

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION GENERAL HEARINGS

Michael Gardner, Chairman
Robert C. Haas, Police Commissioner
Gerard E. Mahoney, Deputy Chief

STAFF:

Elizabeth Lint, Executive Officer

-- Held At --

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

Tuesday, June 28, 2011

6:06 p.m.

REPORTERS, INC.
CAPTURING THE OFFICIAL RECORD
617-786-7783 / FACSIMILE 617-639-0396
www.reportersinc.com

	I N D E X	PAGE
1		
2	Application: Idenix Pharmaceuticals, Inc.	4
3	Disciplinary: El Coloso Market	123
4	Application: Wagamama Boston One, LLC	4
5	Application: Thelonius Monkfish, Ltd.	129
6	Application: Handi Indian Restaurant, Inc.	146
7	d/b/a Harvest Of India	
8	Application: J.H. Restaurant Cambridge,	163
	d/b/a John Harvard's Brew House	
9	Application: Mass. Institute of Technology	179
10	Application: Restaurant Associates, LLC,	184
11	d/b/a Caspersen Hall Cafe	
12	Application: The Upper Crust Harvard,	190
	Square d/b/a The Upper Crust	
13	Application: L'Impasto, LLC, d/b/a	193
14	L'Impasto	
15	Application: Go Cafe, LLC, d/b/a	206
	Rafiki Bistro	
16	Application: Life Alive Cambridge, LLC,	211
17	d/b/a Life Alive Urban Oasis & Organic Cafe	
18	Application: Raymond Graham, d/b/a	222
19	Unlimited Motors	
20	Application: Barismo, Inc., d/b/a	224
	Dwelltime	
21	Disciplinary: Afkor, Inc., d/b/a	261
	Cafe Anatolia	

P R O C E E D I N G S

ELIZABETH LINT: Okay. We are going to begin.

This is the License Commission general hearing on Tuesday June 28, 2011. It's 6:03 p.m. We are at the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Basement Conference Room, Cambridge, Massachusetts.

Sitting tonight is Chairman Michael Gardner, to his right is Commissioner Robert Haas, and to his left is Deputy Chief Mahoney.

If anyone is here for the matter of, Wagamama, that has been continued to July 19th.

We have an application continued from June 14, 2011, Idenix Pharmaceuticals, Incorporated, located at 60 Hampshire Street, has applied to renew the July 7, 2010, special variance from the requirements of the

1 City of Cambridge Noise Control Ordinance,
2 pursuant to Cambridge City Code, Section
3 8.16.090(B) .

4 MICHAEL GARDNER: I would ask the
5 representatives from Idenix to come forward
6 and please state and spell your names for the
7 record and identify your role, please.

8 RICHARD JOHNSTON: My name is Richard
9 Johnston and I represent as counsel for
10 Idenix.

11 PAUL FANNING: My name is Paul Fanny
12 and I'm the Senior Vice President of Human
13 Resources.

14 SAM WILD: My name is Sam Wild and
15 I'm the facility director for Idenix
16 Pharmaceuticals.

17 PAUL BERENS: My name is Paul Berens
18 B-E-R-E-N-S, from Assentech. I'm an
19 acoustical consultant.

20 GREGORY TOCCI: My name is Gregory
21 Tocci from Tocci Associates, Cavanaugh &

1 Tocci. Tocci is spelled T-O-C-C-I.

2 MICHAEL GARDNER: I'm sure, counsel,
3 you've got a presentation in mind. I would
4 like it if you would be so kind as to give us
5 a bit of a procedural history to what brings
6 you here this evening.

7 RICHARD JOHNSTON: Sure, I'd be happy
8 to.

9 As I have said, I'm Richard Johnston
10 and I have appeared for Idenix before the
11 Commission on several prior occasions in
12 connection with a prior application, as has
13 Mr. Fanning.

14 In 2009, Idenix applied for a
15 variance from the nighttime levels of 50 and
16 asked for a variance at 60. There was a
17 series of back and forth meetings. The
18 Commission asked the company to undertake some
19 additional remedial steps in connection with
20 the noise levels on the roof. Idenix did so.

21 Eventually, after the hearing about a

1 year ago, the Commission granted a variance to
2 Idenix for one year at 55. The variance was
3 conditioned on several things. Number one was
4 that the company continue to look at
5 additional ways in which it might work to
6 reduce the noise levels.

7 Number two was that additional
8 testing occur, close to tonight's hearing,
9 sometime in the late spring of 2011. And that
10 if the company wished to extend the variance,
11 that it submit a new application at the end of
12 the one year.

13 So what has happened over the last
14 year is that the company has, in accordance
15 with the condition that it need to look at
16 additional remedial measures, has carried out
17 a series of measures.

18 And Mr. Fanning will be here to
19 describe for you what those measures have been
20 and will have photographs to explain precisely
21 where the changes have occurred.

1 In addition, testing has taken place.
2 There was one round of testing in May of 2011.
3 There was a second round of testing in early
4 June of 2011, at which Ms. Boyer participated.
5 And there was some additional tests about a
6 week later when the company and its
7 consultants thought the weather was going to
8 be warm and might provide some additional,
9 helpful results. It turned out that the warm
10 front that came through during the day wasn't
11 warm at night, so the results were basically
12 the same as what they had been in the past.

13 We submitted the May and early June
14 sets of results to you in connection with the
15 variance application, and then a follow-up
16 letter that came on June 10th. So you have
17 two different sets of results conducted by two
18 different firms. And Mr. Berens will describe
19 in more detail what those results have shown.

20 To summarize, though, the results
21 show that since 2008 there has been a

1 reduction in decibel levels of between four
2 and seven decibels at the key location near
3 the corner of Market and Clark Streets, which
4 is the area where (A) most of the complaints
5 have been generated, and (B) where most of the
6 activity on the roof has taken place to
7 remediate the sound issues. So Mr. Berens
8 will be able to explain in somewhat more
9 detail what the results mean.

10 Suffice it to say, that the company
11 has managed to keep the sound levels below the
12 variance level of 55.

13 However, the sound levels have not
14 dropped at all locations at all times to below
15 50. As a result, the company is back looking
16 for an extension of the variance at 55 for one
17 year.

18 I might just say that Mr. Berens will
19 describe this in somewhat more detail. But
20 the testing was done in May and June under a
21 worst-case scenario basis. So that everything

1 was turned on at Idenix that would be on in
2 the warmest parts of the summer so that we
3 would get readings that could be useful to
4 you.

5 I will -- I think it would make more
6 sense for me to wait until after you've heard
7 from Mr. Fanning and from Mr. Berens to just
8 briefly go through the arguments as to why we
9 think the variance is appropriate. I'm happy
10 to do that now, but I think it makes more
11 sense to wait and get some of the more factual
12 things out on the record.

13 MICHAEL GARDNER: That's fine.

14 And now Mr. Fanning.

15 PAUL FANNING: My name is Paul
16 Fanning, I'm vice president of Idenix and I
17 have responsibility for the facility's
18 operation.

19 I thought one thing that would be
20 helpful is just a recap. During the variance
21 application process, there were two major

1 issues that we undertook.

2 One, an extension of sound curtains
3 along the roof and then down to the actual
4 roof deck floor, which made a difference and
5 was definitely an improvement.

6 And then, secondly, a replacement of
7 RTU 8, which was one of the oldest units and
8 actually had been identified by our sound
9 consultant as one of the loudest units.

