

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION DECISION HEARING

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

STAFF:

Elizabeth Y. Lint, Executive Officer

-- held at --

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

Tuesday, February 03, 2011

10:45 a.m.

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P R O C E E D I N G S

ELIZABETH LINT: It's license decision-making hearing, Thursday, February 3, 2011. We're in the Michael J. Lombardi Municipal Building, 831 Mass. Ave. basement conference room. Before you are the Commissioners: Chairman Michael Gardener, Chief Gerald Reardon and Commissioner Robert Haas.

Have you all reviewed the January 11th minutes?

ROBERT HAAS: I haven't.

MICHAEL GARDNER: I have.

ELIZABETH LINT: Okay. We'll defer that then.

Going back to the January 11th hearing, disciplinary matter of Jaswinder Inc. doing business as Cafe of India.

MICHAEL GARDNER: So, as I understand the procedures, it's up to us if we wish to hear from any of the participants?

1 ELIZABETH LINT: Correct.

2 MICHAEL GARDNER: From the prior
3 hearing and that's at our discretion?

4 ELIZABETH LINT: Correct. But there
5 would be no more public comment. It would be
6 from --

7 MICHAEL GARDNER: Right.

8 GERALD REARDON: So I have
9 Mr. Goldberg's -- since our last meeting and
10 so forth, do you have anything further to add
11 in terms?

12 ATTORNEY WILLIAM GOLDBERG: Well, I
13 can parenthetically state that --

14 MICHAEL GARDNER: Why don't we ask
15 you to come up and state your name, please.

16 ATTORNEY WILLIAM GOLDBERG: I will.

17 MICHAEL GARDNER: Thank you very
18 much.

19 ATTORNEY WILLIAM GOLDBERG: Attorney
20 William Goldberg representing Jaswinder, Inc.
21 Parenthetically I know that the Board was a

1 little disturbed because of the absence of
2 the personnel and manager of the restaurant,
3 and that bothered myself as well. One of the
4 persons are here now, only as an attendee.
5 But I omitted to inform the Board that, that
6 whether it makes a difference as to the
7 presence of some officer of the corporation,
8 I omitted to inform you other than being the
9 attorney for the corporation, I am also a
10 director of the corporation. So I'm aware of
11 the significance of your comments, which were
12 reasonable, but I omitted to indicate too
13 that as far as the corporation's concerned,
14 that somebody as a director was present and
15 heard your comments.

16 GERALD REARDON: I guess I can turn
17 around and say that, you know, even in the
18 abstract, any establishment or residence or
19 anything that has five fires similarly all
20 stemming from the same source and they
21 continue to happen, is something that gives

1 me cause to whether or not we even revoke
2 this license today. We've been in here
3 before. You've had fire losses. You've had
4 insurance damages. You've had collateral
5 damages with other businesses in the area and
6 so forth, and it's troubling to me that we're
7 back here again. And the last license
8 hearing was at the request of myself because
9 of the issues to make sure we brought this in
10 to raise this up again. And we find
11 ourselves, you know, not that many months
12 later back here again.

13 So, my point, my job is to make sure
14 that everyone in the city is safe. It's not
15 a popular job. It's not one I take very
16 lightly either. So the question is why
17 should I believe at this stage again believe
18 that something is going to change? The last
19 time the licensee was in here, you know, this
20 was brought to a head. And, you know, this
21 was pretty much the end of the line and we're

1 back here again. So I guess in a very short
2 brief statement I guess you have to convince
3 me why this time somehow it would be
4 different.

5 ATTORNEY WILLIAM GOLDBERG: I can
6 only relate to you that I communicated to the
7 principals of the corporation the seriousness
8 of the hearing and what the comments made by
9 the members of the board. I can't warrant
10 anything to you except that I think that
11 someone will be specifically designated as we
12 want to insure that the cleaning of the
13 establishment is done in accordance with the
14 prior letter of the prior hearing. If
15 necessary, I will assume responsibility for
16 that as a director of the corporation and
17 will see to the fulfillment of the job that
18 has to be done by the person who's cleaning
19 the establishment. So in that regard I
20 assume responsibility that carries with it
21 quite a bit of responsibility, and I will

1 adhere to the -- what has to be done. I not
2 only will do that, but I will make certain
3 that I'll be in contact with the
4 establishment that does the cleaning every
5 three months. He's due -- I think in terms
6 of scheduling, he's due sometime this month.
7 And I will be there personally to see that he
8 does what he's supposed to do and corollarily
9 make certain that the comments that he makes
10 and the results that he obtains will be sent
11 to the License Commission, the Fire
12 Department and the Police Department as was
13 stipulated as what had to be done.

14 I understand and I'm not denigrating
15 your comments at all. It's a very potent
16 comment, very serious situation. I just --
17 it's a business that's been going on for a
18 number of years. They serve the public well
19 in gourmet situation, but administratively
20 they've fallen down. And I will accept the
21 responsibility to ensure that they will do

1 what they're supposed to do in accordance
2 with the desires and wishes of the Board.

3 MICHAEL GARDNER: I guess I have a
4 question, Chief, in terms of the photographic
5 materials that we had available to us to
6 review, it appeared to me that the problem
7 was at least as much daily cleaning by staff
8 of the hood and range areas as it might have
9 been any sort of three month outside more
10 thorough cleaning. That it appeared for that
11 level of build up, they must not have been
12 doing the job on a daily basis. So, I wonder
13 if you have any thoughts or comments on that.

14 GERALD REARDON: It's obviously that
15 the level of housekeeping in cleaning of
16 those hoods is not being done sufficiently.
17 And whether that needs to be at least daily,
18 if it needed to be done twice daily because
19 of the volume, so be it. But that is the tip
20 of iceberg of the type of grease that winds
21 up in the hood that builds up quickly. So

1 obviously the fact that they're a thriving
2 business, may mean that they have to clean it
3 more often. But the business is thriving
4 that's a good thing. And at the end of the
5 day, and this is not to denigrate the owners,
6 the fact is that we have factual information
7 of where the fires are. So, this is not to
8 point fingers. Other than whatever the
9 collateral collective wisdom is there, it's
10 not working as it's been in the past. And I
11 take Mr. Goldberg has been here many a year
12 and I don't hold him in higher esteem than
13 the other owners, but when he turns around
14 and takes personal responsibility, it gives
15 me some solitude in, you know, giving them
16 another chance. I guess I will put down
17 specific new requirements if the Board so
18 looks in that direction.

19 MICHAEL GARDNER: I guess part of
20 what I'm concerned about is at least what I
21 understood Attorney Goldberg to be saying was

1 first I can't warrant anything to you, but I
2 will take responsibility for making sure that
3 there's compliance with the cleaning. I
4 would have hoped that the responsibility for
5 compliance with maintaining a safe
6 environment within the restaurant was very
7 clear right now; that we didn't need to have
8 the idea that there was going to somehow be a
9 new plan for who was going to take
10 responsibility for it or do it, but would
11 have hoped that was already in place given
12 the number of fires that you've had. And I
13 am wondering whether or not a suspension of
14 some duration might help focus and make sure
15 that in fact the responsibility for the
16 cleaning is fixed and certain.

17 ATTORNEY WILLIAM GOLDBERG: I know
18 that there had been an initial suspension,
19 and whatever the Board determines so that
20 there's an impact on the business for a long
21 period of time, I think that might be a fair

1 assessment and determination by the Board.

2 ROBERT HAAS: So, Chief, just to go
3 back to -- I mean, I know that we have some
4 concerns about not so much about the
5 three-month cycle but just the follow
6 through. I would be interested in knowing
7 now that we've had this frequency of fires,
8 is a three-month cleaning and inspection
9 adequate in your estimation?

10 GERALD REARDON: Subject to the
11 opinion of the Board, I will stipulate some
12 conditions here, one of which I would say is
13 the minimum of a four-month cleaning. And
14 the four-month cleaning would be, you know,
15 at the end of the third month. Coming up on
16 March, that the cleaning workers are there.
17 That within five working days after the end
18 of that quarter, if that record is not in the
19 hands of fire prevention, that on the sixth
20 working day we will revoke the license. So
21 if the corporation chooses to take the chance

1 of letting the cleaning company forward it,
2 gets lost, it doesn't get in the mail, day
3 six after not getting it, after a quarter
4 we'll revoke it.

5 The other issue is that I'm going to
6 have an inspector come in there once a month.
7 Now the minimum fee for inspections, because
8 this is out the ordinary, is \$50. I'm not
9 trying to be punitive, but that's the extra
10 workload once a month for an inspection. And
11 it could be any time within the month. It
12 could happen on the 28th of one month and the
13 4th on the next month. We're not going to
14 tell you when they're coming in. If you fail
15 the inspection, we'll again be looking
16 towards suspension or revocation. And I'm
17 also recommending that a six-months review
18 obviously of the establishment to see where
19 we're at after these particular conditions.

20 ATTORNEY WILLIAM GOLDBERG: Well,
21 just --

1 MICHAEL GARDNER: Just point of
2 clarification, Chief, you said a minimum of a
3 four-month cleaning but then you spoke about
4 quarterly. Are you really talking about a
5 three-month cleaning?

6 GERALD REARDON: Excuse me, three
7 months, I'm sorry.

8 MICHAEL GARDNER: So I don't know if
9 the Chair makes recommendations or motions on
10 these things or not, but we do have a full
11 agenda. I'd like to move it on. So I'll try
12 it. I'll see if I get a second.

