in staying in Cambridge, are really looking at another site on Mass. Ave. and trying to stay. So they're not a shell of a corporation.

They're from Rawanda. There's a charity concept, a basic business model in terms of producing revenue to send back home. So they're committed to staying in Cambridge and working. I don't necessarily know if their business model fit with an alcohol license but that's what they pursued; they had approval for it. And so now they're more looking to sell it than to take it to another location.

MR. HAAS: Why would that be the case if they initially wanted a liquor license? Why would they want to now sell this license?

MR. HOPE: I think because of the space and the size, coffee wasn't enough to sustain that as a business model.

MR. HAAS: So do they think if they downsize and just sell coffee alone that's going to be the market plan?

MR. HOPE: I think that was initially their market plan. There wasn't anything available on Mass. Ave. so when they took that space at 1,100 square feet, they said we could also generate other revenue if we did other types of services on that location.

MR. SCALI: Isn't there an application coming in, Mrs. Lint, for a different location without alcohol?

MS. LINT: Yes.

MR. SCALI: From what I understand, Bourbon is coming in for another spot without alcohol.

MR. HOPE: That's why everyone is motivated to sell this license. There's no wanting to keep it on hold.

MR. SCALI: I personally would like to speak to them. Granted, you can represent them perfectly well. You're doing a great job but I think they need to be here to explain to us exactly what they're going to be doing with the license. Is it Porter Square they're coming into?

MS. LINT: Yes.

MR. SCALI: They're obviously coming back to Cambridge. They need to appear. Maybe there was a delay in their flight, I understand, but they need to appear here before us and let us know what's happening with that license.

MR. HOPE: Okay.

MR. SCALI: I want to make sure they understand that they are the ones that are responsible for making sure they have a buyer, if at all, if we even approve they keep it. It's time to do something soon.

MR. HOPE: So the suggestion is to continue to allow them to be here to be present. But in the meantime, if there was a buyer and there was something facilitated, I'm just wondering

procedurally how that would work because we technically --

MR. SCALI: Until we get that check there's no license at all.

MR. HOPE: First things first.

MR. SCALI: That's the first thing. So if they want to take care of that, that's up to them.

MR. HAAS: So you'd accept the fee for the license at this point then?

MR. SCALI: That's up to the three of us whether we accept it.

MR. HAAS: I would imagine if you're accepting a fee then that's somewhat implicit that they're allowed to retain the license.

MR. SCALI: If we are going to do that.

MR. HOPE: I would ask that you allow us to pay that fee because I do -- just talking to the landlord and the vendor, we do feel that at a reasonable price it could be sold and some of these issue could be resolved, which I know is what the

Commission wants.

MR. SCALI: When do we meet in August?

MS. LINT: The 12th.

MR. SCALI: Is it possible that they could be here August 12?

MR. HOPE: I told them when we spoke today, I said look, if you're not here, this is not something that's going to please anyone. So I think they would make themselves available to meet on August 12.

MR. SCALI: I want to hear that they're serious about it. I know they're paying you so they must be serious about it but I think they need to take some responsibility by stepping up.

So I'm going to make a motion, Commissioners unless anybody else wants to be heard on this matter. Does anybody else want to be heard on this matter? I make a motion that we continue to August 12, which is at 6:00 p.m. It's a Monday night. During the summer we meet on Monday nights, and for your client to appear. That's a motion,

moved.

MR. HAAS: Second.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Thank you very much. I'm
sorry. It's the 16th, Mr. Hope.

MS. LINT: Application: Continued from February 23, 2010 and June 22, 2010. T.W. Food, LLC, Tim Wiechmann, Manager, holder of a Wine and Malt Beverages as a Restaurant license at 377 Walden Street has applied for an Entertainment license to include background jazz with three instruments and no vocals. Applicant is also applying to extend the current Saturday and Sunday hours, which are 5:00 p.m. until 12:00 a.m., to 9:00 a.m. to 2:00 p.m., and then reopening at 5:00 p.m. Alcohol service will start after 12:00 noon on Sundays.

MR. SCALI: T.W. Foods?

MS. LINT: I haven't heard from them.

MR. SCALI: Did they get a letter telling them to be here, do you know?

MS. LINT: Yes.

MR. SCALI: Let's find out what happened to them. If they're available on the 16th, we can put them on then.

MS. LINT: Application: Guido's Bar and Grill, Inc. d/b/a Guido's, Barry Lyons, Manager, holder of an All Alcoholic Beverages as a Restaurant license at 15 Belmont Street has applied to hold said license in an inactive status.

MR. SCALI: Good evening.

MR. CRANE: Good evening, Mr. Chair, members of the Board, Attorney Kevin Crane, 104 Mount auburn Street, Cambridge. I represent the petitioner. Unfortunately my client Barry Lyons cannot be here tonight as a result of a plane conflict as well, long-standing.

MR. SCALI: Vacation?

MR. CRANE: Yes. He'll be back tonight, too, supposedly.

MR. SCALI: Everyone's coming into Logan tonight.

MR. CRANE: A busy night. A lot of cabs over there.

They've closed the store and couldn't make it between the neighborhood changing and I think the facility needed a lot of revamping. So

they are looking to sell their license.

MR. SCALI: Are they selling the property, too?

MR. CRANE: No.

MR. SCALI: They're not selling the property?

MR. CRANE: No. They have no interest in the real estate. It's a different entity. I think they're friends and probably cousins that go back to Adam and Eve as far as the property owners are concerned, but they're separate as far as the real estate goes.

MR. SCALI: So it wouldn't be at that site; it would be a different site?

MR. CRANE: Unless someone else wanted to make a go of a restaurant there. We've asked some possibilities in the neighborhood even, if they'd be interested in the license. I've told him that he should make the License Commission staff aware of it and anyone that I would know that would be interested in a license. It's a 63 seat capacity.

MR. SCALI: Haven't they been there for many many years, like 50 years?

MR. CRANE: Well, the original -- the Pugilesi's (phonetic) ran it for many years and then Barry, and one of the Pugilesi nephews, and Mr. Kelly have run it for I'd say about four or five years maybe.

MR. SCALI: I thought it was longer than that.

MR. CRANE: Maybe it is longer.

MR. SCALI: I know I've been here almost 25 years and I can still remember them being there.

MR. CRANE: I mean these three that are on it now, when they went in and bought it, it was like about -- if might be a little more than four or five years ago.

MR. SCALI: There were other family members that had it before that.

MR. CRANE: Right, but Guido's originally has been there for 50 or 60 years.

MR. SCALI: Our standard is to grant

six-month intervals of time for them to sell. So I guess I would make a motion, unless there's questions by the Commissioners, for a six-month extension. Does anybody from the public want to be heard on this matter on Guido's? Questions?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Motion for six months.

MR. HAAS: Motion.

MR. TURNER: Second.

MR. SCALI: Moved, seconded. All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Thank you, Mr. Crane.

MR. CRANE: Thank you very much.

MS. LINT: Application: Legal Sea Foods, Inc., Jacklyn Plunkett, Manager, holder of an All Alcohol Beverages as a Restaurant license at 20 University Road has applied to transfer said license to Legal Sea Foods, LLC, Jacklyn Plunkett, Manager, at same address.

Do you want them all?

MR. SCALI: Let's do them all together, sure.

MS. LINT: Application: Legal Sea Foods, Inc., Jacklyn Plunkett, Manager, holder of an All Alcohol Beverages as a Restaurant license at 5 Bennett Street has applied to transfer said license to Legal Sea Foods, LLC, Jacklyn Plunkett, Manager, at same address.

Legal Sea Foods, Inc., Myles Eason, Manager, holder of an All Alcohol Beverages as a Restaurant license at 5 Cambridge Center has applied to transfer said license to Legal Sea Foods, LLC, Myles Eason, Manager, at same address.

MR. SCALI: Good evening. Just tell us who you are.

MS. TUTT: My name is Barbara Tutt, T-U-T-T. I'm a paralegal at Legal Sea Foods.

MR. SCALI: So you do all the paperwork there for them?

MS. TUTT: I do.

MR. SCALI: Do you handle all the Cambridge applications, or all over the state?

MS. TUTT: All the state ones.