10 Since the application actually was --
11 sorry -- since the variance was actually
12 granted last summer, we've undertaken a number
13 of additional actions, including removal of
14 exhaust fan 15; and we disconnected EF 9; we
15 removed exhaust fan 17; we removed RTU 15 from
16 the corner of Market and Clark; we relocated
17 RTU 14 to the front of the building over on
18 the Market Street side; and we also moved
19 exhaust fans 16 and 11 away from Clark Street
20 to the middle of the building.

21 And I should say that when we removed

1 15, we connected existing duct work to 9, we
2 didn't disconnect 9, just for a clarification
3 there. And I can show this picture.

4 Most of the items that I just listed
5 were concentrated on the Market Street side in
6 the upper left-hand corner. And, Sam, maybe
7 if you get a chance, if you could key up -- we
8 have sort of a before and after --

9 RICHARD JOHNSTON: And I'd like to
10 just mention on the record that we did submit
11 the chronology this evening that Mr. Fanning
12 is about to discuss as well as photographs to
13 the Commission so that you'll have your own
14 sets.

15 But now he is not going to walk
16 through what the chronology items are and
17 point out on the pictures where it is the work
18 was done.

19 PAUL FANNING: This is the area that
20 was the before (indicating), so the RTU that I
21 just -- well, actually, a couple of RTUs, 15

1 and 17, up in this corner (indicating). So
2 this is where I'm talking about.

3 RICHARD JOHNSTON: Identify the
4 corner so the people know --

5 PAUL FANNING: Okay. This is Market
6 and Clark (indicating). So as you are looking
7 out, Hampshire would be this way, and you are
8 looking out toward Market and Clark this way
9 (indicating). Let me show it to the audience
10 as well.

11 Before I move on, though, in
12 addition, in fact, some of the padding is not
13 shown here because this is the before, but
14 we've consolidated five exhaust fans into
15 exhaust fan 2. I added padding around
16 equipment in the corner of Market and Clark, a
17 padded wall section on top of RTU 4, added a
18 padded wall around exhaust fan 18, added a
19 padded wall around exhaust fan 20, which was
20 at Clark and Hampshire, and then added length
21 to the padded wall near RTU-4.

1 Now, this is a bigger picture of the
2 padding itself (indicating). Okay. What I'm
3 referring to is in this section here
4 (indicating). So we've gone down to the deck
5 floor in some cases and we've actually
6 extended the -- and when we say "padding,"
7 these are sound curtains, okay, that go up in
8 the summertime and then we take them down in
9 the -- I guess around October or the end of
10 October. Okay.

11 MICHAEL GARDNER: So the packet that
12 has been shared with me looks like this photo
13 by ID'ing it is labeled on my set as Photo D.
14 The first photo is clearly A, the before photo
15 you showed us. But to me this looks like "D"
16 (indicating).

17 ROBERT HAAS: I think it's "C."

18 MICHAEL GARDNER: "B" which I think
19 it is, is clearly not it.

20 PAUL FANNING: This would be item
21 "D." Yes.

1 Now, I want to show you the "after."
2 So, just as a reminder, again, looking at this
3 aerial, this is the section here we are
4 talking about (indicating). Now, this is the
5 area, it has essentially been removed. Okay.
6 So this is the after, this is B. Photo B in
7 the application. Okay.

8 I don't know if you want to see the
9 before again, just to kind of give you the --

10 MICHAEL GARDNER: So "A" is before
11 and "B" is after, with respect to the
12 materials that had been removed from that
13 corner. Is this the same perspective?

14 PAUL FANNING: Yes, this is just a
15 close-up of that same corner. So the before
16 one, here, with the RTUs clustered in here,
17 and then the after, we see it is gone.

18 Now, there was -- this one has been
19 moved (indicating), so it's not completely
20 gone. This one was part of the cluster that
21 we took from up here and moved down here

1 behind a clear story (indicating).

2 RICHARD JOHNSTON: And, Paul, just
3 because you've been moving around from one
4 diagram to another, let's just identify for
5 the record again which one you are pointing
6 to.

7 PAUL FANNING: Sure. So the before,
8 okay -- and this is A, okay. The B is --

9 MICHAEL GARDNER: And so that photo
10 would have been taken approximately when?

11 PAUL FANNING: That was in 2008, I
12 believe, is what we identified it as. I think
13 it was the fall of 2008, I think. It was
14 2008 -- the spring of 2008.

15 And this is current, this is a real
16 time. I took this. This is B, this is
17 Exhibit B (indicating).

18 AUDIENCE MEMBER: The first one was
19 2009. (Peter) (inaudible).

20 PAUL FANNING: So '09.

21 MICHAEL GARDNER: So from a member of

1 the audience, we have had the correction that
2 because the A is showing a curtain, which I
3 take it is this three-sided box structure
4 there, and that means this was a photo from
5 2009?

6 PAUL FANNING: Yes, sir.

7 MICHAEL GARDNER: Is that right?

8 PAUL FANNING: Yes. I don't have the
9 exact date on that. Is that right, Kevin.

10 MR. KEVIN: Yes.

11 PAUL FANNING: And this was taken,
12 literally -- I think we took this one today,
13 we took that one today.

14 RICHARD JOHNSTON: And that is B.

15 PAUL FANNING: Yes, B.

16 RICHARD JOHNSTON: And just remind
17 everybody what "C" and "D" are, please.

18 PAUL FANNING: "C" is the before
19 aerial view -- I'm sorry. C is the current --
20 C is the current view with the same corner.
21 The only thing that is different there, there

1 is a little bit of steel still in this one --

2 Is that right, Sam, still a little
3 bit of steel up there?

4 MR. SAM: Yes. That is gone,
5 thought.

6 PAUL FANNING: So that was late May,
7 that would have been, because we had a crane
8 in early June come by and take some of the
9 heavier pieces that were still remaining.

10 MICHAEL GARDNER: With all due
11 respect, I think you called that "C." I'm
12 looking at this, which looks -- "C" doesn't
13 look like that -- my "C" doesn't look like
14 that (indicating).

15 PAUL FANNING: I apologize.

16 MICHAEL GARDNER: So what is it? "D"
17 looks like this (indicating) to me. So is
18 that "D"?

19 PAUL FANNING: Yes. Let me get my
20 hand out of the way here. That is "D"
21 (indicating).

1 MICHAEL GARDNER: And if you would,
2 again -- so this is looking toward the same
3 corner from a somewhat further perspective?

4 PAUL FANNING: Yes. It's taken from
5 the CDM building, which is adjacent, so you
6 get an aerial view of most of the roof
7 actually.

8 MICHAEL GARDNER: And when was this
9 taken, this is D?

10 PAUL FANNING: Late May.

11 MICHAEL GARDNER: Late May of 2011?

12 PAUL FANNING: Correct.

13 MICHAEL GARDNER: So I think we know
14 about A, B and D. Can you describe what "C"
15 is, please?

16 PAUL FANNING: So "C" is an earlier
17 photo. And this is, again, the 2009 time
18 frame, the same aerial view, it shows that
19 corner that we removed the equipment from.

20 MICHAEL GARDNER: So is it fair to
21 say that C was taken about the same time as A,

1 and that is May '09, but from a perspective a
2 little further away so you can see a little
3 more of the roof?

4 PAUL FANNING: Yes, that's correct.

5 MICHAEL GARDNER: Thank you.

6 So A and C show us what it was about
7 the time you filed for the original variance,
8 and B and D show what it is today?