13 I would move for a five-day suspension,
14 reopening subject to inspection, and the
15 conditions which the Chief has articulated
16 here, plus any others that upon reflection
17 may be appropriate.

18 I suggest five days because you've had
19 five fires and we want to make sure you don't
20 have a sixth. I would assume we would in
21 fact be looking at something substantially

1 more strenuous if there's sixth fire
2 including revocation.

3 That's what I would suggest to the
4 Board as a way to resolve the matter.

5 ATTORNEY WILLIAM GOLDBERG: Where
6 there's already been a suspension of I
7 believe six days, would you be able to
8 compromise on the five-day suspension and
9 adhere to all the other rules and regulations
10 that as set forth by the fire chief?

11 MICHAEL GARDNER: I guess my
12 understanding was that it wasn't so much a
13 suspension as it was they shut you down for
14 unsafe operation until the matter could be
15 inspected. I don't think that was so much a
16 suspension that was based on a punitive
17 response to failings to adhere to prior
18 conditions, but rather an immediate response
19 to what was determined to be a public safety
20 failing it with respect to the last fire. So
21 I really -- I see them as different. I could

1 be misinformed and I'd be happy to hear from
2 you.

3 ATTORNEY WILLIAM GOLDBERG: I know
4 at one point in time the various departments
5 of the city permitted them to open, and then
6 at a later date, then I believe Captain
7 Reilly --

8 GERALD REARDON: Cahill.

9 ATTORNEY WILLIAM GOLDBERG: Yes.
10 Came and he examined the premises and made
11 his determination to shut them down. Prior
12 -- but they had already made arrangements to
13 clean-up the hood and correct some of the
14 situations that were set forth by him on a
15 prior fax, I think it was a fax on September
16 10th. So that's what my encounter is to
17 mitigate the five-day suspension, to adhere
18 to all of the serious and potential outlines
19 by the fire chief and we'll accept that.

20 ELIZABETH LINT: If I could just
21 address some of the requirements. I think it

1 would be more in line with what we need to do
2 from a legal standpoint that you could shut
3 them down on the sixth day, but we can't
4 revoke the license without public hearing.

5 GERALD REARDON: Okay.

6 ELIZABETH LINT: Same thing if they
7 fail inspection, you can shut them down but
8 we can't revoke without the hearing.

9 MICHAEL GARDNER: Has there been a
10 six-day punitive suspension?

11 ELIZABETH LINT: No. They were
12 closed by the fire department and ISD due to
13 the fire, but not as a result of anything
14 that this Board did.

15 MICHAEL GARDNER: And Captain
16 Cahill's shutting them down was based on the
17 circumstances as he saw them, not taking any
18 action with respect to the license?

19 ELIZABETH LINT: Correct.

20 GERALD REARDON: The way the rules
21 and regulations is ISD, there's health codes,

1 and fire codes. And some of them come under
2 the hoods and the extinguishing agents and
3 the ansul system. And the extinguishers all
4 come under the fire code. They might have
5 been cleared with ISD with issues that they
6 had, but there are separate jurisdictional
7 matters.

8 MICHAEL GARDNER: I'll amend my
9 motion to clarify Mrs. Lint's point about the
10 authority to suspend, but not revoke absent
11 of public hearing. But I won't amend my
12 motion any further than that.

13 So far it doesn't have a second.

14 GERALD REARDON: Any opinion,
15 Commissioner?

16 ROBERT HAAS: This is more your area
17 of expertise than mine so I'm just curious to
18 see what your reaction to it is.

19 GERALD REARDON: Obviously in light
20 of everything, you know, the suspension is
21 probably not unwarranted. Based upon this,

1 my position is that, you know, I want this
2 and every establishment to thrive in the city
3 but they have to do it within a safe,
4 reasonable means. And they've exposed people
5 to injury. There's been two people injured.
6 There's been others. Certainly the length of
7 a suspension on top of the condition that I
8 put forth is certainly warranted. Because
9 I've wavered back and forth to whether or not
10 to even move to totally dismiss the license
11 because I'm also at risk here in terms of,
12 you know, how many times do I hold out the
13 olive branch to someone and find out that it
14 has not been reciprocated in terms of doing
15 the right thing? I think I have bent over
16 backwards on this. So I will support and
17 second the Chairman's motion.

18 ROBERT HAAS: Just a point of
19 clarification. So, on the inspection that
20 your person will do, if they find their
21 non-compliant that would actually result for

1 another shut down and then move them for a
2 hearing, right, at that point?

3 GERALD REARDON: Normally what we
4 would do is that you'd find -- and the
5 violation depending on how bad the violation
6 is, if it jeopardizes life and safety of
7 anyone, it may require to be shut down, which
8 is rather extreme for us to shut down an
9 establishment. We try to work with the
10 ownership and try to come up with something
11 to immediately address that and many times
12 it's adjudicated that very spot or that
13 afternoon by a company whatever the issue.
14 Is and they're very responsive to it.

15 And in this particular case, yes,
16 again, if we find that this is not working
17 out, then I will turn around to make a motion
18 to come back -- I will file to come back here
19 to permanently revoke their license if we
20 find this is not working out. We would have
21 no other choice. If this appears that we go

1 in there and they start failing inspections,
2 this will clearly tell me that nothing's
3 changed, and what we're doing here by
4 allowing this is exposing public, patrons,
5 neighbors, workers, to something that's
6 not --

7 ATTORNEY WILLIAM GOLDBERG: You will
8 set forth the reasons for your decision of
9 suspension and revocation?

10 GERALD REARDON: Yes.

11 ATTORNEY WILLIAM GOLDBERG: But is
12 it -- and I think I did hear from you that
13 you'll review the type of violation that it
14 is and make a determination as to whether
15 that type of violation would necessitate a
16 suspension and the hearing on revocation?

17 GERALD REARDON: Everything is
18 weighed situational dependency, Counsel, as
19 you know. If we go back in and start finding
20 that two inspections in a row that there's
21 conditions in the hood are similar to before,

1 that's going to be something that I am not
2 going to waiver on whatsoever. If we find
3 something that's ancillary, that something
4 happened, an extinguisher was stolen or
5 something was moved and it's just got to be
6 replaced back there, it's certainly a
7 different case entirely from what we're
8 talking about.

9 ATTORNEY WILLIAM GOLDBERG: May I,
10 just an example, if a fire extinguisher is
11 not tagged, is that a situation which would
12 warrant your --

13 GERALD REARDON: I would say to you
14 at this stage of the game that if you have
15 extinguishers that aren't tagged in light of
16 everything that's gone on, and we go back
17 over there and find out that they're
18 untagged, that I'm not going to be very
19 charitable whatsoever. Understanding the
20 situation. If this was the first time that
21 we were in your establishment, and by for

1 some reason administratively someone missed
2 something and said oh, this has never
3 happened before, it will never happen again,
4 that would be one thing. If you're turning
5 around and getting into fire violations in
6 this establishment, you will find no charity
7 from me whatsoever. This is a stretch as it
8 is for me.

9 ATTORNEY WILLIAM GOLDBERG: I
10 understand the differentiation.

11 GERALD REARDON: If they need to get
12 their extinguishers done a month in advance,
13 I mean, I would think it's little or no cost,
14 that whatever is necessary that they would be
15 far above ahead in whatever is there. I
16 think, the level of consciousness here for
17 this whole issue -- if they fail one of
18 those, I don't, I don't really think you'd
19 expect me to be charitable under those
20 conditions.

21 MICHAEL GARDNER: I'm not so sure

1 where any of us are well served by going
2 through a string of hypothetical violations.
3 I think perhaps what you've heard from the
4 Board is that our level of concern about the
5 non-compliance and the continuing problems in
6 the establishment as such is that you may
7 regard yourselves as having to prove by
8 compliance with all of the requirements that
9 you're subject to, that this ownership
10 deserves to continue to hold the license and
11 be in operation. And I would I guess -- if
12 there's any other comments from or questions
13 from the board members.

14 ROBERT HAAS: Just for
15 clarification, this is five consecutive days,
16 right? Suspension? With an inspection by
17 the fire department prior to reopening?

18 MICHAEL GARDNER: That is what I
19 envisioned, yes.

20 ROBERT HAAS: Okay.

21 MICHAEL GARDNER: With the hope that

1 during those days you would, by training of
2 staff, by the organization of management,
3 lines of authority, responsibility, directors
4 or otherwise, that use that as the
5 opportunity to make sure whatever management
6 and compliance issues that have been in the
7 past are solved.

8 GERALD REARDON: And I take some
9 solace in your reputation and professionalism
10 in make being sure this all happens,
11 Mr. Goldberg.

12 ATTORNEY WILLIAM GOLDBERG: Thank
13 you for that comment.

14 MICHAEL GARDNER: No other comments?
15 All those in favor?

16 (Aye: Gardner, Haas, Reardon.)

17 MICHAEL GARDNER: Opposed?

18 (No Response.)

19 MICHAEL GARDNER: Thank you. Wish
20 you well.

21 * * * * *

1 ELIZABETH LINT: Revocation New
2 Asia. Sally Loh.

3 I can report to the Board that Ms. Loh
4 did come in and pay the outstanding first
5 half alcohol licensing fee as well as
6 reimbursing the city for the bounced check
7 from last summer and she also paid the
8 administrative fee. So she's up to date with
9 the License Commission with all of her fees
10 and payments. She did not come in to apply
11 for the inactive license.