MR. SCALI: I know this has already gone to the ABCC and they've reviewed all the paperwork, and they sent their analysis of the paperwork; right, Mrs. Lint?

MS. LINT: Yes.

MR. SCALI: So this is just going from a corporation to an LLC?

MS. TUTT: Correct.

MR. SCALI: And all the same people are involved?

MS. TUTT: Same people, same ownership.

MR. SCALI: It's just a reorganization?

MS. TUTT: Well, I have a script. We were told that as a part of our refinancing that we did earlier, we were told that it would be best to convert to a limited liability company with a holding company in order to preserve the Sub-Chapter S status of the actual owners.

MR. SCALI: Which is what most of the corporations are doing now, so I fully understand. There are no other changes; right?

MS. TUTT: Not at the present time.

MR. SCALI: Does anybody from the public want to be heard on this matter? Questions at all?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Motion to approve.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: Moved, seconded. All in favor?

MR. TURNER: Aye

MR. HAAS: Aye.

MR. SCALI: Thank you, Ms. Tutt.

MS. TUTT: Thank you.

MR. HAAS: So that's on all three;

Right?

MR. SCALI: On all three, yes.

MS. LINT: Application: Nikolaos Tiftikidis, d/b/a Aram's Pizza No. 1, has applied for a Common Victualer license to be exercised at 1238 Cambridge Street. Said license, if granted, would allow food and non-alcoholic beverages to be sold, served, and consumed on said premises with a seating capacity of 24. The hours of operation will be from 9:00 a.m. to 1:00 a.m. seven days per week.

MR. SCALI: Good evening, just tell us your name.

MR. TIFTIKIDIS: My name is Nikolaos Tiftikidis.

MR. SCALI: So you are the proposed new owner?

MR. TIFTIKIDIS: Yes, sir.

MR. SCALI: And you are the only person involved?

MR. TIFTIKIDIS: Yes, I am.

MR. SCALI: Tell us your experience in the restaurant business.

MR. TIFTIKIDIS: I work in a pizza

place and restaurant for the last 23 years. I'm living in Waltham all this time. I ran a place in Waltham the last five years.

MR. SCALI: What's the name?

MR. TIFTIKIDIS: Athen's Pizza, Moody Street. I have previous experience actually in Greece where I come from. My father used to run a place, a restaurant place and I got experience over there.

MR. SCALI: So you've been all you life in the pizza business?

MR. TIFTIKIDIS: Yes, sir.

MR. SCALI: Are you changing anything on this premises?

MR. TIFTIKIDIS: No.

MR. SCALI: Same hours?

MR. TIFTIKIDIS: Same hours. The landlord is here so you can ask anything from him. His name is Mr. Laurino and he's here right now.

MR. SCALI: So the operation is the same menu?

MR. TIFTIKIDIS: Same menu.

MR. SCALI: Same hours, same days of the week?

MR. TIFTIKIDIS: Yes, sir.

MR. SCALI: As I recall many moves ago, there was an issue with neighbors there and I can't remember exactly what it was having to do with the alleyway or the trash. Do you have regular trash pickup? Tell us about you're going to do your disposal.

MR. TIFTIKIDIS: I'm not familiar about this issue. I'm going to ask and check with Mr. Laurino, the landlord. I'm not familiar with that. There are some places right behind the store place; they put the trash there as far as I know. I don't run the place right now. There is an owner there and he is moving out of the place and I will take the place after him.

MR. SCALI: Is the landlord here?

MR. LAURINO: Yes.

MR. SCALI: Can you come up, sir?

MR. LAURINO: Sure.

MR. SCALI: I just want to make sure

I'm not forgetting anything. I have a history in my mind. I know there's nothing in the files according to Mrs. Lint, but was there an issue with the neighbors with the back alley or the trash there that you recall? Or, am I thinking of something else?

MR. LAURINO: I'm the one who actually takes trash in and out of there so I mean it gets done every week. I don't know of anything.

MR. SCALI: So there's been no neighborhood complaints that you know of from residents?

MR. LAURINO: There was a time when the City was trying to decide what kind of barrels to use and we had plastic barrels or metal barrels, covers on.

MR. SCALI: That's all pretty clear now with the new ordinance.

MR. LAURINO: Pretty much, yeah.

MR. SCALI: How often is trash pickup?

MR. LAURINO: Every week.

MR. SCALI: Once a week?

MR. LAURINO: Yes.

MR. SCALI: Is there a dumpster back there, or barrels?

MR. LAURINO: There actually isn't really room for a dumpster. The trash that is basically in the back mostly is just for the residences upstairs.

MR. SCALI: How does he dispose of his trash?

MR. LAURINO: He will be using his own company for disposal because it's a commercial unit.

MR. SCALI: How are you going to dispose of your trash? Are the barrels out front or in the back?

MR. TIFTIKIDIS: The back I believe. There is an alley back there so I'm going to put the barrels there.

MR. SCALI: How often will your trash be picked up?

MR. TIFTIKIDIS: I think once a week.

MR. SCALI: Once a week for all that

restaurant trash?

MR. TIFTIKIDIS: Probably that be enough.

MR. LAURINO: Usually with the pizza place in there now, they're putting their trash out once a week and there's probably only five or six bags on average that I see.

MR. HAAS: There's no rodent problems as a result of that?

MR. LAURINO: We've got the barrels covered, metal barrels. We've got the traps out there anyway. There's regular maintenance, preventative.

MS. LINT: Mr. Chair, I do have a letter from Councilor Toomey supporting the application. He thinks it's important for the establishment to continue in that neighborhood.

MR. SCALI: The other thing we're reminding people of, all new owners of restaurants, the City Council has requested that we do this to remind you that you are responsible as a restaurant owner for the space in front of your restaurant.

MR. TIFTIKIDIS: Yes, I know, sir.

MR. SCALI: Cleaning off the sidewalks, making sure they're clean, making sure you pick up trash, customers' trash. Even if it may not be your customer's trash, making sure your sidewalk is clean.

MR. TIFTIKIDIS: I understand.

MR. SCALI: Just because it's difficult to determine on a busy street who does what, but you are responsible for that.

And no deliveries or drop-offs before 7:00 a.m. under the noise ordinance.

MR. TIFTIKIDIS: Okay.

MR. SCALI: Does anybody from the public want to be heard on this matter? No hands. Any questions?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Pleasure of the Commission?

MR. HAAS: Motion to approve.

MR. TURNER: Seconded.

MR. SCALI: Motion to approve, moved and seconded. All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Thank you, sir. Good luck.

MS. LINT: Investigative: Continued from April 6 and July 12, 2010. Hersha Hospitality Management, d/b/a Holiday Inn Express, holder of an Innholder's license at 250 Monsignor O'Brien Highway due to a complaint received by the License Commission regarding the illuminated sign on the building.

MR. SCALI: Good evening, again. Just tell us who you are to remind us who you are, again, if you would.

MR. KOVATS: Steve Kovats, 38 Crabapple Road, Windsor, Connecticut, Vice President of Hersha Hospitality.

MR. LEHNEN: Thomas Lehen, General Manager. The address is 142 Lakeshore Drive, Westwood, Massachusetts.

Mr. SCALI: I'm hoping you've all made progress since last we were here.

MR. KOVATS: We have. We've worked very hard. Tom and myself and Hersha have met several times with IHG, which is Holiday Inn's terminology for their mother company. We've come

up with three other options that we have thrown out. We've come up with three new options for that site. One is to properly downlight the signage and turn the sign off.

MR. SCALI: So downlight meaning light coming from above the sign and no light on, on the building.

MR. KOVATS: Correct. Another option would be to uplight the signage with lights and turn the sign off. Obviously this is only at night. We wouldn't be lighting it during the day.

And the third option, which IHG would prefer to have for the sign is to actually put the sign itself on some sort of a dimmer so that that sign could actually be reduced lighting. They really don't care for the uplighting and downlight; it kind of distorts at night how the sign looks. But they understood that we needed to come to the table with more than one option.

So we have some photos. We don't have photos of downlighting; they've never done that. But they certainly don't have an issue with that.