9 PAUL FANNING: Right. That is
10 correct.

11 MICHAEL GARDNER: We have a member of
12 the audience who is shaking his head and
13 saying "no." Because this procedure is a
14 little unusual, but I'd like to actually have
15 the record be clear.

16 If you could just come forward, you
17 can consult with the other people or you can
18 identify yourself and speak to us.

19 PETER LINQUIST: My name is Peter
20 Linguist and I live on the corner of Market
21 and Clark Streets. I just want to get the

1 sequence of this correct.

2 I know that 2008 -- I know that in
3 2008 was when most of this equipment arrived
4 on the roof, and not 2009. It was during the
5 permitting process for the chemical storage
6 permit, which the landlord, Metropolitan Life,
7 add applied for.

8 And what is important about that is
9 that all of this remediation that has taken
10 place only happened after it was mandated by
11 this Commission.

12 MICHAEL GARDNER: I'm sorry. I
13 perhaps misunderstood your role here, sir.
14 We'll give you more of an opportunity to speak
15 but, for the moment, I'm trying to establish
16 the time line of the photos.

17 PETER LINQUIST. Just understand that
18 -- I think if you could read back what --

19 MICHAEL GARDNER: The question I
20 asked was whether photos A and C represented
21 the roof in the spring of '09, which I

1 understood was approximately the time the
2 variance was requested; and I think I had a
3 confirmatory from Mr. Fanning.

4 If you, Mr. Linquist, think that is
5 inaccurate, we'll give you an opportunity to
6 voice your objection after we hear from the
7 company. If that's all right with you?

8 MR. LINQUIST: Yes.

9 MICHAEL GARDNER: Right now what we
10 are thinking is A and C is '09, and B and D
11 are the spring of '11. Is that right,
12 Mr. Fanning?

13 PAUL FANNING: Yes. Again, the first
14 set of pictures -- and I can go back and get
15 the -- try to focus on the exact month -- but,
16 yes, it is going back several years, the first
17 set and the more recent ones.

18 Again, the idea being that we want to
19 show how we kind of focused on that corner and
20 cleaned out over the last couple of years a
21 lot of the equipment, removed the equipment or

1 moved them in some cases.

2 MICHAEL GARDNER: Okay. Thank you.

3 RICHARD JOHNSTON: And just to
4 summarize, as the chronology shows, a number
5 of steps were taken before the variance was
6 granted in June or July of 2010, and a number
7 of other steps; I think about 11 in total have
8 been taken since then.

9 And then to report on the test
10 results that had been taken over May and June,
11 Mr. Berens will speak to that.

12 ROBERT BERENS: My name is Robert
13 Berens and I work for Assentech in Cambridge.
14 And I was brought on in the spring primarily
15 to assist with some of the noise control and
16 some of the noise control assessment, to
17 assist Greg Tocci, Cavanaugh & Tocci, to give
18 them a second pair of eyes and bring our
19 experience into the whole thing.

20 MICHAEL GARDNER: Before you describe
21 what steps you took and what you are

1 reporting, can you just describe your company
2 in a little bit more detail, the kind of work
3 you do.

4 ROBERT BERENS: Assentech is about a
5 50 person acoustical consulting firm. We are
6 located at 33 Moulton Street in Cambridge. We
7 do strictly acoustics. And we have an
8 architectural and building mechanical systems
9 group; we have a group that does sound
10 systems; we have a group that does product
11 noise control, things like that. But the
12 company is, like I say, about 50 people and we
13 do nothing but acoustics. That's what I do.

14 RICHARD JOHNSTON: Can you give a
15 little bit of your own background.

16 ROBERT BERENS: My background is that
17 I've been Assentech for about 22 years now.
18 Back in 1975, I was essentially Andrea Boyer's
19 counterpart at the City of Boston. I worked
20 for the City of Boston Air Pollution and
21 Control Commission. I worked there for about

1 three years doing much of the same kind of
2 work that Andrea does for the municipality of
3 Boston and going out and telling people they
4 were too loud and making them comply with the
5 Boston noise regulations.

6 At about 1976, I actually sat in
7 front of the Cambridge City Council and was
8 testifying to the development of the Cambridge
9 noise regulations, which is largely based on
10 the regulations we had put together for the
11 City of Boston.

12 So since then, I've worked for
13 various and sundry engineering firms, five
14 years at Stone & Webster, again, all within
15 the acoustics realm. And for the past 20
16 years or so, I've been working as an
17 acoustical consultant at Assentech.

18 MICHAEL GARDNER: Thank you.

19 ROBERT BERENS: Like I say, I was
20 brought in in the spring to really look at
21 some of the compliance issues that are being

1 raised here at the Idenix.

2 And one of the issues and that was
3 identified in the variance granting is the
4 issue of ambient noise.

5 What is the influence of the noise
6 from the existing world, and how does that
7 affect or impact noise levels that are
8 measured when the compliance measurements are
9 being made?

10 Andrea Boyer's measurements, whenever
11 anybody sticks out a sound level meter, one
12 measures all the sound that is present. So if
13 we are measuring noise from Idenix, you are
14 measuring not only noise from the rooftop
15 equipment at Idenix, we are measuring noise
16 from the traffic on the various and sundry
17 local street, and neither Broadway or
18 Hampshire Streets are particularly quiet
19 streets, particularly during the daytime and
20 early evening hours.

21 You pick out noise from some of the

1 other biotech firms closer to Kendall Square
2 and the question is: How much the rest of the
3 world is influencing the measurements that are
4 being made and reported around the Idenix
5 facility?

6 So what we wanted to do is really
7 sort of back out how much noise Idenix is
8 producing. And the way to do that is to
9 measure all of the noise.

10 So we actually did two surveys, one
11 in May and one in June, the same ideas for
12 both of them. We made noise level
13 measurements of six locations around the
14 facility at two different times of the
15 evening; one late evening when traffic noise
16 is sort of dying down but not at its minimum
17 level, and one set of surveys, a set of
18 measurements around 2:00 in the morning when
19 traffic noise is pretty much at its minimum.

20 And what we wanted to do was bring
21 all the equipment that Idenix has up to its

1 full noise generating potential. So we
2 simulated a hot summer nighttime condition
3 where all of the equipment that would be
4 running normally at night was operating.

5 And then all of the cooling, the
6 air-conditioning equipment that would only
7 operate on a night like tonight, you know, a
8 hot, muggy, summertime condition.

9 So we faked the controls on the
10 equipment to convince it to produce as much
11 noise as it ever could. We then did a survey
12 of noise levels at these six locations. We
13 then shut everything off. We shut everything
14 off at Idenix and re-measured how much noise
15 was left. How much noise was being made at
16 that point by traffic, biotech firms down in
17 Kendall Square, conversations of people
18 walking by at 2:00 in the morning as the bars
19 closed. All of these things contribute to the
20 noise levels around Idenix, and when Idenix is
21 operating, can add to the total noise that

1 Idenix is making.

2 MICHAEL GARDNER: Just so I'm
3 following what you said, you did the testing
4 around 10:30 and 2:30, and you did it with the
5 Idenix equipment going full blast?

6 ROBERT BERENS: Full blast and then
7 we shut it all of.

8 MICHAEL GARDNER: Both at 10:30 and
9 2:30 you shut it off both times, the same
10 evening, essentially contemporaneous, you got
11 one measurement with it running and you took
12 another measurement, essentially at the same
13 time, with it turned off?