12 ROBERT HAAS: One of the things I
13 think I asked her during the last hearing was
14 what her future plans were with respect to
15 her license, because she was closed so long.
16 Whether she was going to try to re-establish
17 a business there or was it her intent if the
18 license wasn't revoked was to try to sell the
19 business with the license. That's the thing
20 I'm curious about. I'd like to know what her
21 intent is to do with that license.

1 ELIZABETH LINT: She did not convey
2 that information to us.

3 MICHAEL GARDNER: So the fact that
4 she hasn't applied for an inactive license
5 puts us in what position with respect to
6 action?

7 ELIZABETH LINT: Well, it was on
8 January 11th for revocation. She's well
9 aware that the Board could take action to
10 revoke the license if she didn't apply for
11 inactive status.

12 GERALD REARDON: I guess I would
13 make a motion that we give her 30 days, at
14 which time at the end of 30 days, the license
15 will be revoked unless she takes some action.

16 MICHAEL GARDNER: I think we have
17 the authority to make a conditional
18 revocation like that or do we --

19 ELIZABETH LINT: Yes.

20 MICHAEL GARDNER: The matter -- we
21 don't need to have the matter before the

1 Board again?

2 ELIZABETH LINT: No. I would put it
3 on at the end of the 30 days to put it on the
4 record.

5 ROBERT HAAS: Just some
6 clarification --

7 MICHAEL GARDNER: Well, I guess then
8 would just wonder, Chief, if we would say
9 that to have a motion to place this matter on
10 the March 8th agenda with the idea that if
11 it's not paid by then --

12 GERALD REARDON: I believe it's
13 paid. The issue is inactive.

14 MICHAEL GARDNER: Right.

15 ELIZABETH LINT: Yes.

16 GERALD REARDON: We can do it that
17 way, too. The point being that obviously if
18 it's going to sit out there at this stage in
19 the docket, she has to apply for inactive or
20 make some arrangements to move it or
21 something, but it shouldn't be open ended,

1 that's all.

2 MICHAEL GARDNER: Well, 30 days is a
3 functional equivalent to having it on March
4 8th.

5 ELIZABETH LINT: Yes.

6 GERALD REARDON: I would amend my
7 motion to reflect the March 8th hearing.

8 ROBERT HAAS: So you're going to
9 continue the matter to March 8th is that the
10 motion?

11 GERALD REARDON: Yes.

12 ROBERT HAAS: I'll second it.

13 MICHAEL GARDNER: All those in
14 favor?

15 (Aye: Gardner, Haas, Reardon.)

16 MICHAEL GARDNER: Opposed?

17 (No Response.)

18 MICHAEL GARDNER: So the matter is
19 referred to the March 8th meeting.

20 * * * * *

21 ELIZABETH LINT: The application of

1 Red Line Bar and Grill. I believe the
2 outstanding issue had to do with
3 accessibility.

4 MICHAEL GARDNER: Appreciate hearing
5 from Attorney Rafferty on any updates since
6 our last hearing.

7 ATTORNEY JAMES RAFFERTY: Thank you,
8 Mr. Chairman.

9 At the conclusion of the last hearing
10 there were two issues the Board will recall:

11 One was response to a concern expressed
12 by Mr. Mui of the Commission with the Persons
13 of Disability, and the other was a head's up,
14 if you will, from the fire chief suggesting
15 that the licensee would benefit from getting
16 an early understanding whether the increase,
17 the expansion of the premises and the
18 increased capacity would trigger any
19 additional egress requirements beyond what
20 the current premises allows or provides.

21 We had the architect who is working

1 with the licensee review both issues. To
2 Mr. Mui's credit, there was a need to make
3 some modification to the seating plan, to
4 create some seats that the five percent
5 accessible requirement. And we've filed a
6 revised plan that reflects that. We've also
7 reviewed the egress requirements and
8 concluded that the existing egress is
9 satisfactory. And that plan and that letter
10 were provided to the Commission. I also
11 provided copies to Mr. Mui. I haven't heard
12 further from Mr. Mui.

13 ELIZABETH LINT: Those should have
14 been forwarded to you yesterday.

15 MICHAEL GARDNER: So your position
16 is you're in compliance with both the
17 accessibility and the egress?

18 ATTORNEY JAMES RAFFERTY: Right. My
19 position is that these issues -- any time a
20 premises goes for an expansion, the ultimate
21 determination is with the Building Department

1 as to whether or not they can get a building
2 permit to show compliance. So Mr. Mui had
3 raised an issue. In fact, there was some
4 merit to that apparently, so that's been
5 addressed, and we've also looked at the
6 egress issues and we are being informed by
7 the architect that will be applying for the
8 Building Permit that both of these issues are
9 consistent with the requirements of the
10 building code.

11 ROBERT HAAS: Mr. Chair, in light of
12 that information, I make a motion to approve
13 the application for expansion.

14 GERALD REARDON: I second.

15 MICHAEL GARDNER: The motion's been
16 made and seconded.

17 All those in favor please indicate by
18 saying "Aye."

19 (Aye: Gardner, Haas, Reardon.)

20 ATTORNEY JAMES RAFFERTY: Thank you.

21 MICHAEL GARDNER: Opposed?

1 (No Response.)

2 MICHAEL GARDNER: None.

3 We appreciate your working this out,
4 Counsel.

5 ATTORNEY JAMES RAFFERTY: That's
6 what I get paid for, thank you.

7 * * * * *

8 ELIZABETH LINT: The application of
9 Maharaja.

10 MICHAEL GARDNER: At the hearing on
11 January 11th it appeared there were a number
12 of complicated issues for the Commission to
13 deal with. We invited written comment prior
14 to today's hearing. My understanding is that
15 we have received three letters on this. Do
16 we have any more on this, Mrs. Lint?

17 ELIZABETH LINT: No.

18 MICHAEL GARDNER: All right. I
19 guess let me begin by stating my
20 understanding of the issue or issues that
21 have been raised and asked for comment and

1 clarification from my more experienced
2 colleagues here, and also any comments from
3 the affected parties.

4 At least one issue that we were
5 concerned with that we spent a fair amount of
6 time on was the matter of whether or not the
7 terms of the lease might give some actual
8 implied or arguable right of the landlord to
9 lay some claim to the license. Although
10 there were representations made that there
11 were not such restrictions or rights
12 attendant to the lease, at least our concern
13 was by a reading of the plain meaning of the
14 language of at least one provision in the
15 lease that there might be, and we suggested
16 that the lease terms be adjusted to deal with
17 that concern.

18 Do we have any information about
19 whether that happened?

20 ELIZABETH LINT: As far as I know,
21 it did not.

1 ATTORNEY BERNARD GOLDBERG: May I
2 address that particular issue?

3 MICHAEL GARDNER: Just identify
4 yourself for the Board, sir.

5 ATTORNEY BERNARD GOLDBERG: Bernard
6 Goldberg, 620 Massachusetts Avenue in
7 Cambridge. Attorney for the purchaser if you
8 will.

9 I've been advised and informed that as
10 of this moment an attorney by the name of
11 Kevin Chinell (phonetic) of Acton,
12 Massachusetts, is actively involved with
13 changing the Section 24 that you referred to,
14 relative to any interest that the landlord
15 may have. The landlord has agreed to the
16 change by the purchaser's attorney who
17 resides and operates and is active in the
18 business in Acton, Massachusetts. That is
19 being done now, and I will receive a letter
20 from attorney which has the ascent of Raj
21 Dhandra, the landlord which will expressly

1 state in its terms that the landlord has no
2 lien and or any position whatsoever so far as
3 the license is concerned. And I would ask
4 that the Board defer making a decision, an
5 affirmative decision on the right of the
6 transfer represented by Kevin Crane until you
7 have that document changed and agreed to the
8 change.

9 MICHAEL GARDNER: I'm sorry, sir,
10 I'm not clear I understand who you are
11 representing here?

12 ATTORNEY BERNARD GOLDBERG: Well,
13 I'm representing --

14 ATTORNEY KEVIN CRANE: Maharaja.

15 ATTORNEY BERNARD GOLDBERG: I'm
16 sorry, I represent the purchaser. The
17 Northeast Group --

18 MICHAEL GARDNER: You represent the
19 applicant for the license?

20 ATTORNEY BERNARD GOLDBERG: Yes.
21 I'm sorry I did not make that claim. But I

1 represent them insofar as their position here
2 in front of the License Commission. Kevin
3 Chinel represented them and is now
4 representing them in connection with the
5 application with regard to the lease and will
6 make the necessary changes which I would ask
7 that the Board defer until they see and
8 approve that change being made as of the
9 moment.

10 MICHAEL GARDNER: Thank you.

11 Any questions of Mr. Goldberg on this
12 aspect of the matter?

13 ROBERT HAAS: No.

14 MICHAEL GARDNER: A second issue
15 which was raised in the written comment that
16 we received by a letter time stamped January
17 31, 2011 in the License Commission from --
18 signed by Mr. Solomon -- is it Chowdhury?