MR. LEHNEN: The downlighting photos, we've reviewed those. It's the uplighting photos that don't exist because they haven't produced that type of lighting. We did meet with Mrs. Spera just last week and did review a proposal of the dimming option with some variable options of 50 percent, 60 percent, 80 percent in terms of the dimmer addition, as well as showing what the image of the proposed downlighting or uplighting would look like. These were photo enhanced images that were not actual lights, because again, IHG doesn't make these packages and this is an exception that they're making to the rule. So the pictures that we have shown, I don't know if the Commission has seen these.

MR. KOVATS: Some of the photos are on and off so you can see them during the daytime. That would be downlighting. The back of that photo is the same photo but during the daytime, the very last photo. That's how they to the building and then at night obviously it shines on the sign.

MR. LEHNEN: You can see one of those

has - there's quite a bit of light that is emitted, bright white light that's emitted from those sorts of lights, whether it's going to be downlighting or uplighting. I think that's one of the many ways reasons why I think IHG is suggesting to go away from that. You get bugs, you get shadows emitting off the light. The dimming effect will satisfy I think many things we're going after here in terms of dimming down, or hueing [sic] down that green look, you know, the coloring effect.

MR. SCALI: How is that done?

MR. LEHNEN: It's a pretty elaborate electronic set of ballasts that are installed in various parts of the sign. So it requires electricians to come in and basically rewire the whole sign.

MR. KOVATS: It would be like some people have a light above their dining room table and at night, instead of it being this bright they would turn it down.

MR. SCALI: Do you use a switch to turn it down?

MR. LEHNEN: Correct.

MR. SCALI: So you would be able to determine how much it would go down or up?

MR. LEHNEN: Correct.

MR. KOVATS: And their only concern with that is that we don't turn it off all the way, or dim it to the point where you couldn't see it at all. It will emit less run off light. Like those other options do a little bit of runoff light, but those options really aren't too too bad either. I've seen those applications done with some other brands.

MR. SCALI: I know that Mrs. Lint and Ms. Boyer have been working with you and Ms. Spera on this. Is there a consensus on this?

MS. LINT: We just met on Friday and I know Ms. Spera is here. She was going to think about the different options. It's hard because you're looking at computer-generated pictures and you don't really exactly what it's going to look like. That was certainly something we talked about.

MR. SCALI: Do you gentlemen have any questions of the Holiday Inn on these options?

MR. HAAS: So on the third option you're proposing that all the lettering, plus the sign would be affected by that dimming light feature?

MR. LEHNEN: Right.

MR. KOVATS: Then we had also put out the proposal that we were open to -- on the one photo you can see the blue light, the one on the left. We have signage permits to install those on our neighbor's side, but we've offered not to install those blue uplights because when I was here at a meeting once I heard that the neighbor did not like that option at all. So we are also putting that into the proposal to not upset our neighbors anymore at this point.

MR. SCALI: Ms. Spera, do you want to come up? Just tell us your name for the record.

MS. SPERA: Jean Spera.

MR. SCALI: I know you've all been very cooperative in trying to work this out. I

know you had a meeting with Mrs. Lint on Friday in Holiday Inn. These all seem like reasonable options. I'm just wondering whether you have an opinion about which one, if any, is the most -- I think I know what you really want but we're coming more to the middle here. So let's see what it is that you feel would be the best.

MS. SPERA: Well, obviously I probably would go with the dimming but as Ms. Lint said, and as we said at that meeting, obviously that's really kind of -- the pictures show a difference between 100 percent versus 50 percent; however, I'm not sure that that's actually how it's going to look, because 100 percent in that picture looks less bright than it does in actuality.

So I guess there's another issue sort of tied into that. Obviously as you know, this has been going on for several months from February. It really is very disruptive to sleeping. So I'm not getting a full night's sleep and this making very stressed out, very irritable. It makes you distracted and unable to focus especially when you

have to get up and be at work at 7:00. I'm also missing out on my gym, which I try to get to at quarter-of-six, but if you're not really falling asleep until 4:30, it makes it hard to get up at 5:15 to get over to the gym. So it really is very trying.

So my being that I want to be careful about what I commit to because I'm sort of operating -- no pun intended -- operating in the dark here because I'm not going to really really know what that impact is. I know that if there were an opportunity to see this in actuality and make a decision about what would actually be the correct level of dimness that that might be more helpful.

MR. SCALI: We certainly can work with you and them on what the correct dimness would be. I guess if we say to Holiday Inn, go ahead and do this, invest your money in this -- I'm not sure what level of monetary commitment there is, but I guess at some point we're saying to them that we're going to try to make this work. So it seems like

you're willing to cooperate and do that, which I'm happy to hear because it seems like we've come a long way. So that's really good to hear. We're certainly willing to work with Ms. Boyer in my office in finding out what that level would be, whether it's 50 percent or whatever it may be. If they have a switch, I'm assuming they can adjust it to whatever we all feel is best, and making sure that that's done on a regular basis without having to remind you to dim it and all that would be preferable.

MS. SPERA: Make sure it's written down and what else you need to do.

MR. SCALI: Yes, as to what that would like is another issue for us as well.

MR. SPERA: I think that's sort of another issue that I'd like to have addressed is having something that is on the record and is something that we can hold somebody to, so that there is no need for me to come back here, hopefully, in the future on this particular issue. Ten years ago I thought that was resolved.

MR. SCALI: Things do change, and owners change, and buildings change, and all those things happen, and you're there, so you're the person who has to live there.

Questions from the Commissioners?

MR. HAAS: No questions.

MR. SCALI: Anybody from the public want to be heard on this matter?

So I guess Commissioners, it's a -
I'm sorry, Mrs. Lint.

MS. LINT: I have a letter from Mayor Maher saying that he wanted to express his views about this hearing; that there certainly was back in 1999, when the original license was issued there was concern expressed by Jean and Anne Spera about the intrusion of light from the sign. And at that time, the Commission did craft a compromise and he would ask the Commission "to honor the spirit of that agreement by urging the current hotel operator to make necessary modifications that will not result in an adverse impact on the neighbors. The hotel is certainly entitled to the use of its

corporate color on its new signage," but he believes "some modifications to the internal illumination of the sign facing Schiarappa Street would both be appropriate and considerate."

MR. SCALI: Pleasure of the Commissioners? I'll make a suggestion unless you had another comment. My feeling is that we probably should move forward and have them look into the issue of the dimmer. That sounds like the most reasonable solution to me. That sounds like it would be a perfect solution for you, I'm hoping, and work with them on finding out how to do that. What it's going to cost them obviously is up to them. And then Ms. Boyer, when she gets back from vacation in a week or so can work with you on how that all takes place. Then we can decide how we want to craft that into our decision letter as to what that would look like to document that agreement.

MS. SPERA: Once we've taken a look at it, once we've actually seen it.

MR. SCALI: Do you have any idea what

level of commitment that it monetarily for you? Is it a huge commitment to experiment with that?

MR. KOVATS: It's pretty big. We've already spent a lot of money on this. We've had lighting people look at it. Between the lighting folks and the attorneys and the lighting contractor, there's been a lot of money spent here. So if we make this decision today, this is our offer to make this happen. IHG spoke to us and let us know that the dimming process that this sign works off of reduces it down from where it is today by 50 percent. It doesn't reduce it down any more than that the way those ballasts work.

MR. SCALI: That's the most it could be, reduced 50 percent.

MR. KOVATS: Yeah. The way those ballasts work and those light bulbs in that sign actually work, they reduce by 50 percent. Otherwise what happens is the ballasts burn out, the bulbs burn out, and then that sign basically doesn't function.

MS. SPERA: That's a little bit

different then from what I heard on Friday or whatever day that was, Thursday. So it was my understanding that it could go below that.

MR. KOVATS: Then let's move forward with uplighting or downlighting it; that's another option. Then the sign won't even be on and it won't be an issue.

MS. SPERA: I think those pictures were less accurate, less definitive. One was simulated and the other was --

MR. LEHNEN: The pictures we showed you were 50 percent.

MS. SPERA: Right, I have those.

MR. SCALI: I think 50 percent is a pretty good reduction. I'm not committing to saying that it's going to completely satisfy you, Ms. Spera, but I think that's a pretty good commitment.

MR. KOVATS: It's pretty good.

MS. SPERA: It is, but if I end up not being able to sleep because of it, then it doesn't matter to me whether it was 100 or 50. That's my

only concern.