14 ROBERT BERENS: Right.

15 MICHAEL GARDNER: Okay.

16 ROBERT BERENS: And that way we
17 really can get a, sort of, apples and apples
18 comparison of how much noise the world is
19 making and how much noise Idenix plus the
20 world is making.

21 We then do our acoustical magic and

1 do the logarithms subtraction. Unfortunately,
2 it's a mess, but basically two noise sources
3 of equal magnitude added together produces a
4 level 3 DB higher than either one of them.

5 So you have one noise source making
6 50 DB, another noise source making 50 DB, and
7 you stick a meter up, you turn them both on,
8 you get a measure of 53 DB.

9 So, conversely, if you go out and you
10 measure 53 DB, and you turn off one source and
11 the level drops to 50, you say, "Well, we can
12 do the backwards math and say, 'Well, the
13 source that we just turned off must be
14 contributing 50 DB as well.'"

15 So that is essentially what we did
16 for figuring out how much noise Idenix, in the
17 absense of all the noise from the rest of the
18 world, was making.

19 MICHAEL GARDNER: And this has got
20 something to do with the way the sound waves
21 cancel each other out, that 50 plus 50 isn't a

1 hundred?

2 ROBERT BERENS: Right. It's all
3 pressure and logarithms and things like that.
4 I wish it was easier --

5 MICHAEL GARDNER: And it doesn't help
6 me to ask you what your honest opinion is, but
7 what's your opinion about the quality of the
8 science with respect to the logarithms?

9 How widely accepted in the business
10 is this?

11 ROBERT BERENS: It is completely
12 verifiable. It's not really a black art, it
13 is just confusing.

14 And so essentially what we did was,
15 again, we measured with everything running at
16 full bore; turn everything off, measure the
17 background level; subtract the two; that is
18 how much noise Idenix was making at 10:30.

19 We then did the same thing at 2:00 in
20 the morning. Again, everything running full
21 bore; shut it off, measure the background; do

1 the subtraction; and that is the level that
2 Idenix was producing.

3 MICHAEL GARDNER: And, again, with
4 six separate readings from the six separate --

5 ROBERT BERENS: Three locations were
6 the historical compliance locations along
7 Clark Street, one at the corner of Market, one
8 mid-block at Cross, and then one at the corner
9 of Hampshire and Clark. So those three
10 locations have been documented throughout the
11 process here.

12 The measurements were made at an
13 elevation of 16 feet in the air to comply with
14 the elevated receptor locations of the second
15 floor windows, the houses across the street
16 and avoiding the barrier effect of the roof
17 itself.

18 So this is -- and then the
19 measurements at the three other locations, one
20 was closer to the corner of Market and --
21 Broadway, one at the corner of Hampshire, and

1 right in front of the Idenix building.

2 Basically, both of them in the area right by
3 the Camp, Dresser, McKee building, and then
4 one a block away. So you get a handle on,
5 again, what the existing ambient levels are in
6 the area.

7 So the upshot of this whole thing is
8 that we measured overall levels, which would
9 be equivalent to the kind of measurements that
10 Andrea would make in her compliance
11 measurements. And we measured -- at 10:30, in
12 the late evening period, we measured levels of
13 about 54 to 56. That's with everything
14 running full bore and background. And that
15 dropped about a DB at the 2:00 level to a
16 level of about 53 to 55; again, full bore
17 operation of the Idenix equipment and all of
18 the ambient noise.

19 The background levels at 10:30 at
20 those locations was 46 to 53. So backing
21 out -- you have the 10:30 measurements,

1 backing out, at the 46 to 53 range of
2 background levels from the 54 to 56 total
3 levels resulted in what's called an Idenix
4 only contribution level that was about 52 to
5 55 DB.

6 RICHARD JOHNSTON: For then
7 Commissioner's ease, I would just mention that
8 Mr. Berens submitted a letter to Mr. Fanning
9 dated May 20, 2011, which is part of the
10 application for the variance, and these
11 numbers are found on page 4.

12 ROBERT BERENS: Okay. And the same
13 type of thing happened late at night, at again
14 2:00 in the morning, with everything running,
15 it was 53 to 55. So the background levels
16 dropped back about 3 DB or so, 43 to 50 DB.

17 And then backing out the world from
18 the total leaves Idenix only levels of, again,
19 52 to 55.

20 So what we are seeing is that Idenix
21 is producing a level that is within compliance

1 of the variance; it's not yet down to the 50
2 that, albeit, the need for the variance, but
3 it's a substantial improvement looking back to
4 taking the total noise levels and comparing
5 those to the earlier levels that had been
6 measured without separating out Idenix from
7 the rest of the world, and we are now looking
8 at the total noise levels back in 2008, those
9 levels were on the order of 59 to 61-ish, 58,
10 59, 60. So we are now down to levels of 54 to
11 56, 53 to 55 total levels.

12 So substantial improvement has been
13 made over the past year or several years, but
14 we are not down to the point where we don't
15 need the variance.

16 And, again, the other half of the
17 story here is that the background levels
18 themselves are above the 50 DBA level.

19 So the limit, you know, the Cambridge
20 City noise regulation says, "Thou shalt not
21 make more than 50 DBA." Well, we turned

1 Idenix off, the levels dropped down to, like I
2 say, 46 to 53, along those -- along Clark
3 Street at 10:00 at night. So even with Idenix
4 shut off, they couldn't show compliance with a
5 50 DBA limit.

6 At 2:00 in the morning we got the
7 ambient level down when the traffic died down
8 enough to get ambient levels 50 and below.
9 Again, when Idenix is operating at essentially
10 anything above 40, that is going to kick that
11 50 DBA background level, the Idenix
12 contribution is going to push that over the 50
13 limit because the background level is at 50.

14 So there is a lot of interplay
15 between existing background. The fact that
16 they can't show compliance even if they are
17 off, and the noise improvements that they've
18 made, and I think we are coming at it to
19 reduce the levels. Again, I think we have
20 shown substantial improvement, and I think
21 that's about the story I can tell at this

1 point.

2 So I'm glad to answer any questions
3 that you may have.

4 RICHARD JOHNSTON: You might just
5 mention or amplify the fact that essentially
6 you did the same thing in early June and --

7 PAUL BERENS: Yes. There's actually
8 two reports in the record, one for the May
9 survey and one for June, which Ms. Boyer was
10 along and observed.

11 RICHARD JOHNSTON: And the second
12 set of results were submitted on June 10th to
13 the Commission, and they included both a
14 report from Assentech and a report from Tocci,
15 which talked about the differences in DBA
16 levels on the overall ambient plus Idenix
17 between 2008 and 2011.

18 So I think that pretty much completes
19 the scientific record that we intend to
20 submit.

21 MICHAEL GARDNER: I have a couple of

1 questions about that, but I wonder if either
2 of the other Commissioners have any questions
3 at this point?

4 ROBERT HAAS: No questions.

5 GERARD MAHONEY: No questions.

6 MICHAEL GARDNER: So part of what
7 I'm wondering about with respect to the
8 arguments you are presenting about the ambient
9 noise is whether or not it proves too much.
10 That is -- I mean, isn't this a fact of urban
11 life and any readings that the City would take
12 on any potential noise complaint, if we are
13 taking the noise, would get both the ambient
14 noise and the -- and your attempt to isolate
15 the Idenix out.