19 ELIZABETH LINT: Chowdhury.

20 MICHAEL GARDNER: Chowdhury.

21 Says firstly, "I would like the

1 Commission to look at the minutes of meetings
2 of last year when Commissioner Scali made it
3 clear to the Red Bull owners that no new
4 licenses would be issued for the building of
5 57 JFK Street until all lawsuits and current
6 issues between the landlord and the owners
7 are settled." That's declared a statement in
8 the letter. And then the author goes on to
9 say, "Does the Board still stand by its
10 statement as there are still lawsuits in the
11 building between tenants and the landlord, or
12 has that position changed?"

13 Obviously I was not here at the time
14 and not cognizant as to whether the author is
15 accurately stating any position of the Board,
16 of the Commission or then Commissioner Scali
17 with respect to the general issue of this
18 building.

19 ROBERT HAAS: So, Mr. Chair, my
20 recollection was that we did in fact take
21 some action because of the complications

1 associated with licenses in that vicinity.
2 But I don't think the License Commission made
3 it that broad in terms of making it
4 conditional upon any lawsuits being settled.
5 But again, I think we have to look at the
6 minutes of the hearing just for clarification
7 on that.

8 ELIZABETH LINT: I would agree with
9 that. I don't think it went so far to say
10 that until lawsuits are settled because as we
11 all know that could take many years.

12 GERALD REARDON: There was no vote
13 or motion taken specifically on that evidence
14 or commentary. I believe it dealt with the
15 particular premise and the number of licenses
16 and the licenses that were pledged towards a
17 certain individual. And I think it was
18 specific to that and not broad based, and it
19 was a motion or a regulation of the License
20 Commission to imply that in perpetuity.

21 MICHAEL GARDNER: Well, if we do

1 have time before an ultimate decision
2 hearing, I guess I would like the opportunity
3 to review those minutes.

4 ROBERT HAAS: Yes.

5 MICHAEL GARDNER: The third issue as
6 I understand it, was an objection or concern
7 raised by members of the public, and I
8 believe other license holders within Harvard
9 Square that the Commission may be violating
10 its policy with respect to caps in Harvard
11 Square by allowing the transfer of a license
12 from an uncapped area into this, a capped
13 area.

14 I have reviewed the regulations. As I
15 understand them, it appears to me, and I'm
16 asking for a reaction to this interpretation
17 from Mrs. Lint, fellow Commissioners and at
18 the appropriate time the interested parties
19 here, that transfers are within a cap area
20 between one licensee to another in the capped
21 area are generally the easiest to approve

1 because they don't end up changing the
2 numbers under the cap. An alternative way to
3 grant a license relates to if the license
4 application -- that this is D2B. (Reading)
5 The license application, rigorous searching,
6 detailed examination passes scrutiny of the
7 Commission. And then the licensee agrees to
8 accept Addendum A of the rules and regs,
9 which I understand then the provisions of 2B
10 of Addendum D relate to licenses that don't
11 have any economic value.

12 Is that -- that is those in A, Addendum
13 A, that they are not sellable or otherwise
14 transferable. Is that -- that's your
15 understanding of the purpose of 2B of
16 Addendum D.

17 ELIZABETH LINT: Without looking at
18 it -- I'd have to look at it. I don't have a
19 copy. Thank you. What page are you on?

20 MICHAEL GARDNER: This is 14 as it
21 relates back to 9.

1 ELIZABETH LINT: 2B. Yes.

2 MICHAEL GARDNER: And that is not
3 what we are talking about here?

4 ELIZABETH LINT: No.

5 MICHAEL GARDNER: And we certainly
6 haven't done that rigorous process that 2B
7 envisions I don't think.

8 ELIZABETH LINT: But that would --
9 but we're not talking about --

10 MICHAEL GARDNER: We're not talking
11 about that.

12 ELIZABETH LINT: Okay.

13 MICHAEL GARDNER: So then the only
14 other authority I find in the regulations
15 with respect to approval of a license going
16 into a capped area is contained on page 19 of
17 the rules, an amendment to the cap policy
18 passed September 28, 2006, which provides I
19 believe in most relevant part, cap-to-cap
20 license transfers will be considered when
21 there are available licenses in other cap

1 areas. Increases in capacity within a cap
2 area are allowed in accord with the rules and
3 regulations already in place. An applicant
4 may apply to break the cap as a last resort
5 after every effort to purchase any existing
6 license is exhausted.

7 And I guess what the concern I have
8 about that is given that as the authority
9 that the rules provide, I'm not sure I
10 understand that there's any authority to --
11 that we've set out in the rules to approve a
12 transfer from an uncapped area to a capped
13 area. And whether that was an oversight or
14 an intentional policy provision, I'm not
15 privy to, but I'm not sure I see the
16 authority for us to -- under what our stated
17 rules are to go from uncapped to capped.

18 ELIZABETH LINT: And I think that's
19 a very valid point. Having sat on the
20 committee that did this amendment, I don't
21 know -- I don't think it was intentionally

1 left out. I don't think it was ever
2 addressed. I don't think anyone ever brought
3 it up and considered it. And my only concern
4 is that there is precedent because there has
5 been licenses that have transferred already
6 from non-capped areas to capped areas.

7 GERALD REARDON: The issue before us
8 were just not regulated --

9 ELIZABETH LINT: Correct.

10 GERALD REARDON: -- to the extent of
11 capped areas. So, it was kind of like a
12 regulated capped area and an unregulated
13 capped --

14 ELIZABETH LINT: Correct.

15 GERALD REARDON: -- and I never knew
16 the distinction in terms of the -- I think in
17 the past we worked on the capped and the
18 uncapped.

19 ELIZABETH LINT: I think just from
20 asking a lot of questions over the last few
21 years, that the non-capped areas were not

1 capped because there may have only been one
2 or two licenses in them in anticipation of
3 future growth and things like that such as
4 we're seeing down in the Kendall Square area.
5 Where parts of it were not capped and now
6 there are new licenses coming in.

7 MICHAEL GARDNER: So one of the
8 things that bothers me about it, and I
9 certainly see that to the extent that the
10 Commission has thought in the past an area
11 deserved to be capped, if the cap in one area
12 was being -- going to be exceeded, the theory
13 would be that well, another area that's
14 capped is losing a license, so there is --
15 overall it nets out. I guess I'm not sure
16 that I see if you're taking a license from an
17 area which the Commission has felt didn't
18 need to be capped and putting it into a
19 capped area, you don't have the same net
20 effect. And so I can understand why there
21 would be a rational purpose for not

1 articulating an authority to move from an
2 uncapped area to a capped area.

3 If the Commissioners have any thoughts
4 or reflections on that, this would be a good
5 time to hear it. Otherwise we would hear
6 from comment from interested parties.

7 GERALD REARDON: Going way back to
8 capped areas was the prevalence of the number
9 of licensees in the area that they felt as
10 though, from what my gathering was from
11 several chairpersons ago, was that there was
12 no need to deal with the uncapped areas.
13 There just wasn't that many issues out there.
14 That pretty much was the squares itself, so.
15 I don't know what the correlation is. I
16 never knew. I never thought if there was a
17 difference.

18 ROBERT HAAS: Well, I would suspect
19 that what you basically could do is you could
20 undercut the value of licenses if you had
21 flooded the area with licenses from outside

1 the cap. And I think to preserve some value
2 to the licenses, I think the Commissioner was
3 trying to be mindful as to not erode the
4 value of licenses that are existing in the
5 capped area. So I think in part -- because I
6 think there's a provision also with respect
7 to if we do transfer from one cap to another
8 when it goes to be sold, it has to go back to
9 the cap area from which it came.

10 ELIZABETH LINT: Right.

11 ROBERT HAAS: So, I'm just trying to
12 think about if it was an oversight --

13 GERALD REARDON: Or in this case the
14 uncapped area.

15 ROBERT HAAS: Well, I'm --

16 MICHAEL GARDNER: We don't have a
17 regulation about that.

18 GERALD REARDON: That's right.

19 ROBERT HAAS: We don't have a
20 regulation. I'm trying to think of that
21 correlation with respect to something that's

1 not specific in the regulations if there's
2 something that you can do that's akin to
3 that, that would accomplish primarily the
4 same thing. Because we know now the value
5 based on what's been represented to us. That
6 the value of the license is presently in sale
7 within that capped area, are in the vicinity
8 of the \$200,000. And this license is being
9 sold for considerably less value.

10 What should happen is somebody -- I'm
11 not saying it's going to happen in this area.
12 You can buy a license, bring a license into
13 the capped area, turn around sell your
14 business and reap a huge profit on the
15 license because it's now within a capped
16 area. And that value theoretically would
17 increase substantially by virtue of the fact
18 that it's in a capped area and you've
19 actually gone over the number of licenses
20 within that capped area.

21 ELIZABETH LINT: And I think, too,

1 the other issue that has to be looked at is
2 they're applying to increase the capacity as
3 well. Because the -- Guido's license I
4 believe is 50 something and they're looking
5 for that much -- 58. And they're looking for
6 that much more. And I traditionally, in
7 order to do that, we've asked people to try
8 to purchase banked seats.

9 ROBERT HAAS: Banked seats.

10 MICHAEL GARDNER: I'm just troubled
11 because I don't see any authority to approve
12 uncapped to capped in the regulations. And I
13 think we would welcome comments from informed
14 counsel who are representing interested
15 parties here.

16 ATTORNEY KEVIN CRANE: My name is
17 Kevin Crane, 104 Mount Auburn Street,
18 Cambridge, Massachusetts. I'm the attorney
19 for the Guido's Bar and Grill, Inc. Good
20 morning, Mr. Chairman, members of the board.
21 I take it you've received my correspondence?