MR. SCALI: I think we have to at least try something at this point to do that. SO I think maybe that might -- do the Commissioners wish to take this under advisement until August 5, or do you want to make a decision this evening?

MR. HAAS: I think that dimming is probably the better solution. It strikes me that the uplighting or downlighting, all it's going to do is yield a lot of reflection off the side of the building, which I think you're going to find more offensive. SO the only viable solution seems to me is the dimming option.

MR. KOVATS: While we're doing this are we moving forward with not to illuminating the blue on that side of the building as part of this?

MR. SCALI: Not illuminating the blue on that same sign?

MR. KOVATS: There's permits pulled and work ready to be done on illuminating the blue as you see on the one photo, and we've told them not to do that.

MR. SCALI: I think that would be preferable, yes. You haven't done it so it probably should stay that way.

MR. KOVATS: I'd like to put it in the notes; that's all.

MR. SCALI: I'm going to make a motion then that we move forward with the dimming process and not illuminate the blue; that Ms. Boyer will work with you on the process and any help you need from my office as well to get that accomplished in terms of just levels and what that looks like. Then that there be a document from us voting this as our decision in terms of a compromise agreement between the parties so that it goes forward with this particular license.

MR. KOVATS: I have contractors lined up so I will first thing in the morning give them a call and see how fast we can get this scheduled.

MR. SCALI: Great. So if you could just let Mrs. Lint know when that will be and Ms. Boyer will make herself available when you're ready to begin that process to assist you.

MR. KOVATS: Understood.

MR. SCALI: Any discussion?

MR. HAAS: No discussion.

MR. TURNER: No discussion.

MR. SCALI: Motion, moved.

MR. HAAS: Second.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you all very much.

MS. LINT: Application: Mass Ave Restaurant, LLC, David Barlam, Manager, holder of a Common Victualer license at 906 Massachusetts Avenue has applied to increase hours of operation from 7:00 a.m. to 4:00 p.m. seven days per week to 7:00 a.m. to 4:00 a.m. seven days per week.

MR. SCALI: Good evening. Tell us your name for the record.

MR. BARLAM: David Barlam.

MR. SCALI: How long have you been there?

MR. BARLAM: Since June 1.

MR. SCALI: So this is just new for you. That's right.

MR. BARLAM: I talked to you guys at the end of last hearing and this is the process to go through.

MR. SCALI: So you want to change your hours?

MR. BARLAM: I'm not going to be open seven days a week until 4:00 a.m. I did that because I understand you can only take away hours,

you can't add hours. So ideally I definitely need to be open for dinner service. So I'd like to do Monday through Thursday, to close the kitchen at 10:00 and have everybody out by 10:30, 11:00.

MR. SCALI: So Monday through Thursday closing at 10:00 or closing at 11:00?

MR. BARLAM: Closing at 11:00, but that means doors locked, everybody out. And then Friday and Saturday, I would that be open until 4:00 a.m. Obviously doors locked and everything done at 4:00 a.m. And like on Sunday night I'm not going to have any dinner service as of now.

MR. SCALI: Sunday closing at 4:00 p.m.

MR. SCALI: Yeah, Sunday closing at 4:00 p.m. And if 4:00 a.m. is too late, I just definitely want to have some sort of business after 2:00 a.m. so I can get a little bit of rush from the people. I think there's a need in the area, because if you look from Central to Harvard Square there are a few bars that are very popular such as Peoples' Republic and Plow and Stars, and they get

only busier when school is in session. And there's no late-night eatery for a few blocks up until you get to the Pizza Ring in Central Square.

Also, I think it would create some more jobs and we'd do good business.

MR. SCALI: You're going quite a spread here from 4:00 p.m. 4:00 a.m. That's a big change for the neighborhood. It's very residential in that area as you know.

MR. BARLAM: Absolutely.

MR. SCALI: Plus you're kind of new. People don't know who you are.

MR. BARLAM: I thought it would be a reasonable request with the amount of foot traffic with the Plow and Stars and the Peoples' Republic down there?

UNIDENTIFIED SPEAKER: Can I have some input here?

MR. SCALI: Certainly. I just want to finish with him and then we'll take comments. Not a problem, sir.

MR. BARLAM: I was going to say,

obviously I'm not going to just open it. If I'm going to stay open at night, I'm not going to just keep it as business as usual; I'm familiar with the area. And additional staff, specifically security. There will be a doorman/bouncer or whatever on when we're open late just to make sure that things go smoothly. And also, with request with the Building Inspector when he was coming for an inspection, I told him that I was planning on doing this and I put in ancillary lighting that has been installed for the whole place.

MR. SCALI: So here is problem: My problem is that when people get out at 1:00 or 2:00 in the morning, the neighbors are not used to people being in that neighborhood past that time. You're open until 4:00 a.m. How are you going to handle all that foot traffic and noise that's going on until 4:00 a.m.

MR. BARLAM: That's why I came to discuss this with everyone here.

MR. SCALI: That's not our problem; it's going to be your problem to figure out how you

handle it.

MR. BARLAM: And I'm not trying to -- I've taken baby steps going through this. I haven't made any changes to the business and I don't plan on making any major changes. I definitely need to be open for some form of dinner, and I felt that on Friday and Saturday night, a late night diner that serves quality food would be a good thing.

Obviously I care a lot about the people who come in and live around there because they're my regular customers in the morning. So if they're not happy then I'm not going to do any business in the morning or at lunch. If 4:00 a.m. seems a little late, maybe something like 2:30 to close the kitchen and everybody out by 3:00 is something I could do. Or, if I could eliminate sit down service and just do to-go and delivery after a certain point.

I'm at ears and I obviously want to hear what John has to say because I want to make sure that when I'm doing this it's not with a lot

of people being opposed to it. I want to make sure that people are okay with the changes.

MR. SCALI: Are you thinking this is like do or die for you on a Friday? Are you already experiencing problems?

MR. BARLAM: Here's the thing: It's a very seasonal location so I know for a fact that -- we're doing fine. Like we we're doing a lot better than most new restaurants; we're paying our bills and everything. I do know for fact that to sustain through the summer we'd need to be open for at least dinner during the week, which I think it's reasonable being open until 11:00. I feel that the Friday and Saturday night would really add the type of revenue in addition to jobs that would be extremely beneficial for all the parties involved.

I'm not going to under staff and I'll do whatever needs to be done for compliance with the neighbors and everything in order to get it done.

MR. SCALI: Questions?

MR. HAAS: What are your current hours

of operation?

MR. BARLAM: Right now we're only open until 4:00 p.m. for lunch. Might I say also, we're very fully staffed. I didn't fire anybody when I took the place over. As most people know, I know who to cook, so I could be cooking there seven days a week and not employing people, but I wanted them to keep their jobs and everybody likes them around there, and they do a good job.

So being open for dinner service wouldn't be an overextension of like a new owner. Like I'd easily be able to slip into that because they have keys to the place anyway; they open and close. They've been working there longer than I have. So theoretically the breakfast/lunch service pretty much is running on a very smooth operation where I don't need to be involved as much so I could be there hands on to oversee the dinner service especially when we're starting up, which I would want to be anyway.

MR. SCALI: Are you going to be there until 4:00 a.m.?

MR. BARLAM: Until 4:00 a.m., you mean on the late nights? For starters, absolutely. I have to be there just to see what's going on.

MR. SCALI: "For starters" is the part that bothers me.

MR. BARLAM: Obviously I'd want to hire a responsible manager once I saw everything going well and stuff. Like I said, I thought it would be a good way to increase revenue and I'm at ears for whatever questions or comments?

MR. HAAS: Questions?

MR. HAAS: No questions.

MR. SCALI: Sir, just tell us your name for the record.

MR. GALE: John Gale, 900 Mass. Avenue. I'm there 35 years and I'm the owner there and also the owner of 56 Hancock. So I'm an abutter on all sides of the building where Dave's restaurant is and I eat there most every day of the week.

MR. SCALI: You must like his food.

MR. GALE: It's getting better. We

were discussing today and I have no problem with anything except that I think 11:00 is fine but 4:00, it's a drunk magnet there. When I first came here years ago, we had drunks every there. We had to get the liquor store time set back and we had all kinds of problems. It's pretty good right now. I can see after 2:00 a.m., everybody is -- I hear them because my bedroom is right on Mass. Ave. I hear them coming out of the Plow and the -- what do you call it -- the communist place there.