16 And yet the ordinance, as I
17 understand it that we are expected to enforce,
18 doesn't do this analysis. It measures the
19 noise at the point of complaint or at an
20 appropriate point.

21 ROBERT BERENS: Yes. I can speak

1 from both sides of the regulatory fence here.

2 When I was with the City of Boston,
3 we basically said, "This is a real problem
4 with the City." And Boston and Cambridge are
5 identical regulations, identical wording as a
6 matter of fact. It's a problem.

7 If the ambient level is 50, there is
8 no way that anybody can make any noise more
9 than 40 -- sorry -- but they add up. You have
10 to be more than 10 DB difference only the
11 noise of your source controls.

12 As the quieter source gets louder,
13 you get sort of an incremental increase to
14 where they are equal, that's a 3 DB increase,
15 and this becomes the noise of your source, and
16 this is now the contributor, and as it goes
17 up, it sort of passes it.

18 The problem here is -- okay, suppose
19 the ambient is 49, there is the two guys with
20 air conditioners. Okay. Now, guy one has an
21 air conditioner that makes 47. Okay. That is

1 47 and 49. That just pushed the total level
2 that the compliance officer would measure to
3 51. Now, if traffic dies down and it gets
4 down to below 50, this 47 is now completely
5 legitimate; he has no problem complying.

6 If his neighbor turned his air
7 conditioner on, his air conditioner makes 47
8 as well, the two of them together now make 50.
9 Are they both in violation or are they both in
10 compliance?

11 The way we addressed it with the City
12 of Boston, we said, okay, everybody gets their
13 50. We have to look at what the ambient
14 conditions are. We have to back that out
15 before we can hold somebody accountable for a
16 measured level in excess of the stated
17 regulatory requirement.

18 So in the Idenix case, you know,
19 there is no way that, even if they turned off
20 every piece of equipment on the rooftop, that
21 they can show compliance when the ambient is

1 53.

2 So, again, what we did in Boston, we
3 said: Okay. Without a variance, we give them
4 the 50. If the background is 60 and we can
5 prove -- hold their feet to the fire, they can
6 proof that they are at 50, it is in
7 compliance.

8 In this case with the variance, if we
9 can hold their feet to the fire and show that
10 they are making 55, they are in compliance
11 with the variance, even though the total level
12 measured may be higher than that because of
13 the ambient conditions.

14 Does that answer your question?

15 MICHAEL GARDNER: Thank you, sir.

16 RICHARD JOHNSTON: Let me just make a
17 few concluding remarks about why the variance
18 ought to be granted.

19 As a special variance application, it
20 requires the Commission to evaluate or balance
21 the hardship to Idenix if the variance isn't

1 granted against the hardships to the community
2 if it is granted.

3 The Commission is also supposed to
4 consider, under the terms of the ordinance,
5 where the noise disturbance occurs in or
6 across a buffer zone between two districts,
7 which, in this case, it does, Idenix does
8 along Clark Street.

9 Here Idenix has requested and needs
10 the variance because it has to operate certain
11 equipment at night during the summer at all
12 times to maintain the kind of research lab
13 that it has in the building below. And that
14 point was made at the time we obtained the
15 variance, and that point is still true.

16 Idenix has been able to out-source
17 some functions out that enabled it to make
18 some of the changes on the roof that it did.

19 But other research functions were
20 made in the building and that requires the
21 equipment on the roof to be operating at full

1 tilt.

2 Idenix also should be given an
3 extension of the variance because it has lived
4 up to the terms of the variance that was
5 granted just about a year ago.

6 It was told to investigate additional
7 opportunities on the roof. It did investigate
8 those opportunities and, as Mr. Fanning
9 described, it went through 11 different steps
10 to try to bring the noise levels down.

11 Even with those modifications
12 however, Idenix will still be above 50 at some
13 locations during some portions of the year.

14 Now, during much of the year, it
15 wouldn't be. There have been measurements all
16 summer that have been below 50 and, as we
17 know, air conditioners are not on all of the
18 time because the temperatures are not as high
19 all the time, but there are some portions of
20 the year where it will be about 50 at some
21 locations.

1 So without the continued variance,
2 Idenix could be forced to shut down the
3 research operations that exist at 60 Hampshire
4 Street and, consequently, put people out of
5 work.

6 The company has now operated under
7 the variance at 55 for a year. And as far as
8 Idenix is aware, there haven't been any
9 registered complaints about its operations
10 during that time frame.

11 So if a company has been able to
12 operate during that year without causing
13 significant disturbances in the neighborhood,
14 the balance of hardship should be the same as
15 they were last year or even more in Idenix's
16 favor.

17 Furthermore, as Mr. Berens has
18 explained, the ambient levels around Idenix
19 are essentially above 50 at many of the
20 locations. So even if Idenix were to shut
21 down tomorrow, the noise level wouldn't be

1 that much different in the neighborhood. And
2 Idenix really shouldn't be punished under this
3 balancing of hardships or something that
4 exists irrespective of its operations.

5 So for all of those reasons and, in
6 particular, because the balance of hardships
7 was found by this Commission to favor Idenix
8 last year, and where the operations have
9 continued in a non-prejudicial fashion over
10 the last year, it makes sense, as a matter of
11 logic, that the variance should be extended
12 for another year at 55.

13 And we are all available here to
14 answer any questions that you may have.

15 MICHAEL GARDNER: Commissioners, any
16 questions on that point?

17 ROBERT HAAS: No.

18 GERARD MAHONEY: No questions.

19 MICHAEL GARDNER: I'm interested in
20 your areas of expertise. If what you're
21 saying is that this is really it, that there

1 isn't additional technological improvement or
2 capital investment that can get these levels
3 consistently below 50, assuming you backed out
4 the ambient noise, is that where we are?

5 PAUL FANNING: Yes. I think that it
6 would be -- yes. There is really no major
7 recommendation on the table that would allow
8 us to guarantee that we get below 50.

9 We've taken all the recommendations
10 from our consultants in implementing them. I
11 don't want to say that it is an impossible
12 task, I don't know. I guess, you know, if
13 there were no rooftop units -- but we need the
14 air-conditioning units to run the chemistry
15 operation, so I don't know of any current
16 capital that would get us there, that's
17 correct.

18 RICHARD JOHNSTON: I just want to
19 mention that in the past, Berens or Tocci, did
20 evaluate another option, which is to put a
21 large wall around the outside of the building;

1 and I don't remember how high it was going to
2 be, something like 14 feet, but the neighbors
3 didn't find that to be a very palatable
4 solution because it substituted a visual
5 problem for the sound problem. And that is
6 still a theoretical possibility, but nobody
7 really found it to be an attractive solution.

8 PAUL FANNING: Yes, that's true. But
9 even there, that doesn't guarantee -- that
10 recommendation was to allow the Idenix
11 contribution to be below 50. That didn't
12 necessarily mean that an as-found reading
13 would be necessarily below 50 because of the
14 background noise.

15 So I guess I would say that that's
16 true, you know, a large wall could get our
17 contribution below 50, and that capital
18 improvement could still be revisited, but it
19 won't necessarily guarantee an as-found
20 reading to be below 50.

21 MICHAEL GARDNER: And are you able or

1 willing to identify for us the approximate
2 capital investment you've made in these
3 improvements?