1 MICHAEL GARDNER: We have.

2 ATTORNEY KEVIN CRANE: Okay. First
3 a direct -- as far as the uncapped areas on
4 authority goes, the regulations do not
5 prohibit the transfer from uncapped areas to
6 capped areas. General Laws Chapter 138
7 certainly gives this Board the authority to
8 hear an application for a transfer just as
9 that's before you right now. There have not
10 been, I would say, any applications for
11 transfer from uncapped area to a capped area
12 because we have 15 different capped areas in
13 the City of Cambridge. I would suspect that
14 -- I only know of two licenses that are not
15 in a capped area. So basically what you're
16 saying is that Guido's and Joey Max on Warren
17 Street should apply to get into a capped area
18 because then they can transfer it. Otherwise
19 the license is valueless because they can't
20 transfer it anywhere.

21 The uncapped areas are not in any

1 business districts. And the concept behind
2 the cap, and I've been here since the
3 beginning of this cap business, was always
4 the focus on the receiving cap, whether that
5 particular area was affected negatively or
6 not. It didn't matter whether it was coming
7 from a cap or capped area so that the policy
8 underlying the cap should be focussed on what
9 is the area that's being affected as far as
10 the receipt of the license goes. In Harvard
11 Square, we have had, in the last three or
12 four years, at least five new beer and wine
13 licenses issued, no value, no transfer. I
14 note those in my letter. We've had at least
15 three transfers of licenses from other capped
16 areas in. The First Printer, Shine to Conga,
17 and the Wagamama license. I don't know where
18 that one came from, but I'm informed that
19 that one came from outside the Harvard Square
20 capped area.

21 And I know in the First Printer

1 situation the capacity was also increased.

2 MICHAEL GARDNER: I'm sorry, is it
3 First Printer?

4 ATTORNEY KEVIN CRANE: First Printer
5 on Dunster Street. The Cambridgeport Saloon.
6 They not only got a license transferred from
7 a different capped area in Harvard Square,
8 but they had their capacity increased and
9 they're still not open. In contrast to
10 actually the present licensee who's -- if he
11 hasn't opened already, is ready to open up
12 very soon. And as far as the protection of
13 the value of a license, if that's what the
14 Board's interest is, you can say to the two
15 uncapped licenses that I just mentioned,
16 forget about it, guys, you can't transfer it
17 anywhere because all the business areas are
18 capped. And as far as authority goes, again,
19 there's no prohibition against uncapped
20 licenses going to capped areas. And quite
21 frankly I don't think the Board ever gave it

1 much thought. And the reason they didn't is
2 because they're only dealing with the two I
3 mentioned and maybe a little bit more, and
4 you wouldn't have the issue brought before
5 you. And it seems ridiculous to me that my
6 client actually would be better off being in
7 a capped area. And quite frankly on the 15
8 areas, particularly the ones at the end, as
9 far as where the lines were drawn and where
10 they're located, I don't think there was a
11 whole lot of thought given to it. It was
12 just a rage. You know, let's have -- let's
13 have capped areas. I know one area, capped
14 area No. 10 which runs from Huron to Concord
15 -- to Huron to Grove Street, I don't think
16 there's a pouring license on that whole
17 stretch of Huron Avenue unless you include
18 the VFW Club. So I don't think that there
19 was much thought given to where the lines
20 were and what businesses were located there.
21 As far as the opposition goes, as I state in

1 my letter to you, this is nothing more than a
2 holdup. And, you know, the proposed licensee
3 wasn't going to pay \$225,000 or whatever the
4 figure was to this Om fellow. So this guy is
5 going to hold him up because he's paying
6 110,000 for an existing license of a
7 longstanding nature. Probably one of the
8 longest effective licenses in the city. And
9 he's using the Board to hold him up for, you
10 know, a business investment that he made and
11 now because he seems to be in vogue, we're
12 going to accept what he says as far as
13 protecting values of licenses. His license,
14 the value of his license anyway. Forget
15 about everyone else.

16 MICHAEL GARDNER: I guess, Counsel,
17 it would seem to me reasonably correct that
18 an existing license holder in a capped area,
19 presumably may have the value of the license
20 affected by the fact that it's capped.
21 That's sort of part of what we're wrestling

1 with here, so I don't think that's any
2 surprise.

3 I guess with respect to your view of
4 our authority under Chapter 138, would you
5 then say that the 2006 amendment's really
6 unnecessary; that we had the authority to
7 essentially ignore the cap without any
8 process or amendment to the regulations
9 pursuant to 138? Because, I mean, if you
10 take the view, whether intentional or not,
11 that the regulations done in September 28,
12 2006 amendment was to give the Board a
13 process by which it could have an alternative
14 way to deal with the cap besides that the no
15 value license, then there's some meaning to
16 those words. Or is it your view that even
17 without the 2006 amendment we could have
18 approved any license going into a capped area
19 as we so chose and just simply ignore the
20 cap?

21 ATTORNEY KEVIN CRANE: Yes. And

1 what I'm saying as far as approval goes, you
2 know, that's a different story. As a matter
3 of policy, people would know that this is the
4 policy of the Board as far as capped areas
5 are concerned. The 2006 policy change of the
6 License Commission made it clear that we
7 would get -- at least have a shot at going
8 from a capped area to a capped area. I don't
9 think at any time that given the state
10 statute that if I went in upstairs and filed
11 an application for a transfer of someplace up
12 in, you know, Route 2 to come to Harvard
13 Square, I don't think it could have been
14 denied the right to file for the application.
15 Whether it would have been approved or not,
16 is a totally different story, okay? But I
17 don't think if, if uncapped -- if I came in
18 with this application for Guido's to transfer
19 this same application three or four years
20 ago, I don't think I could have been denied
21 the right to file the application. Okay?

1 I think it made pretty clear that the
2 policy was you'd allow cap to cap. And I
3 think the 2006 amendments do address that
4 issue. Would they have done -- you're asking
5 me a technical question. Would they have
6 been necessary for me to file an application?
7 I don't think so.

8 MICHAEL GARDNER: Well, maybe not to
9 file it -- I guess my question isn't about
10 filing, it's about --

11 ATTORNEY KEVIN CRANE: Getting it
12 approved?

13 MICHAEL GARDNER: About the Board's
14 authority to approve.

15 ATTORNEY KEVIN CRANE: The Board has
16 authority to do it. In my book. Under state
17 statute, the Board has the authority to do
18 it. And quite frankly, from the beginning,
19 I've always been an advocate that the Board
20 -- there's no reason for the caps. That the
21 Board can decide cases on a case-by-case

1 basis in any event. And if they felt like
2 there were too many licenses in a particular
3 area, on a case-by-case basis the Board could
4 say there are too many licenses in the area.
5 As long as they weren't doing it arbitrarily.

6 MICHAEL GARDNER: Any members of the
7 Board or Mrs. Lint have further comments on
8 the issue of the capacity question which also
9 was raised as one of the items in one of the
10 letters we received?

11 ELIZABETH LINT: Just as I already
12 stated, I think they have to look at
13 purchasing bank seats before you would agree
14 to expand that license. That's always been
15 the Board's policy.

16 GERALD REARDON: Do we know how many
17 seats were at Guido's?

18 ELIZABETH LINT: 58.

19 MICHAEL GARDNER: And the
20 application is for 100, is it?

21 ATTORNEY BERNARD GOLDBERG: 125.

1 ATTORNEY KEVIN CRANE: You can't
2 purchase banked seats unless you have a
3 license already.

4 ELIZABETH LINT: Good point.

5 MICHAEL GARDNER: So I mean, is it
6 the -- then has it been the policy or
7 practice of the Board that if a license were
8 -- a license transfer were to be approved,
9 the transfer was only for the number of seats
10 in the original license until -- and they
11 could only operate with that until such time
12 as they were able to get the --

13 ATTORNEY KEVIN CRANE: First Printer
14 one they had their capacity increased.

15 ELIZABETH LINT: Yes, I would have
16 to review that. Because I'm thinking maybe
17 Conga did, too.

18 ATTORNEY KEVIN CRANE: Conga might
19 have as well.

20 MICHAEL GARDNER: Okay.

21 ROBERT HAAS: So, Mr. Chair, I just

1 want to ask one question to Mr. Goldberg.

2 So what's your client's view if in fact
3 we were to treat this license transfer
4 similar to what we do from a capped to capped
5 area, that upon sale of the establishment, it
6 would have to leave the capped area?

7 ATTORNEY BERNARD GOLDBERG: Well, I
8 cannot deny the verity of what Kevin Crane
9 has said.

10 MICHAEL GARDNER: I didn't hear the
11 noun. Did you say verity?

12 ATTORNEY BERNARD GOLDBERG: No, I
13 agree 100 percent with what Kevin has said.
14 I looked over his letter. It's concise. It
15 addresses the issues that are before the
16 Board at this moment in time. And I may say
17 I've looked at the list of inactive licenses
18 of one of which is Guido's Restaurant. And
19 if you know, and you may have a copy of it,
20 some of the licenses are in the amounts of
21 200, 300 seats, and those licenses have been

1 inactive for a considerable period of time.
2 I would say two years or maybe even longer.
3 They're being held for whatever reason or
4 another, but I would think that they're being
5 held because of the economy, because they
6 have grand designs with regard to those
7 licenses. And it would seem as though that
8 those are beyond my guy's attempt to purchase
9 them. They would be in the same vicinity of
10 220,000. The most recent license to the
11 downstairs at 75 went for about \$220,000.
12 That's above and beyond what Guido's has the
13 opportunity to purchase it.