MR. BARLAM: Peoples' Republic.

MR. GALE: They're coming out of there yelling and sometimes fighting and all kinds of things. Number one, if they want to go into Dave's place, they've been drinking and all that stuff and they need to have services like a restaurant, which are not available. So they're going to be either in my front yard, which Mass. Ave., or around the back on Hancock Street. Probably noisy like the way I hear them coming out of those bars. And I'm sure you folks are familiar with the way people are when the bar closes and they're still flying.

MR. SCALI: Obviously he wants to do a dinner crowd, which is understandable, and you're saying 11:00 p.m. is okay. On a Friday and Saturday night, is that something that's still a problem for you past 11:00? I'm not talking until 4:00 a.m. I'm talking about is there a different time that would be more acceptable to you?

MR. GALE: I suppose. How many restaurants are open at that time, generally?

MR. SCALI: There's quite a few that are open. Not in that neighborhood particularly, but we have some.

MR. BARLAM: Sandwiched in between Pizza Ring on one end and then you have IHOP and Charlie's Kitchen down there on the other.

MR. GALE: I just don't want to have those bars open up and there's not only our area right there but they'll be coming from further away, you know. It will be like a magnet and I can see it really bringing the whole neighborhood down.

MR. SCALI: Definitely the issue is that it's much more residential where he is right

there than it is down at Pizza Ring or at IHOP or any of the other places. They're more in the Square. You're definitely in a more residential neighborhood.

MR. GALE: The city down zoned it to residential. Even the restaurant building is down zoned. I think that was part of the reason they want to keep it to be a neighborhood type place and something like this to me is just way overboard.

I think David and Carolina are trying to do a good job and I'd like to see them succeed. But I don't want to make it into the -- what do you call it zone -- like downtown where everybody goes all night. So that's all I have to say.

MR. SCALI: Thank you. Any other questions? Mrs. Lint, go ahead.

MS. LINT: I have a letter from James Spanks, G and P Management Group. They are the residential property managers for 922 Mass. Ave., which would be directly affected by this extension in hours. "A business being allowed to stay open until 4:00 a.m. would bring added noise to the

area. It would also create a location for people to gather very late into the night." And therefore, they're opposed to the 4:00 a.m.

MR. BARLAM: After hearing all this, I'm a realistic person, I think that 4:00 a.m. is too late. Obviously the more control I had over my hours -- I wanted to put the maximum down.

Maybe we could come to some sort of a compromise. I think if there are bars already there that are operating until 2:00 a.m., I don't think that it would be unreasonable Friday and Saturday nights to operate until at least 2:00 a.m. What I would ask is maybe if I could have a half-hour of business after that with some restrictions or something like that. Maybe I'd have to notify abutters in a few months and take it back under advisement or something like that to make sure things complied.

And if I need to, if it's getting busy enough that I'd need to hire a police detail, I know that it's a four hour minimum and it's about 40, 50 bucks an hour.

MR. SCALI: That would eat up all your profits right there.

MR. BARLAM: Yeah, I know, but the point --

MR. SCALI: I think the issue is first of all, you've only been there a very short time. You're very new. Normally what we do is we give people a six-month opportunity to get their feet wet and let them figure out what's going on in terms of operation, and then we let you come back, generally.

I have no trouble with the 11:00 p.m. dinner hour and all that, but the Friday and Saturday night issue is a big thing. Personally, I'm not sure how the other Commissioners feel -- I probably would consider something after 11:00 p.m. but definitely not until 2:30. It may be midnight or something like that just to see how you go. And then you can come back in six months and see what's happening there. I definitely think it's definitely a big impact on that particular neighborhood. See how the dinner hour goes first.

You may do very very well with the dinner hour and not need the after-hours.

MR. BARLAM: That's fine.

MR. SCALI: I'm just one vote.

MR. BARLAM: Like I said, because the bars are already open there, would say like closing, lock the doors at 1:30 so I'm shutting off dinner service at 1:00? I think that would be reasonable because everybody would be clearing out for an hour. I think that between 12:00 and 1:00 would make a huge difference, whereas between 1:00 and 2:00 isn't as big of a difference. At 12:00 and 1:00, it just means people can get there at 12:00, have food, and then be able to leave. Then we reevaluate in six months and if it's going well, we could extend the hours a little bit. If it seems like we have control of the place then we could definitely do that at that time. But I understand.

MR. HAAS: What were the hours before you opened the establishment? What were the prior hours?

MR. BARLAM: Before with the people I purchased it from it was open until 10:30 at night. It was a very popular Mexican restaurant and he did an amazing business. The people took it over and they were doing business at night. There's definitely a demand down there.

The one partner -- it was two partners and one was just over-extended. He was literally sleeping at the restaurant, he was there so long. He was there from 6:00 a.m. until 10:00 p.m. That was part of the reason he wanted to give up a very successful restaurant. So that's the only reason he stopped doing dinner service was because of that.

I think their past Victualer licenses, they were approved for later hours than 4:00 p.m. It's just that when I was coming on and acquiring it, I wanted to basically change nothing in the process of doing everything, and then I wanted to come back.

MR. HAAS: So when you bought it, it was closing at 4:00 p.m. in the afternoon?

MR. BARLAM: It was closing at 4:00 p.m. I wanted to see how things were going. My girlfriend who is my business partner is here and has been working there for a year-and-a-half. So I had a real good understanding of the business before I bought it. Now that I've been hands on I definitely know we need to be open for dinner. I think it would be very important especially to sustain the business over the summer so we're not living day to day say next year. And I think there would be a demand for it and if we could start with a later hour on Friday and Saturday and then expand at another point, then that would be fine.

MR. HAAS: Mr. Chair, my inclination is that since this is a new venture that I think it would be prudent on the part of the Board given the complexion of the neighborhood to probably limit to 11:00 with a six-month review.

MR. SCALI: Even on Friday and Saturday?

MR. HAAS: Yes.

MR. SCALI: I'd be inclined to see how

you do with the dinner hour first until 11:00. There's definitely opportunity for you to come back and figure out what you might need to do and then maybe work with Mr. Gale and the neighbors in the meantime. See how until 11:00 p.m. goes on the six days.

MR. BARLAM: All right.

MR. SCALI: You can decline that if you want but I think that's a prime opportunity for you to get your dinner menu started and figure out what you're going to be doing in the evening. Then you really have to come up with a plan. Anything later than that really requires a security plan after that in the evening. You could certainly come back to us at the end of the year.

MR. BARLAM: Could we do midnight on Friday and Sunday; would that be reasonable?

MR. SCALI: It's not Lets Make a Deal at this point.

MR. BARLAM: I understand. It's just that I think a little bit later on Friday and Saturday would be helpful in terms of staffing and

making sure that -- I think it would be helpful. And also it would be a little after 11:00, so I would have at least a slight idea and the neighbors would have a slight idea of how we're running things past 11:00, which is kind of like for me the cutoff for most people, even on weekends are going to sleep.

MR. HAAS: You run a risk, and I think it's really wise for you to kind of tread slowly into this, because if you start to have a problem right in the front end, it's going to affect your whole business across all the evenings. You want to be somewhat prudent about it because there is a risk that as you start -- as Mr. Gale indicated -- you to start to encroach later in the hours, you do start to draw a different kind of crowd into your business. I don't think you want to take that chance right now.

MR. BARLAM: I agree with you guys.

MR. HAAS: That's my perspective.

MR. BARLAM: So 11:00, stop serving food, or 11:00, everything is locked?

MR. SCALI: Well, you've got no liquor license so 11:00 p.m. locked. People out, closed. You can be there afterwards cleaning up but you can't have anybody there premises past 11:00 p.m.

MR. BARLAM: So I could close the kitchen at like 10:30 or something like that. Something reasonable.

MR. SCALI: So the motion is going to be Monday through Saturday until 11:00 p.m., with a six-month review. So you have an opportunity to come back in six months.

MR. BARLAM: And that way I could see how things are going and I'd have the money to guarantee a police --

MR. SCALI: Right, or whatever the plan may be. It may be you have an employee out there on the sidewalk.