4 PAUL FANNING: I wouldn't be able to
5 say right now; I'd have to go back.

6 As far as historical, what we put in,
7 to be accurate, I would really have to get
8 back to you on that one. Because it goes back
9 four years now and it's in the hundreds of
10 thousands of dollars, that's for sure. Is it
11 over a million? I don't know.

12 MICHAEL GARDNER: And there aren't
13 really additional capital investments to be
14 made at this point of the summation because
15 you've filed out all the recommendations of
16 your consultants or experts.

17 PAUL FANNING: Well, we are still
18 continuing to evaluate other possibilities,
19 but I wouldn't label them major, any major
20 capital improvements at this point because we
21 have taken every major recommendation at this

1 point, yes.

2 MICHAEL GARDNER: And now I'm not
3 exactly sure how you can answer this question
4 for my education, but I'm sort of interested
5 in how one gets to the psychological
6 perception of a difference in 3 DBs, or the
7 dropping from your 60 previously to the 55
8 level now?

9 I don't know how to understand from
10 just these numbers what kind of difference it
11 makes in people's experience of the
12 environment, and I don't know how you can
13 answer that.

14 ROBERT BERENS: I would say the
15 general rule of thumb is a 10 decibel increase
16 is perceived as doubling in loudness. So if
17 you go from an environment that is 50 DBA and
18 the level goes up to 60, do you say, Hey,
19 that's twice as loud?

20 And, conversely, if it goes from 60
21 to 50, do you say, Oh, that's about half as

1 loud as it used to be.

2 A five DB increase or decrease is
3 perceptible -- you know, three to five DB is
4 perceptible in the field. A one DB increase
5 is, I think, back in the 20's, was defined as,
6 What is the smallest increment that a wide
7 spectrum of people can perceive in a
8 laboratory situation. A one DB difference in
9 the field is imperceptible.

10 So, to make a perceptible difference
11 in the field in real life, you need to have
12 that three to five DB difference, or people
13 just really are not able to say, Oh, yes, that
14 is significantly louder than it used to be.
15 It's not twice as loud, but it's louder than
16 it used to be. But it has to be above three
17 to five DB.

18 So a one DB increase or decrease --
19 one is within the error of the measurement
20 itself, the instrumentation has about a one DB
21 tolerance.

1 Certainly the conditions of -- the
2 ambient conditions -- when the fire truck goes
3 by, it is way up, there is all sorts of things
4 that contribute to, you know, the perception
5 of one particular source getting louder or
6 quieter.

7 So the rule of thumb is ten DB is
8 twice as loud, three to five DB is clearly
9 perceptible, one DB is not.

10 RICHARD JOHNSTON: And the Tocci
11 findings in the 2008 and 2011 were the four to
12 seven --

13 GREGORY TOCCI: Four to seven.

14 ROBERT BERENS: So it's a noticeable
15 difference, it is not half as loud or twice as
16 quiet as it used to be. But it's in that four
17 to seven, that's a little bit better than the
18 three to five perceptible difference.

19 MICHAEL GARDNER: Any other
20 questions?

21 GERARD MAHONEY: None.

1 ROBERT HAAS: No. Thank you.

2 MICHAEL GARDNER: Any additional
3 comments you want to make before we open it to
4 the floor?

5 RICHARD JOHNSTON: No.

6 MICHAEL GARDNER: If there are any
7 members of the public who would like to be
8 heard on this matter, please come forward and
9 state and spell your name for the record. And
10 if you could make space at the table, that
11 would help.

12 PAUL FANNING: Sure.

13 PETER LINQUIST: I'm Peter Linquist,
14 I am a property owner and reside at 11 Market
15 Street on the corner of Clark Street.

16 MR. GARDNER: First, let me say I
17 apologize, sir, for cutting you off earlier.
18 I misunderstood. It sounded like -- well, I
19 misunderstood.

20 MR. LINQUIST: Okay. I'm a cranky
21 neighbor. I just want to set the record

1 straight. You heard one side of the story;
2 there is a second side to the story.

3 First, I'd like to correct some
4 statements that were made by various members
5 of the Idenix crew.

6 Council mentioned that Market Street
7 is the problem corner. The corner of Market
8 and Clark is the problem corner where most of
9 the complaints have come from. This is true
10 in that I have been very vocal about this, but
11 I am certainly not the only one in the
12 neighborhood that has very strong feelings
13 about this. And I have represented their
14 feelings for four years now, and many of them
15 have also spoken. So the corner of Market and
16 Clark, number one, is not the only problem
17 area.

18 The Council also mentioned that they
19 have faithfully lived under the 55 decibel
20 level for the past year. And they also
21 mentioned that there haven't been any

1 complaints made in the last year.

2 Well, there was a complaint made to
3 Andrea Boyer by myself in October, barely
4 three months after the variance was granted.
5 And this stemmed out of the fact that in
6 September, a month earlier or almost a month
7 earlier, Idenix had removed some of the
8 curtains, baffling curtains, from the bottom
9 of the baffles, and were clearly in violation
10 of the noise ordinance.

11 I thought they were working on the
12 equipment to improve the situation. And when
13 I finally called Ms. Boyer, she said she would
14 check into it. She got back to me and told me
15 that it was being checked into, but it had
16 something to do with the curtains being taken
17 off in the event of a hurricane.

18 When I first called Ms. Boyer, I
19 asked two things: One, that she come and take
20 noise readings and verify my readings that
21 they were in violation of the noise ordinance.

1 And the second thing was that I
2 requested a hearing on the matter once she had
3 received this.

4 I heard nothing until later in
5 October when I received the letter from
6 Mrs. Lint stating that they had looked into
7 it, that the curtains had been, in fact,
8 removed because of an impending hurricane,
9 which never materialized in early September,
10 and, for some unknown reason, the curtains
11 were not reinstalled; whether it was because
12 they didn't want to spend the money, they
13 didn't care or whatever, the curtains were not
14 installed for a month.

15 September was a very warm month and
16 we suffered through excessive noise for more
17 than a month until the air conditioners were
18 shut down. So I'd like to correct Council on
19 that point.

20 MICHAEL GARDNER: And the status of
21 the curtains now?

MR. LINQUIST: They have been reinstalled. They were reinstalled -- I don't know, let's say, in April sometime would be my guess. And so, clearly, they have not lived up to the terms of the variance.

Nowhere in the variance did it say, "Oh, it's okay to take it down if it's going to rain." Nowhere in the variance did it say that.

I'm a little bit confused about Mr. Berens' interpretation of the data which was collected. He referred to Idenix only numbers as being in compliance with the noise ordinance.

Well, from my reading of the noise ordinance, that is not what the noise ordinance means. It's not Idenix only, it's the sum of all noises in the area that cannot exceed whatever level is stipulated.

The fact that they contend that they can't possibly meet this noise ordinance

1 because of background levels also is not
2 addressed by the noise ordinance.

3 I think, if you read carefully the
4 noise ordinance, the noise ordinance says that
5 whatever the conditions are -- in essence,
6 whatever the conditions are, they cannot
7 exceed the limit.

8 It doesn't matter if it was at 50
9 degrees, the background noise, and they put
10 one air conditioner up there and it pushed it
11 over 50, they are not complying with it.

12 I do appreciate them showing us what
13 the background levels are in the neighborhood.
14 And that's what we enjoyed before Idenix moved
15 into the neighborhood.

16 I was speaking to my neighbor the
17 other night, the other day, and she said, "You
18 know, it was the most amazing thing the night
19 that they were sampling out there and they
20 shut off all the Idenix equipment."