14 I have called Swiss Traders and I spoke
15 to the attorney Fred Conroy who was there.
16 And unfortunately that firm is not involved
17 with it at all, but he did give me the name
18 of a gentleman from Bullfinch who I have
19 called several times in order to get what
20 their thinking is with regard to the license.
21 I would assume, without having spoken to him,

1 that they're holding that license for a
2 better opportunity because their capacity is
3 high and large enough so far as the purchase
4 is concerned.

5 There are enumerable licenses that are
6 available now according to the License
7 Commission information that I have received.
8 But we have exhausted every opportunity in
9 order to obtain a license. And the one
10 that's available to us at a reasonable price
11 that we can afford is Guido's.

12 ATTORNEY KEVIN CRANE: Mr. Chairman,
13 I always thought that the License
14 Commission's policy on inactive licenses was
15 to get them active. There are six inactive
16 licenses listed here. One of them being
17 Guido's. I don't -- I'm a little confused on
18 this issue about Om because they're listed as
19 inactive, but the restaurant is still open
20 and operating. I don't know how a restaurant
21 can be open and operating and still be

1 inactive. But the other license, as Attorney
2 Goldberg mentions, the Hoffa's one, I suspect
3 that that's being held for when that
4 property's developed there along Mount Auburn
5 Street. The former restaurant on the first
6 floor there. It used to be -- the last one
7 was Friday's, was it?

8 UNIDENTIFIED MALE: Hoffa's.

9 ATTORNEY KEVIN CRANE: Hoffa's.

10 And then there's one on Church Street,
11 the Fat Boys which is obviously being held
12 for space that's been built-out for a new
13 restauranteur.

14 ELIZABETH LINT: That actually has
15 been in bankruptcy as well.

16 ATTORNEY KEVIN CRANE: Yes.

17 And then there's the Uno up in Porter
18 Square. Which, again, the size of that would
19 not justify the capacity that they're looking
20 for.

21 ELIZABETH LINT: And Uno's is

1 attached to that location.

2 The only reason Om is on that list is
3 because we've been advised that it's for
4 sale, not that it's inactive. So, that's
5 just a clerical error.

6 ATTORNEY KEVIN CRANE: It's like
7 being a little bit pregnant?

8 ELIZABETH LINT: I would never say
9 that.

10 MICHAEL GARDNER: I think it's just
11 an error, Counsel.

12 ATTORNEY KEVIN CRANE: Okay. So
13 they're not inactive. Then we're down to
14 five inactive licenses, one of them was
15 Guido's. I thought the policy was to get the
16 active licenses -- inactive ones active.

17 MICHAEL GARDNER: And I guess I'm
18 not sure why that would be the policy. I'm
19 happy to just be educated as to, you know, if
20 it's -- why it's the policy of the Board to
21 try to do that?

1 ELIZABETH LINT: Because licenses
2 are issued for the public good. So that if
3 they were active licenses, then it's benefits
4 the public. If they're inactive because
5 places close, that --

6 MICHAEL GARDNER: All right. And
7 presumably the cap is for the public good.
8 And somebody at some point said there were
9 enough licenses in Harvard Square and the
10 public good didn't require any more.

11 ATTORNEY KEVIN CRANE: And that
12 policy's changed.

13 ELIZABETH LINT: Many times.

14 ATTORNEY KEVIN CRANE: That policy's
15 changed.

16 MICHAEL GARDNER: And how so, sir?
17 I mean, it's changed in terms of the free
18 ones and the rigorous process that we haven't
19 had.

20 ATTORNEY KEVIN CRANE: That's a
21 significant change from saying none.

1 MICHAEL GARDNER: Right, right.

2 ATTORNEY KEVIN CRANE: And also
3 allowing transfers in from other capped
4 areas. That's another significant change in
5 policy.

6 MICHAEL GARDNER: Right. And are
7 you now asking that we make an additional
8 change in policy by applying the 2006
9 amendment not only to capped transfers, but
10 transfers from uncapped areas? I mean, isn't
11 that a change in policy?

12 ATTORNEY KEVIN CRANE: I don't think
13 so. Because if it was a change in policy,
14 the policy would say right now specifically
15 that we prohibit transfers from uncapped
16 areas to capped areas. It doesn't say that.
17 It's silent regarding it.

18 MICHAEL GARDNER: Well, doesn't it
19 say there's a cap and there are two ways
20 around the cap? One is the rigorous process
21 for a non-transferable license. And the

1 other is to move it -- license from a capped
2 area to another capped area? I mean, I don't
3 know that -- I guess if you say there's a cap
4 and then you provide exceptions to how you
5 get around the cap or you change the cap, but
6 this is not one of the exceptions, I'm not
7 sure that it isn't then if you start to do
8 that, a change in the policy that you had.
9 I'm sorry, I'm not being clearer about what
10 my concern is, but....

11 ATTORNEY KEVIN CRANE: Well, I hear
12 your concern and I think I've addressed it on
13 a couple of fronts.

14 One is that the policy's presently
15 silent on the issue of uncapped areas to
16 capped areas. And you might ask why?
17 Because we're talking about two licenses
18 citywide. When they change the policy, there
19 was no thought given to these two particular
20 licenses. It's been silent on the issue.
21 It's common statutory construction that if

1 the issue -- if they're silent on an issue,
2 that means the legislative body considered it
3 and they didn't think they needed to have a
4 written policy about it. Still under Chapter
5 138, you're permitted to consider a transfer
6 from an uncapped area to a capped area. I
7 don't think there's a need for a change in
8 policy. If that's what it's going to take
9 for the Board to think they have the
10 authority to do it, fine. Change the policy.
11 Or quite frankly, add on No. 16 as far as the
12 capped area goes. Add Belmont Street,
13 between Cushing and Holworthy. There would
14 be another part of Yugoslavia.

15 MICHAEL GARDNER: Do you have an
16 opinion on the issue of the resale of this
17 license? And I understand it's not your
18 client. The resale of this license, again,
19 and the Board policy that it has to revert
20 back to the place from which it came.

21 ATTORNEY KEVIN CRANE: The place

1 where it came is an uncapped area. I don't
2 think as a matter of policy the Board should
3 draw any distinction between going back. I
4 think there's certainly a distinction to be
5 drawn between value and no value, okay? If
6 they paid value for the license, I think that
7 the Board -- if they wanted to sell the
8 license some day to someone else, the Board
9 could consider that, you know, the history of
10 it. But I don't think the Board as a matter
11 of policy, should draw a distinction on going
12 back -- even if it's a capped area quite
13 frankly. In my book as a policy matter, it's
14 value or no value.

15 MICHAEL GARDNER: Right. But as I
16 understand it, you don't like the idea of
17 caps in general.

18 ATTORNEY KEVIN CRANE: Yes.

19 MICHAEL GARDNER: Right. Okay.

20 Thanks.

21 Mr. Goldberg, did you have any further

1 comments on what was originally Commissioner
2 Haas's question.

3 ATTORNEY BERNARD GOLDBERG: Well,
4 only to the extent so far as the policy is
5 concerned, it says that we have to exhaust
6 every opportunity to find another license.
7 And I think that basically to find another
8 license at the prohibitive prices that we
9 have now, that are generated now, are
10 something that we cannot -- and we have
11 exhausted all opportunity to purchase within
12 the capped area. So basically I think we've
13 satisfied that part of the policy that you're
14 talking about.

15 ROBERT HAAS: But with regard to the
16 condition that if the license were to be
17 resold, it would have to come out of that
18 capped area.

19 ATTORNEY BERNARD GOLDBERG: If it
20 were to be sold. Are you talking about the
21 transfer?

1 ROBERT HAAS: They decide they're
2 going to sell the establishment. And the
3 requirement for the license is it would have
4 to come out of that capped area again.

5 ATTORNEY BERNARD GOLDBERG: Well,
6 that could be part of the policy, a change to
7 be made. The -- I suppose that in the last
8 analysis, as you have stated with regard to
9 no value license, the person, the licensee
10 cannot charge for that.

11 ROBERT HAAS: Right, right.

12 ATTORNEY BERNARD GOLDBERG: With
13 regard to this license, if the Board feels
14 that the transfer is being made at 120, it
15 may establish, I'm not saying that it's part
16 of the policy, may establish that it cannot
17 be sold for less than what is paid for. And
18 so no one is making a huge value, increase in
19 the expenditure that they made at the outset.

20 ROBERT HAAS: That would only be if
21 we put a cap on the value of the license. I

1 don't think I want to get into that business.

2 ATTORNEY BERNARD GOLDBERG: Well, I
3 suppose that's up to the Board to make that
4 decision subsequently when and if it is
5 decided to transfer it from the present
6 location to another location within Harvard
7 Square.

8 ROBERT HAAS: I'm just trying to
9 think of a similar analogy, and the closest
10 thing in my mind that comes to it is
11 cap-to-cap if we treated this in the same
12 fashion.