MR. HAAS: See what your clientele looks like in the evening and then you can decide.

MR. TURNER: Monday though Saturday, or the seven days?

MR. SCALI: Monday through Saturday

because Sundays he wants to be closed at 4:00 p.m.

So that's a motion. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MS. LINT: Application: Huamulan Restaurant, Inc. d/b/a Mulan Taiwanese Restaurant, Chang Zing Zhang, Manager, holder of a Wine and Malt Beverages as a Restaurant license 228 Broadway has applied for a change of manager from Chang Zing Zhang to Shui Huang Hua. Applicant is also applying for a change of directors.

MR. SCALI: Good evening. Tell us who you are for the record.

MR. JAI: I'm attorney Wei Jai on behalf of Huamulan Restaurant, Inc., d/b/a Taiwanese Café Restaurant. We have application -

MR. SCALI: And your client's name?

MR. HUA: My name is Shui Huang Hua.

MR. SCALI: The proposed manager?

MR. JAI: And also the new director. Mr. Hua and his partner have been at the premises for about six years at the restaurant. With the planned departure of the current manager, he's taking over the position. He's a 50 percent owner of the restaurant.

MR. SCALI: So 50 percent owner and

now you'll be the manager of record.

MR. JAI: And director on the Board.

MR. HAAS: So the existing manager left the business; is that what you're saying?

MR. JAI: Is going to leave, yes.

MR. SCALI: Was he an owner too?

MR. JAI: No.

MR. SCALI: Did the background check come back okay, Mrs. Lint?

MS. LINT: I don't see one. I don't have one.

MR. SCALI: You're already an owner on the record.

MR. JAI: For the past six years.

MR. SCALI: I don't know that we need to do a background check if he's already an owner.

And the directors are now just --

MR. JAI: He's the sole director.

MR. SCALI: So you're the sole director, okay. Nothing else is changing: hours, menu?

MR. JAI: Nothing.

MR. SCALI: Nothing financially changing at all?

MR. JAI: Not at all.

MR. SCALI: Does anybody from the public want to be heard in this matter? No hands. Questions?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Motion.

MR. HAAS: Motion to approve.

MR. TURNER: Second.

MR. SCALI: Moved and seconded.

All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Good luck.

MS. LINT: Application: Robert Stefanilo and Brian Culipher d/b/a Brian J's Snack Time, has applied for a peddler's license to operate a mobile food truck. All stops will be made on private property.

MR. SCALI: Good evening. Just tell us your name for the record, please.

MR. CULIPHER: Brian Culipher.

MR. STEFANILO: Robert Stefanilo.

MR. SCALI: I guess what happened was we discovered that you guys were out there. Maybe Mrs. Lint can help me weed out how this all happened.

MS. LINT: Yes. Originally, Rain or Shine and applied for a Peddler's license, which you denied.

MR. SCALI: And that was Mr. Fraser.

MR. CULIPHER: John Fraser.

MS. LINT: Then I get a call from Mr. Culipher telling me that he had bought that route and would be operating it. I advised him that there was no route to buy because he never was

licensed by us and had been denied by us, and no one had a right to be out there operating.

Officer Arcos then -- actually we had numerous phone calls from Mary Cheevers and Inspectional Services that the truck was seen all over the city. Officer Arcos found him and told him he couldn't be operating. They continued to operate. Mr. Fraser who you had denied was the one operating the truck.

MR. SCALI: Tell me who owns the truck, first.

MR. CULIPHER: I own the truck.

MR. SCALI: So the registration says what?

MR. CULIPHER: Brian Culipher.

MR. SCALI: Just you?

MR. CULIPHER: Yes, sir.

MR. SCALI: You want to be on the truck and you want to be on this truck, too?

MR. CULIPHER: Bobby is going to be an operator. Can I just bring us up to speed?

MR. SCALI: Yes, please.

MR. CULIPHER: Ms. Lint is 1,000 percent right in everything she's said and everything that's happened. I have trucks in Boston and I have trucks in Newton and Bobby has been there for eight years; I've been operating for four years with my Peddler's license, my SafeServe license. I had no issues in either city for any situation whatsoever.

I have a state-of-the-art truck. I just put in -- which I explained to Ms. Lint -- and rightfully so she has a bad taste as well as you people do with the situation. It's a flaunt of authority and it's flaunt of you know, your operating systems. I was totally unaware of it. I literally bought the truck with seeing the application for permit that he was supposed to sit at a Thursday hearing or something of that nature.

I'm friends with his family. He was in financial trouble. I assisted him with buying the truck. I bought the truck and then knowing that he was - he's a pretty good -- he's a schmoozer, if you get my point. I bought a brand

new back which is -- there's a \$24,000 front to start with but then I said we can't operate this truck with the condition it's in. So I went and proceeded to get a \$27,000 back, which matches all the other vehicles that I have because I keep them all in impeccable shape.

In the process of going in he had been written up once, and then at that point in time we were both there and he said well, I have a hearing Thursday. And unbeknownst to me, because I have my Peddler's license in the other two cities, I have my SafeServe, it was never an issue. I didn't know that it was this intense at this point in time.

I explained to Ms. Lint that he bare faced lied to you people. He had the opportunity to do everything the right way. And from the get go I've tried to do each and everything that was requested of me from you people other than the fact that I know I did a lot -- he is totally out of the picture at this point in time.

MR. SCALI: So he is not on the truck now?

MR. CULIPHER: He's not on the truck now.

MR. SCALI: Because he had been on the truck.

MR. CULIPHER: Obviously I could not take him off the truck because he knew the route, but I know the distaste for what he has accomplished, which is nothing.

MR. SCALI: It's not because he's a bad person; it's just because he wasn't following the rules.

MR. CULIPHER: Simple things.

MR. SCALI: He didn't appear before us, he didn't respond to any of the requests. He could have probably done very very well if he just responded to what he was supposed to do.

MR. CULIPHER: I was totally unaware of all of it, totally. Now I'm almost \$60,000 in the thing here and I want to do whatever the City wants me to do. I've never been written up, I've never had a moving violation, I've never had any situations whatsoever concerning my trucks. I also

have a construction company in Everett that I've been at for the past 12 years and I've never had a situation whatsoever. I'm a hard-working guy. I work 16 hours a day as well as Bobby. We don't have an issue, we won't have an issue. I will do whatever it is to please you people.

MR. SCALI: Tell me what you want.

MR. CULIPHER: Bobby and I will be operating that truck.

MR. SCALI: You're going to own the truck under your registration?

MR. CULIPHER: Yes.

MR. SCALI: You and he are both going to be on the truck at the same time?

MR. CULIPHER: Bobby will be running the truck.

MR. STEFANILO: At different time. He's bringing me in case he's not capable of driving.

MR. SCALI: So primarily you'll be on the truck operating?

MR. CULIPHER: Yes.

MR. STEFANILO: He wants to be upfront With you guy so you know what's going on.

MR. SCALI: And you'll be there Sometimes but he'll be on the truck operating.

MR. CULIPHER: I'm more of a manager. I'm more in the back room. I'm buying the stock and maintaining the trucks, making sure the operational part of the company. He's out there trying to secure customers and one guy can't do both properly. I know all the routes, so if something goes wrong, I can jump right in and drive.

MR. SCALI: Where are you stopping now? What route did you buy?

MR. CULIPHER: We've got opportunities to stop at a lot of places. We stopped going to the city yards, and we stopped going to Mobardi's (phonetic), and we stopped going to the Post Office. I have it written down there exactly; there are three places that we are stopping.

MR. SCALI: So it's not on City property. You're going on private property. Is it

construction sites and that that kind of thing?

MR. CULIPHER: Yes, sir.

MR. SCALI: Because you can't stop on the street, you know that; right?

MR. CULIPHER: I understand that. I'm well aware of it. And again, Ms. Lint has been forthright in telling me what I can and cannot accomplish and I've tried to be honest and upfront with her and everybody else that I've had conversation with.

MS. LINT: I would have to add, Mr. Chair, when Mr. Culipher came in with the application he was not applying for the truck, it was in the name of Mr. Stefanilo. I told him at the time that there is no license for this truck and you can't be out there and operating. It wasn't until several weeks later when I finally got him on the phone and I said, you know, I told you, you couldn't be operating and you're operating.