21 And at first she couldn't understand

1 what had happened and then she realized all of
2 this equipment was off.

3 And the tenant in her house came
4 running downstairs, he was so upset at not
5 knowing what had happened. That's how
6 dramatic the difference is between equipment
7 on and equipment off.

8 And if you look at the figures on
9 Table 2 on Assentech's report, you'll see that
10 this woman lives at Receptor 2, at the corner
11 of Clark and Crossland. And her background
12 noise there has registered in the middle of
13 the night at 43 decibels. And then when the
14 equipment goes on, it's 12 decibels higher;
15 more than a doubling of the perceived sound.
16 And this is a significant level.

17 I would like to point out that when
18 this variance was issued last fall, or last
19 summer, I'm sorry, a year ago, it was
20 stipulated that Idenix would continue to work
21 on this problem. And we've seen how they

1 removed all of this equipment from the corner
2 of the building there.

3 But, Paul, can you maybe explain why
4 that was done? What the reason was that you
5 could remove that equipment?

6 PAUL FANNING: We were able to -- and
7 I think Rich alluded to this earlier -- we
8 were able to look at our chemistry operations
9 and we were trying to identify what types of
10 activities could we look at outside the
11 company. And can we get out-sourcing certain
12 things, certain activities, knowing that
13 chemistry drives a lot of the requirements in
14 terms of storage and air conditioning.

15 So there were two walk-in hoods in
16 particular that determined that we could shut
17 down, and that RTU was located in the corner.
18 So by removing that and then re-ducting some
19 of the exhaust fans into another RTU, we were
20 able to clear that out and we basically did
21 stop using those walk-in hoods by the

1 chemists.

2 MICHAEL GARDNER: So this is part of
3 the out-sourcing that Mr. Johnston had alluded
4 to?

5 PETER LINQUIST: Right. But I think
6 that the point is that this wasn't done to
7 make me happy, I don't believe. The way it
8 was explained to me was this was done because
9 their operational procedures had changed and
10 the out-sourcing was the more beneficial
11 thing.

12 PAUL FANNING: For the record, both.
13 It was a win-win. We know that this would be
14 a potential noise reduction -- so it was, I
15 would say, it was for both purposes.

16 MICHAEL GARDNER: All right.

17 PETER LINQUIST: So the end result of
18 that is -- and as far as I know, that was the
19 only thing that was done in the course of 12
20 months to improve the noise situation here.
21 And if we go back historically and look at

1 data taken in 2010 at receptors 1, 2 and 3, at
2 16 feet, at 10 something at night, which were
3 the only numbers that were available that they
4 provided us with, all three receptors were
5 reading at 55 decibels in 2010 at 10:00 in the
6 evening.

7 In 2011, the only difference was
8 that, on my corner, it experienced a one
9 decibel drop. At the middle of the block it
10 was the same, at receptor 2, and they got a
11 reading of 56, one decibel higher on the
12 corner of Hampshire and Clark.

13 So all the work that was supposed to
14 have been done in the course of the year
15 produced a one decibel drop in one location.

16 I also have an interest in the
17 science of acoustical measurement. And if I
18 could ask one of the members of one of the
19 consulting firms a question, I would
20 appreciate it.

21 ROBERT HAAS: No objection.

1 GERARD MAHONEY: No objection.

2 MICHAEL GARDNER: Go ahead.

3 MR. LINQUIST: I don't know who wants
4 to answer.

5 MICHAEL GARDNER: And identify
6 yourself for the record.

7 ROBERT BERENS: Well, ask the
8 question first and then we'll figure out who
9 gets to answer it.

10 PETER LINQUIST: In 2010 -- so I
11 guess it's Mr. Tocci, I do believe he took
12 samples in 2010.

13 That same night, when you took the
14 readings prior to, I think, the final hearing
15 for the variance, you also took -- you took
16 readings at 16 feet and you took readings at 5
17 feet above the sidewalk; is that correct?

18 MICHAEL GARDNER: And just identify
19 yourself for the record, sir.

20 GREGORY TOCCI: My name is Greg
21 Tocci, Cavanaugh & Tocci Associates.

1 MR. LINQUIST: And the numbers that I
2 saw on your report where receptor one at five
3 feet aboveground readings of 52 decibels, and
4 at receptors 2 and 3, at 5 feet, were 53
5 decibels.

6 And shortly thereafter or shortly
7 before that, you took readings at those same
8 locations but at an elevation of 16 feet and
9 you got a reading ranging between 3 and 2
10 decibels higher than those at the five foot
11 level. So now we are up to 16 feet.

12 MICHAEL GARDNER: Could you just
13 answer, sir, so it can be picked up on the
14 record. Mr. Linquist made I had statement
15 and you are agreeing with it?

16 GREGORY TOCCI: Yes, I do.

17 PETER LINQUIST: Now, is it possible
18 to speculate, if we went another five feet
19 higher or ten feet higher, based on -- and you
20 are all aware of how the street is laid out
21 and where the samples were taken -- if we went

1 and took measurements at, say, 20 feet or 25
2 feet, you might get higher readings than you
3 did at 16 feet and certainly higher readings
4 than you did at five feet. Is that reasonable
5 to anticipate?

6 GREGORY TOCCI: No, I would say not.
7 The reason why some of it was at five feet or
8 higher than the 16 feet was because the
9 building roof edge is shielding much of the
10 noise produced by the equipment. And that is
11 why we went to 16 foot in order to be able to
12 get a position that had a full few of sources
13 on the roof.

14 PETER LINQUIST: But at 16 feet, you
15 do not have full view. The building is 18 and
16 change high.

17 GREGORY TOCCI: Mh-hmm. I think you
18 are correct. But we felt that we had a
19 substantial view of all those out-sources;
20 most of those sources, particularly the major
21 ones, were higher above the roof than that.

1 MR. LINQUIST: Well, the unfortunate
2 part is that I have readings -- and the real
3 unfortunate part is that the neighbor's
4 second-story windows at midpoint are -- in my
5 house, they are 18 feet, in the middle house
6 it is 18 feet, the third house on the corner
7 of Hampshire and Clark has four stories, their
8 third floor is at 22 feet, their fourth floor
9 is a 30 feet, and the fourth floor skylight is
10 at 33 feet.

11 And I would beg to differ that moving
12 to a higher elevation -- because particularly
13 on that Hampshire Street property, the one on
14 the corner of Hampshire, they are above the
15 baffles, they are above some of the silence --
16 the sound attenuators that were put on the
17 equipment, and they suffer a tremendous sound.

18 So I can see it walking from my
19 second story to my third story with my sound
20 meter in hand, my \$80 Radio Shack meter, which
21 on numerous occasions that I tested it against

1 Andrea Boyer's or Bill Elliot's, it has read
2 very comparably. And I can experience a three
3 decibel difference walking up a flight of
4 stairs and putting the meter out the window.

5 So I beg to differ that going beyond
6 the 16 feet mark is really a true measurement
7 of what the sound is hitting the windows where
8 people sleep in the neighborhood.

9 One other issue I'd like to bring up
10 is in the middle of the block, across from the
11 receptor 2, in that area, on the Idenix roof
12 is a very large and old air-conditioning unit.

13 If I am correct -- and correct me if
14 I'm wrong if I'm wrong, Paul -- but that is a
15 unit that is the responsibility of your
16 landlord?