13 ATTORNEY BERNARD GOLDBERG: Well, I
14 tend to agree that it's not cap-to-cap.

15 ROBERT HAAS: Well, now it's a
16 license in a capped area.

17 ATTORNEY BERNARD GOLDBERG: Well,
18 only to the extent that the -- I'm sorry.

19 ATTORNEY KEVIN CRANE:

20 Mr. Commissioner, I don't think there would
21 be a problem if there was condition placed on

1 it that the license could only be sold to
2 another capped area. That's where it's going
3 to go anyway. It's not going to go into an
4 uncapped area. The whole city's capped.

5 GERALD REARDON: When this was done,
6 I thought there were just three licenses
7 outside the capped area. And when the
8 discussions came up, it was about
9 proliferation. And obviously uncapped areas
10 didn't have proliferation of licenses in
11 those areas so they weren't dealt with. I
12 guess my read on this is it wasn't addressed
13 because it didn't need to be addressed. And
14 I don't know if we change the whole policy to
15 address two licensees.

16 ROBERT HAAS: Well, what strikes me
17 is you've got a series of licenses, and maybe
18 it's inflatable. You've got a series of
19 licenses within a capped area, they're
20 exceeding \$200,000. And you're now
21 introducing a license for \$110,000 into that

1 capped area. Do you offset the value of
2 those other licenses by doing that and do you
3 erode the value of those licenses by doing
4 that or do you allow that to continue to
5 happen?

6 ATTORNEY KEVIN CRANE: Well, I don't
7 know what the other licenses that have been
8 transferred. You erode it by creating no
9 value, no transfer licenses. Okay? I don't
10 know what the other licenses that were
11 transferred in for value, what they went for.
12 And the value of a license that's on a
13 purchase and sale agreement could be not as
14 straight forward a number as you might think.
15 You know, a lot of it depends quite frankly
16 on other things that are being sold, the
17 conditions of the lease. So it's very
18 hard -- you know, people ask me all the time
19 what's the value of a license? And I say
20 pick a number. So, sure it decreases the --
21 it might -- it's based on basic supply and

1 demand, it would affect the value. But I
2 query whether it's the Board's role to
3 protect the value of just this license or all
4 the licensees in the city. You know, I think
5 the Board is getting into a dangerous area
6 when you start focusing policy on just
7 protecting the value of a private investor's
8 asset.

9 MICHAEL GARDNER: I would tend to
10 agree with Counselor Crane with respect to
11 the Board role on trying to regulate or
12 control value. However, it does appear to be
13 an inexorable effect of setting caps and
14 hence how the caps or exceptions to the caps
15 are dealt with.

16 ATTORNEY KEVIN CRANE: Legislative
17 process all the time affects values of
18 things. But if the focus, again, is on, you
19 know, an active license, someone doing
20 business, employing people, and not having --
21 and serving the public, and not having vacant

1 space, then the inactive licenses should be
2 -- become active as quickly as you can.

3 MICHAEL GARDNER: So I'd like to
4 propose the following action to the Board for
5 your consideration and that is:

6 Given Attorney Goldberg's indication
7 that the request we made at the last hearing
8 for clarification of the lease has not been
9 perfected, that we defer action on the
10 approval of the transfer until any time in
11 the future, whether that's the next meeting
12 of the Board or the next decision meeting of
13 the Board. I would seek guidance on.

14 But I think the other thing that I
15 would like to see is a written description
16 from the perspective purchaser or the
17 applicant for the transfer to describe the
18 efforts to purchase an existing license from
19 within the cap. I mean, we have had oral
20 statements to that effect by some people. I
21 do not think we have had the applicant give

1 us a detailed description of the efforts
2 they've made to comply with the requirements
3 of the September 28, 2006 amendment to the
4 city's cap policy. And so I'm looking for a
5 written record of the efforts that have been
6 made which were exhausted which would then
7 call us to consider this application as a
8 last resort.

9 ATTORNEY BERNARD GOLDBERG:

10 Mr. Chairman, I would be only too happy to do
11 that. I don't know whether it would be a
12 nullity at all to call Swiss Traders or the
13 other licensees -- inactive licensees who
14 have a capacity above and beyond 200 seats,
15 in some instance 300 seats. I can always
16 call up. I've called up with regard to Swiss
17 Traders, and I have not received a response
18 as I mentioned to you. However, I'd be happy
19 to do that and give you something in writing
20 as to show you what our exhaustive efforts
21 were.

1 MICHAEL GARDNER: I won't presume to
2 give you advice about the steps you should
3 take to exhaust your search.

4 ATTORNEY BERNARD GOLDBERG: Okay.

5 ATTORNEY KEVIN CRANE: Mr. Chairman,
6 just on that point, though, are we talking
7 about just the inactive licenses or active
8 licenses that might be for sale?

9 MICHAEL GARDNER: This says existing
10 -- to purchase an existing license is
11 exhausted. That's what the Board's policy
12 is. That's what I think is our obligation as
13 long as that's the Board's policy. Existing
14 licenses are existing licenses.

15 ATTORNEY KEVIN CRANE: So are we
16 supposed to call every existing license in
17 Harvard Square and see if they're for sale?

18 ATTORNEY BERNARD GOLDBERG: That
19 could be an -- not an exhausting, but a time
20 consuming effort to go to every license of
21 which there are many in Harvard Square.

1 ATTORNEY KEVIN CRANE: And

2 everyone's for sale.

3 MICHAEL GARDNER: I think that, you
4 know --

5 ATTORNEY BERNARD GOLDBERG: Yes.

6 MICHAEL GARDNER: There has to be a
7 willing buyer and a willing seller. And you
8 have to demonstrate that you've exhausted the
9 possibilities before going outside of the
10 capped area. And I think to the extent that
11 the Board has dealt with that issue in the
12 past, you can be guided by that. I do think
13 we would be well served by your written
14 description of those efforts.

15 ATTORNEY BERNARD GOLDBERG: Okay.

16 ROBERT HAAS: So, Mr. Chair, are you
17 making a motion to continue this matter?

18 MICHAEL GARDNER: Yes. Are you
19 making the motion or am I?

20 ROBERT HAAS: I can make the motion.
21 I thought you were.

1 MICHAEL GARDNER: I'll make the
2 motion to continue this matter subject to the
3 submission of the materials that Mr. Goldberg
4 identified with respect to the lease and the
5 request for a written description of how the
6 conditions in the September 28, 2006
7 amendment to the cap policy had been adhered
8 to.

9 ROBERT HAAS: I would like to amend
10 your motion. I would include that we get a
11 clarification with respect to representations
12 that were made in one of the letters, as to
13 the License Commission's policy with respect
14 to sale of licenses in Harvard Square.

15 ELIZABETH LINT: Into --

16 ROBERT HAAS: In other words, I want
17 to make sure that -- I doubt it is accurate,
18 but I want to make sure that it's either
19 accurate or it's not accurate.

20 ELIZABETH LINT: What was in that
21 transcript?

1 MICHAEL GARDNER: You mean about
2 that particular building?

3 ROBERT HAAS: Right. Right, right.

4 MICHAEL GARDNER: You don't mean
5 Harvard Square. You mean --

6 ROBERT HAAS: That particular area.

7 ELIZABETH LINT: 57 JFK.

8 ROBERT HAAS: Right, right.

9 ATTORNEY BERNARD GOLDBERG: If I can
10 request of Mrs. Lint if she could provide me
11 with a list of all of the licensees in
12 Harvard Square, I would appreciate that.

13 GERALD REARDON: I think that this
14 is being really arduous. I mean, if we're
15 asking someone to look and make sure that
16 someone is looking to buy a home in a
17 neighborhood, and checks all the homes that
18 are for sale. But to turn around and go up
19 street by street, and find out all the
20 potential homeowners and ask them if their
21 house is for sale, I think is arduous. And I

1 don't believe it's the intent of -- being on
2 the Board back then, that's what we intended
3 to do. It was available licenses that were
4 up for sale.

5 MICHAEL GARDNER: Nor was I
6 suggesting that. I had not meant that, you
7 know.

8 ATTORNEY KEVIN CRANE: How about
9 Mr. Goldberg asks Mrs. Lint as to licenses in
10 Harvard Square that she is aware of that
11 might be for sale?

12 MICHAEL GARDNER: Well, he can do
13 that, but I think that's his obligation.

14 ATTORNEY KEVIN CRANE: Okay.

15 MICHAEL GARDNER: I mean, you want
16 to buy something. Find out who's selling and
17 you tell us the efforts you've made to find
18 out who's selling and whether you've been
19 able to come to satisfactory terms.

20 I mean --

21 ATTORNEY BERNARD GOLDBERG: Well,

1 are you suggesting -- I'm not suggesting that
2 it is an arduous task or it's not an arduous
3 task as indicated by the Fire Commissioner.
4 I would think it's an arduous task no matter
5 which way you look at it.

6 MICHAEL GARDNER: I'm suggesting
7 that this -- the September 28, 2006 policy of
8 the Board is the policy of the Board. It's
9 our intent to administer in this
10 circumstance, consistent with that policy.
11 And the -- and I think that the -- I'm not
12 suggesting any higher and certainly no lesser
13 degree of effort than has been done in the
14 past with respect to demonstrating that every
15 effort to purchase an existing license has
16 been exhausted.

17 ATTORNEY BERNARD GOLDBERG: That's
18 an arduous task.

19 MICHAEL GARDNER: Well, then
20 presumably if we --

21 ATTORNEY BERNARD GOLDBERG: I mean,

1 if I were to comply with what you're
2 suggesting, I would tend to agree that it
3 would include everything within the locale of
4 Harvard Square.