MR. SCALI: I think we got that part that they just continued to operate without a permit. So now we want to start fresh.

MR. CULIPHER: I want to do whatever it is you people want me to do. I have a \$60,000 investment, and don't get me wrong, that's not your problem, but I should have done more research obviously. I didn't think it was going to be a problem because I've never had a problem in six years.

MR. SCALI: Did you pay Mr. Fraser?

MR. CULIPHER: I paid John Fraser \$24,000 for the front end. Well, he had a problem but ultimately I paid, yes, \$24,000, because I'm friends with his family.

MR. STEFANILO: For the whole truck.

MR. CULIPHER: They advised me of the situation. He was in trouble, you know. So I thought it would be a good opportunity for me because Bobby is an extremely good operator and I'm good at management. I have what would be know right now as the best truck in Cambridge. It's useless now if you don't give me the opportunity.

MR. SCALI: It could be a good truck but it's not allowed out there.

So in Boston you have a Boston license?

MR. CULIPHER: Yes, I do, sir, and a Newton license.

MR. HAAS: Did you produce both licenses?

MR. CULIPHER: Yes, I showed her. I had the Peddler's license for the state, which covers both cities.

MR. SCALI: Did they do the background things in Boston, too?

MR. CULIPHER: Yes, sir. We had no problems. Don't get me wrong, I grew up a tough kid.

MR. SCALI: I'm not so much concerned about the old. All this stuff is private information but there's one issue on here that's still open.

MR. CULIPHER: And that was a domestic thing concerning my dog downstairs. It's all explainable but it doesn't look well on paper. I do understand that. Again, the Chief of Police in

Everett has granted my license four years straight.

MR. HAAS: What would keep you from operating this truck in either Newton or Boston on your existing licenses?

MR. CULIPHER: I'm sorry?

MR. HAAS: You make it sound like if you can't operate this truck in Cambridge --

MR. CULIPHER: Oh no, no, no. I have two other trucks. One operates in Boston and one operates in Cambridge. I bought this truck specifically to operate in Cambridge. I mean one in Boston, one in Newton, and I bought this truck specifically to operate in Cambridge. I am friends with a few other drivers that are going to facilitate business for me. I was a good opportunity for me. I don't have the business or the use for this truck anywhere else. And again, the only reason I would have -- I could have withstood the truck, which would have been a backup truck in case something ever went wrong as far as the truck itself went, but not a \$27,000 box.

MR. HAAS: The Chief in Everett knows

you very well?

MR. CULIPHER: Yes.

MR. HAAS: Personally?

MR. CULIPHER: Yes.

MR. SCALI: Are you going to talk to him?

MR. HAAS: Uh-huh.

MR. CULIPHER: I'm not the brightest light bulb on the tree but I'm a hard-working guy and I'm a pretty honest person. And again, I would not embarrass the Board here. I'm accessible 24 hours a day if ever you call me.

MR. HAAS: It's kind of worrisome that you take on a business and then you claim you don't know what's going on with your business.

MR. CULIPHER: I literally, and I'm not lying, I literally --

MR. HAAS: So when you say you're a good businessman, I'm just trying to figure out how that happened.

MR. CULIPHER: Because Cambridge is the only city that has its own personal license; no

one else does.

MR. SCALI: Doesn't Boston?

MR. CULIPHER: No. All you have to do is go through Inspectional Services. They inspect your truck and you're done.

MR. SCALI: They don't have a separate Peddler's license in Boston?

MR. CULIPHER: Nothing, not at all, no, Newton, or Boston, or Brookline.

MR. STEFANILO: You pay your mild license and you pay your food permit, but they inspect the vehicle and --

MR. CULIPHER: It's just not set up like this.

MR. SCALI: They don't do the background checks?

MR. STEFANILO: They don't do none of this.

MR. SCALI: You don't operate in Everett, do you?

MR. CULIPHER: No, sir. I live in Everett.

MR. SCALI: You live in Everett.

MR. CULIPHER: Yes. And I've had a construction company there for 10 years.

MR. SCALI: Are you out there operating right now?

MR. CULIPHER: I'm not going to lie to you; I've got a couple of stops we're still doing because I'll be out of business and the truck will be dead.

MR. SCALI: This is the problem I had with Mr. Fraser. I said to him, if you can just wait until you get your license but he chose to continue operating without waiting for his license, and then he didn't show up, so that's why he got denied. That's why he got denied. It's not because of who he was or what he was.

MR. CULIPHER: I don't know how to make this -- either I go out of business and lose everything, or -- I don't know how to make this work.

MR. HAAS: So as a good-faith on your part, if we continue this matter until we have an

opportunity to some further background, do we have your assurance you're not going to operate the truck in the City between now and then?

MR. SCALI: He's not willing to do that. That's what we've been trying to get him to do.

MR. CULIPHER: It's not that I'm not willing to do that. If I shut this route down, I'll be out of business. There will be no business in two weeks. I mean literally, there'll be no business in a week. If I shut down now, there will be no business.

MR. STEFANILO: Let the Board know that no one else can cover the stops right now either.

MR. CULIPHER: No one else can cover the stops that are there but -- you see, it's a Catch 22, gentlemen. Again, I'm trying --

MR. SCALI: If anybody is there, they're doing it illegally wherever you are.

MR. CULIPHER: But no one else can go there.

MR. SCALI: Why can't they?

MR. CULIPHER: I was given these stops through other canteen drivers that are licensed in Cambridge.

MR. SCALI: They don't own them. You're buying something they don't own.

MR. CULIPHER: I understand your position. What I'm saying is if I don't do these stops within a week's time, they're unobtainable after that. I mean literally unobtainable. I'm in a barely breakeven point now just to sustain the truck itself until you people possibly look at a favorable decision to allow me to operate in your city.

MR. SCALI: What if we say no?

MR. CULIPHER: Then I've lost my investment. I don't know if I can appeal. I don't have any other options. I financially cannot lose \$60,000. And again, you're 1,000 percent right; it's totally my ignorance that put me in this position.

In my prior dealings in this business

I never thought that this was possible, especially when the kid showed me the paperwork saying he was going to be given a license, not knowing that it was only a hearing that he could be denied at. Then when I find out the history and the background of his actions, I said Jesus Christ. I left here crying.

I'm not trying to flaunt any authority. I'm not trying to tell you people that -- you know. Again, I think you understand my position.

MR. SCALI: I certainly do, and I'm trying to think of a way to resolve it.

MR. CULIPHER: I literally give up the route. If I stop servicing these customers, in a week's time I'll have no business and they will be unobtainable after that point in time.

MR. SCALI: You're the only truck allowed on these premises?

MR. CULIPHER: No, that's not the question. Once I'm out and another truck goes in or another truck takes over, I'm done. I cannot

get these stops back. And I'm new to this area. It's not like I even know these people. I have no history with any of these people.

MR. SCALI: How did you get these stops?

MR. CULIPHER: Through Jimmy Bennett, a friend of mine that helped me out with a couple of stops. I've know Jimmy for 30 years.

MR. SCALI: Now I understand.

MR. CULIPHER: And again, gentlemen, I totally understand and agree. I would not have done this. I would never have put you people through this. I would never have lied to you. I've never lied to Ms. Lint telling her I wasn't out there. I just said I have a couple of stops.

MR. SCALI: Pleasure of the Commissioners?

MR. HAAS: I think we need to get more information before we take a vote on this.

MR. SCALI: Motion to take the matter under advisement.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: We're scheduled to vote August 5, at 10:00 a.m. right here in this room. We'll gather more information between now and then, and decide what to do.

In the meantime, Commissioners?

MR. TURNER: Temporary.

MR. CULIPHER: I won't pursue any new areas. If you could just allow me to maintain what's --

MR. SCALI: Officer Arcos is out there ticketing him if he's operating now.

MR. CULIPHER: And just to interject for one second. I will pay the years that this kid didn't do the right thing. I'll pay the back fees.

MR. SCALI: That's not really the important part. It's only \$39.

MR. CULIPHER: No, but I'm just

saying. It's not even that. I want to do whatever it is you people want me to do to operate a successful business and respect the city that I'm operating in.