5 MICHAEL GARDNER: Well, look, I
6 mean, if you're buying a house as the Fire
7 Chief said, you don't have to go to every
8 house in the neighborhood and find out if
9 they're willing to sell. There's a market.
10 And, you know, and licenses are for sale or
11 they're not for sale.

12 ATTORNEY BERNARD GOLDBERG: Well,
13 the real estate broker would have to make an
14 assessment of all of the properties that are
15 comparable in the area of which you're
16 talking about with regard to real estate, and
17 that would be two families, three families,
18 single families, seven rooms, ten rooms
19 eleven rooms, whatever it may be. That is a
20 task that would have to be done by a real
21 estate broker, and that would be -- if you're

1 including several streets, that still would
2 be an arduous task I do believe. But we'll
3 try and comply with what you want.

4 ROBERT HAAS: Well, I think you have
5 a broker in the room that can tell you what
6 licenses are for sale or not for sale.

7 UNIDENTIFIED MALE: Om supposedly.

8 MICHAEL GARDNER: Please, we won't
9 hear comments from the public.

10 ATTORNEY BERNARD GOLDBERG: Thank
11 you.

12 MICHAEL GARDNER: We haven't taken a
13 vote on it. Is there a second?

14 ROBERT HAAS: Do you want a date?

15 ELIZABETH LINT: I was just going to
16 ask you.

17 MICHAEL GARDNER: I'm happy to -- I
18 don't know what the time parameters
19 Mr. Goldberg has for getting the lease
20 language straightened out.

21 ATTORNEY BERNARD GOLDBERG: Oh, that

1 should be momentarily. That would be in a
2 week's time I do believe. I would ask for it
3 as soon as I can possibly get it and I'll
4 submit it to the Board.

5 ROBERT HAAS: And your submission
6 would also be included with that? Your
7 submission that the Chairman's asking for
8 would be --

9 ATTORNEY BERNARD GOLDBERG: That, I
10 don't know.

11 MICHAEL GARDNER: Well, I think -- I
12 don't know if this is a matter that could be
13 ready for February 8th or not. I'm happy to
14 put it over to February 8th.

15 ATTORNEY BERNARD GOLDBERG: All
16 right, let's try it then. February 8th. Oh,
17 that's next week?

18 ATTORNEY KEVIN CRANE: Are you
19 meeting later in the month?

20 MICHAEL GARDNER: The 22nd.

21 ATTORNEY KEVIN CRANE: I would

1 suggest the 22nd.

2 ELIZABETH LINT: I don't think you
3 want to be on that one.

4 MICHAEL GARDNER: It's either
5 February 8th or March 8th.

6 ATTORNEY KEVIN CRANE: March 8th?

7 MICHAEL GARDNER: March 8th is the
8 next available date after. Unless there's a
9 decision hearing before that. Could we do it
10 at a decision hearing?

11 ELIZABETH LINT: There should be
12 one.

13 (Whereupon, a discussion was
14 held off the record.)

15 MICHAEL GARDNER: That would be the
16 3rd?

17 ELIZABETH LINT: That sounds right.

18 MICHAEL GARDNER: Well, then I
19 prefer March 8th then. Does that cause your
20 client any particular hardship, sir?

21 ATTORNEY BERNARD GOLDBERG: No. I

1 could not say so that it would cause any
2 hardship.

3 MICHAEL GARDNER: So the motion is
4 to defer the matter to March the 8th
5 expecting receipt of materials clarifying the
6 lease and outlining the steps to comply with
7 the September 28, 2006 policy.

8 ELIZABETH LINT: Got it.

9 MICHAEL GARDNER: Is there a second
10 to that?

11 ROBERT HAAS: Second.

12 ATTORNEY BERNARD GOLDBERG: Well,
13 Attorney Crane and I were talking about the
14 fact that he believes I could have something
15 here by February 8th, and I just assume put
16 it on February 8th and see if I can
17 accomplish that objective. And if not, we
18 can continue it therefrom. Is that okay?

19 MICHAEL GARDNER: That sounds like a
20 better idea to me. February 8th, motion.

21 All those in favor?

1 (Aye: Gardner, Haas, Reardon.)

2 MICHAEL GARDNER: Thank you very
3 much.

4 ATTORNEY KEVIN CRANE: Thank you.

5 * * * * *

6 ELIZABETH LINT: From the January
7 25th agenda, I think the only outstanding
8 matter was the Garden of Eat-In Pizzeria.

9 MICHAEL GARDNER: I think,
10 Mrs. Lint, at that hearing we had some
11 concerns from an abutter or a neighbor about
12 trash collection issues in the area?

13 ELIZABETH LINT: Yes.

14 MICHAEL GARDNER: And we saw some
15 photos of what looked like dumpsters that
16 were overflowing?

17 ELIZABETH LINT: Yes.

18 MICHAEL GARDNER: And I think
19 we've --

20 ELIZABETH LINT: I know that as
21 of --

1 MICHAEL GARDNER: Why don't you
2 update the Board on what steps the staff has
3 taken since then.

4 ELIZABETH LINT: Yes. I know that
5 -- I believe the applicant called
6 Inspectional Services and they immediately
7 went up there. Their response to me and to
8 Ms. Boyer, was that any dumpster has to be
9 able to be secured.

10 MICHAEL GARDNER: A lid and a latch,
11 right?

12 ROBERT HAAS: It has to be secured?

13 ELIZABETH LINT: Yes.

14 MICHAEL GARDNER: It doesn't have to
15 be locked, but it's got to be latched in such
16 a way that rodents can't get in?

17 ELIZABETH LINT: Right.

18 MICHAEL GARDNER: A latch smart
19 enough to keep a rodent out?

20 ELIZABETH LINT: Right.

21 MICHAEL GARDNER: And do you know if

1 the alleyway appeared to be in compliance
2 with respect to current dumpsters?

3 ELIZABETH LINT: I did not get any
4 report back saying that there were any
5 problems. And there's a lot of snow.

6 MICHAEL GARDNER: So I see the
7 applicant's here. I understand you were
8 going to do some more investigation. Could
9 you just report back to us.

10 SUSAN PRESTI: I'm Susan Presti for
11 2378 Mass. Ave.

12 I personally in regards to the
13 dumpsters, I have called three different
14 services and they all confirmed that all of
15 their waste receptacles all have lids and
16 they all have latches to -- and that was the
17 biggest concern from the gentleman that had
18 come here that day.

19 So in response for myself making sure
20 that I adhere to that policy, I will have a
21 dumpster that does have that.

1 I also have -- I think his concern was
2 also about the activity in the area. And our
3 pest control has come out and everything has
4 been clear for the last three months.

5 MICHAEL GARDNER: Did you say --

6 SUSAN PRESTI: Pest control.

7 MICHAEL GARDNER: Pest control?

8 That's what I thought you said.

9 SUSAN PRESTI: Yes. He was
10 complaining about that.

11 And let's see what's this one for?
12 They've come out on that -- they have been
13 out on a regular basis and things have been
14 found. So I don't know what else you'd need
15 from me.

16 MICHAEL GARDNER: Okay.

17 GERALD REARDON: That alley in the
18 rear has been an issue in the past in terms
19 of, you know, especially like grease
20 overflowing or dripping and so forth. So
21 it's kind of a tough area getting in and out.

1 What was in 23?

2 SUSAN PRESTI: The Good Eats -- Good
3 Food Cafe.

4 ELIZABETH LINT: Good Food Cafe.
5 And I will say, I never had any complaints
6 whatsoever about Good Food Cafe. Usually we
7 would get those complaints that there's, you
8 know, problems in the back. Can you send
9 somebody up here and take a look. Or ISD
10 would, and they were surprised when Andrea
11 went over and said hey, what's going on over
12 there.

13 ROBERT HAAS: So Andrea didn't find
14 anything about the other establishment up
15 there?

16 ELIZABETH LINT: I can't speak to
17 the other establishments.

18 GERALD REARDON: I've had nothing
19 recently up there at all. For quite
20 sometime. I know there was an issue with
21 dumpsters probably four or five years ago.

1 And since that time and we have information
2 in our file.

3 MICHAEL GARDNER: So, rodent control
4 is a very important policy of the city, and I
5 think we are well served to -- although it
6 was frustrating to you to have the delay to
7 have this checked out further, and I hope
8 that we can prevail upon Inspectional
9 Services to keep monitoring the area as the
10 weather improves.

11 I would entertain a motion.

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

14 GERALD REARDON: Second.

15 MICHAEL GARDNER: All those in
16 favor?

17 (Aye: Gardner, Haas, Reardon.)

18 MICHAEL GARDNER: None opposed.
19 Good luck.

20 SUSAN PRESTI: Thank you very much.

21 ELIZABETH LINT: Make a motion to

1 adjourn?

2 ROBERT HAAS: Make a motion to

3 adjourn.

4 GERALD REARDON: Second.

5 MICHAEL GARDNER: All those in favor

6 please signify by saying "Aye."

7 (Aye: Gardner, Haas, Reardon.)

8 (Whereupon, at 12:25 p.m., the

9 meeting adjourned.)

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C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.

I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the undersigned
Notary Public, certify that:

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

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

IN WITNESS WHEREOF, I have hereunto set
my hand this 8th day of February 2011.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

My Commission Expires:
April 23, 2015

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