MR. SCALI: I guess we need to vote whether we continue with the ticketing or not in the meantime between now and August 5. Should we place a hold on that for now, Commissioners, until we decide what we're going to do?

MR. HAAS: In essence, we're giving him a temporary license then to operate between now and then.

MR. SCALI: If we place that matter as a decision --

MR. TURNER: Two spots; right? Two locations?

MR. CULIPHER: Mobardi's obviously has been calling me every week to see if I can go back there, and I have not gone back there because I was told not to. We're at three locations now that we're doing.

MR. SCALI: SO there are three other

locations besides those two?

MR. CULIPHER: Yes. SO if it would be possible to obtain a temporary license, it would be absolutely life saving to me, never mind -

MR. HAAS: For those three locations and those three locations only?

MR. CULIPHER: Yes, sir.

MR. HAAS: Just so you understand, if you're operating any place else, then you'll just forfeit that license at that point.

MR. CULIPHER: All right.

MR. HAAS: You have to supply the information to Ms. Lint in terms of where you're stopping.

MR. CULIPHER: I know there's three locations. I'm not sure if one borders Cambridge or --

MR. HASS: You keep on slipping away from this.

MR. STEFANILO: That's Allston. He's all right with that one.

MR. HAAS: It's easy; you've got a

river.

MR. STEFANILO: That's across the river so you're all right.

MR. SCALI: So motion then for a temporary license on the three locations to be furnished to Mrs. Lint, until August 5 at 10:00 a.m.

MR. CULIPHER: I'll concrete have those tomorrow morning, or at the latest the next day.

MR. SCALI: That's moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. HAAS: So understand that Officer Arcos will continue to monitor those other locations and if he finds you operating there, then you're in violation.

MR. CULIPHER: Okay.

MR. SCALI: In the meantime, we'll do the rest of our investigations to find out what to

do on August 5. Thank you.

MR. STEFANILO: Thank you very much.

MS. LINT: Application: Continued from July 12, 2010. Handi Indian Restaurant, Inc. d/b/a Harvest of India Fine Indian Bistro, Avtar Singh, Manager, has applied for a Common Victualer license to be exercised at 1001 Massachusetts Avenue. Said license, if granted, would allow food and non-alcoholic beverages to be sold, served, and consumed on said premises with a seating capacity of 39. The hours of operation would be 11:00 a.m. to 11:00 p.m. seven days per week.

MR. SCALI: Good evening. Tell us your name for the record, please.

MR. NARDONE: My first name is Glenn, G-L-E-N-N, last name Nardone, N-A-R-D-O-N-E, and I'm the attorney for the petitioner.

MR. SCALI: Who do you have with you?

MR. SINGH: Avtar Singh, A-V-T-A-R
S-I-N-G-H

MR. SCALI: When you were here in July it was the issue of the abutter notifications.

MS. LINT: It was to reach out to some of the neighbors who had been vocal in the past.

MR. SCALI: What did we do?

MR. NARDONE: I reached out and I got a lot of return mail. Mrs. Lint suggested I contact individuals at the following addresses on Ellery Street: No. 8, No. 9, No. 13.

MR. SCALI: How did you notify them?

MR. NARDONE: I sent them a cover letter and a copy of the published notice by regular mail and certified mail.

MR. SCALI: All you have to do is furnish us with the slips that you notified them. That's all. The white slips.

MR. NARDONE: Okay.

MR. SCALI: If they don't sign for them, that's their problem. As long as you notified them by receipt and you have proof that you notified them by receipt, you did your job. If they don't pick up their mail --

MR. NARDONE: So we're here on the original application.

MR. SCALI: Did you do an affidavit?

MS. LINT: What had happened is

because there was nothing different than that abutters hadn't been notified, you remembered from the past that Andrea had dealt with difficulties at that location. So I asked Andrea who the people were that were the problem, which is what you had asked me to do, and that's what we did.

MR. SCALI: And you got no response, no phone calls, no letters?

MS. LINT: Nothing, nothing, nothing.

MR. SCALI: No one else is here. So the application is for a Common Victualer, 11:00 to 11:00 seven days a week. Did you give us your experience last time? I can't remember.

MR. SINGH: I own the Shalimar Restaurant for 24 years. I opened in '86.

MR. SCALI: Any other issues?

MS. LINT: No.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Motion to approve.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you very much.

MR. SINGH: Thank you.

MS. LINT: Ratifications: Medallion 234, sale of 109, finance of 109, refinance 32, 86, 96, and 227.

MR. SCALI: Is everything in order on those?

MS. LINT: Yes.

MR. SCALI: Motion to accept.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MS. LINT: There is one other issue.

MR. SCALI: What issue is that?

MS. LINT: You were concerned about the accident in Boston.

MR. SCALI: I just wanted to ask the Commissioners, and it doesn't -- whatever the pleasure is -- that there has been two incidents with the Duck Tours. One happened to be an issue, a mechanical issue. A box had broken off and fallen beneath the pedal and caused the Duck Tour to cause an accident. And the other one was a vehicular accident where a car got wedged between the Duck Tour and another vehicle.

MS. LINT: That driver was cited, not the Duck. It was the car that got cited. The other driver was trying to scoot around him.

MR. TURNER: It was the car's fault.

MS. LINT: Not the Duck.

MR. SCALI: The issue is whether the Commissioners wish to hear any issues with regard to the Duck Tours.

MR. HAAS: All of these were in

Boston; right?

MS. LINT: Yes.

MR. HAAS: What happened with the person with the defective equipment?

MS. LINT: Something fell. I have the State Police report and all it indicates is a box had fallen off and got wedged under the brake pedal.

MR. SCALI: It was a mechanical piece that broke off that fell underneath.

MR. HAAS: I thought it was all new equipment he has. Didn't he get all new equipment? Aren't these the green ones?

MS. LINT: No, no. no.

MR. SCALI: These are the actual boats.

MS. LINT: These are the ones that go in the water.

MR. TURNER: There's two different companies that do it now. There's the old military ones, which is the -- there's Duck Tours and then there's another one.

MR. HAAS: Isn't it Super Ducks?

MR. TURNER: Super Duck.

MR. HAAS: So is this Super Duck or the Duck Tour?

MS. LINT: The Duck Tours.

MR. SCALI: The majority of the route is in Boston.

MS. LINT: We license it because they come into the water here.

MR. SCALI: So the issue is whether we need to have a hearing on the safety of these particular vehicles, or whether you're satisfied with the report, or whether we need more information.

MR. HAAS: You're saying the second incident was the result of the fault of another driver; right?

MS. LINT: The first one was the result of another driver.

MR. HAAS: And the other one was defective equipment?

MS. LINT: Yes, in Boston.

MR. SCALI: Does the Fire Department have any issues with them at all?

MR. TURNER: No issues whatsoever. I know the first concern I would have certainly is after the Philadelphia incident when the barge ran over, but I mean that was clearly -- we don't have barge traffic like that on the Charles River.

MR. HAAS: On the Fourth of July we do.

MR. TURNER: One big barge. These Duck boats are inspected annually by the Coast Guard and they pass. He does meticulously maintain his boats. I know they do the drills, the life safety drills; the people in the water drills once or twice a year, maybe more than that.

MR. SCALI: I just wanted to make sure that we were satisfied with whatever they continue to do so there's no danger. When there was one accident I was concerned but not overly concerned, and then when the second one happened I thought maybe perhaps there was another bigger issue. I don't particularly have a problem with it unless

someone else does. Or, do you think you need more information about it?

MR. HAAS: No.

MR. TURNER: I'm satisfied.

MR. SCALI: Place that on file, Mrs. Lint, and we're all set. Anything else before us?

MS. LINT: No.

MR. SCALI: Motion to adjourn.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: Moved, seconded. All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

(Whereupon, the proceeding was concluded at 8:12 p.m.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY, SS

I, Anne Ouellette, a Professional
Court Reporter, the undersigned Notary Public
certify that:

I am not related to any of the
parties in this matter by blood or marriage and
that I am in no way interested in the outcome
of these matters.

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

In Witness Whereof, I have
hereunto set my hand this 2nd day of August,
2010.

Anne Ouellette



ANNE OUELLETTE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
March 16. 2012

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