17 PAUL FANNING: It could be, it's
18 possible. Depending on the one you are
19 talking about. We have the --

20 PETER LINQUIST: The noisiest one.

21 PAUL FANNING: If it is four, that

1 was a base unit that was put in -- I think I
2 know the one you mean. It's not the highest
3 one. That is probably a base unit.

4 PETER LINQUIST: This unit
5 contributes in our estimation to a lot of
6 noise on the block, not all of it, by any
7 means. But when the compressor on that unit
8 kicks in, it is very noticeable and it rumbles
9 along and it's very noisy, the fans on it are
10 very noisy. And this has come up in
11 discussions about replacing it. And because
12 it might be the landlord's responsibility, I
13 guess, it can't be resolved to fix it or
14 replace it. I don't know how old it is; it's
15 quite old.

16 Unfortunately, you may not know the
17 full history of all of this dating back to
18 2007 or 2006, but originally this noise issue
19 came before this Commission as part of
20 resistance to a permit for chemical storage,
21 an increase quantity of chemical storage in

1 the Idenix facility. And inherent with that
2 was the increased amount of equipment on the
3 roof.

4 And at that time -- and, in fact, the
5 applicant for that permit was the landlord,
6 who is Metropolitan Life Insurance
7 Corporation, they are a real estate division,
8 I guess. And they are the ones that received
9 the actual permit to store additional
10 quantities of --

11 MICHAEL GARDNER: One of our
12 commissioners would like to interject here.

13 GERARD MAHONEY: That is just a
14 historical clarification.

15 That was actually an application for
16 a license, a preamble storage license, which
17 if memory serves me correctly, I was involved
18 in that license process, and in the end result
19 the license was not required because of the
20 change in the state law with regards to the
21 amounts of flammables.

1 So a permit was actually issued by
2 the fire department for the storage use of
3 flammables; a license if the quantities exceed
4 a certain threshold that's issued by this
5 board.

6 PETER LINQUIST: And the previous
7 board did issue a license, or at least voted
8 to issue a license.

9 GERARD MAHONEY: I just wanted to
10 clarify the difference between a license and a
11 permit.

12 PETER LINQUIST: Am I not correct --

13 MICHAEL GARDNER: The records will be
14 there and, if it is relevant, we can check it.

15 PETER LINQUIST: My point is that
16 this license presumably was to be granted to
17 the landlord and was to stay with the building
18 forever.

19 GERARD MAHONEY: Not really.

20 MICHAEL GARDNER: Okay. Go ahead
21 and make your point.

1 PETER LINQUIST: Well, for as long as
2 the landlord owned the building.

3 GERARD MAHONEY: No. Licenses are
4 issued to the -- actually, in Chapter 148 it
5 states that, "The license runs with the land,
6 the owner of the land," which in most cases is
7 the owner of the building. So a tenant does
8 not get a license for the storage of
9 flammables, the property owner does.

10 But the license is only in effect --
11 it has to be renewed every year and is only in
12 effect as long as the inventory meets or
13 exceeds the threshold stipulated by the fire
14 prevention regulations of the Commonwealth.

15 PETER LINQUIST: Meets or exceeds?

16 GERARD MAHONEY: There is a threshold
17 where you need a license. If you have
18 flammables below that, you don't need a
19 license.

20 And their application was during a
21 period of transition of those figures, the

1 state changed the figures.

2 PETER LINQUIST: I see. So this
3 Commission granted a license that wasn't
4 necessary?

5 MICHAEL GARDNER: That may or may not
6 be the case. But would you make the point
7 you are trying to get to.

8 PETER LINQUIST: The point I'm trying
9 to get to is, if there was a license granted,
10 or so this Commission agreed to grant a
11 license, that this landlord has -- we've never
12 heard from the landlord, and since this
13 landlord, I thought, was holding this license,
14 shouldn't they be responsible for some of this
15 noise equipment, this equipment that is making
16 some of this noise?

17 Now, maybe not, because maybe they
18 don't need the license. It's news to me.
19 Because I was here at the hearing when it was
20 voted by the Commission to grant a license for
21 this chemical storage.

1 MICHAEL GARDNER: All right. I
2 appreciate that.

3 PETER LINQUIST: It's a little
4 historical background.

5 In summation, which I'm sure you are
6 all happy to hear, I urge this Commission not
7 to grant a permanent nor temporary extension
8 to this variance.

9 What I would suggest, in the spirit
10 of cooperation and fairness, is to set some
11 definitive guideline for the company to meet
12 the noise requirement or improve -- at least
13 improve upon the situation that they have.

14 It was stated by everybody that there
15 is nothing else that can be done. I heard
16 that in 2009 when the company applied for a
17 variance to 60 decibels, when they said there
18 is nothing else we can do.

19 And in the magical period of six
20 months later, according to their numbers, they
21 brought the readings down to 55 decibels by

1 implementing additional things.

2 So I urge you not to just give a
3 carte blanche extension of this variance, but
4 to require Idenix to identify other means.

5 Mr. Tocci, in 2008, in the one of his
6 reports, which I'm sure is in your files,
7 outlined several possible techniques which
8 could be used to bring this into compliance.
9 One was this great wall of China, which they
10 have half-built anyway with these cloth
11 baffles, it blocks the sun, it blocks the air
12 in the neighborhood, it blocks our skyline
13 views, it's a scar on the neighborhood, but it
14 improved the sound.

15 The Commission frowned upon the idea
16 of a 16-foot wall, so they put up twelve-foot
17 baffles instead.

18 But there was an option that I had
19 recommended to Mr. Gilman, who no longer is
20 with Idenix, back in 2005 when they started
21 putting the first pieces of equipment on the

1 roof.

2 And I met Mr. Gilman -- I had
3 complained to a previous facility's manager
4 there and never received any response.

5 And when Mr. Gilman came on board, we
6 met on numerous occasions, and I suggested
7 this to him because I have some experience in
8 this type of thing -- not installing the
9 equipment as close to the residential property
10 as possible, but moving it back 50 or 60 feet
11 where there was ample room on the roof and
12 dumping it to where it should go.

13 And he said, "Well, we'll solve the
14 problem." And 2006, 2007 rolled by, and the
15 problem was getting worse, more equipment was
16 showing up there.

17 But the solution to the problem as
18 Mr. Tocci had identified in his report and was
19 never spoken of again, was to relocate the
20 equipment; some of it internally in the
21 building, some of it further out on the roof,

1 he didn't specify the plan, but it's basically
2 what I thought should have been done from day
3 one, and what the engineers should have done,
4 the same engineers that signed off on the
5 building permits that their work would comply
6 with the city noise ordinance.

7 And I think this is the option, to
8 remove that equipment, put it where it should
9 have been put on day one.

10 The neighborhood did not create this
11 problem; we have inherited it. We do not like
12 it and we are tired of it. Basically, it has
13 gone on too long. And that company, if they
14 had taken all the money that they have spent
15 on lawyers and consultants and put this stuff
16 where it should have been, moved it two years
17 ago, three years ago, they'd have money in the
18 bank today. Truthfully.

19 So I will end on that note. Thank
20 you.

21 MR. GARDNER: If you wouldn't mind,

1 any questions?

2 ROBERT HAAS: I probably asked
3 Mr. Linquist and Mr. Johnston. One of issues
4 we keep on struggling with is the point of
5 measurement and where is the appropriate point
6 of reading. So I want to get your take of it
7 now.

8 PETER LINQUIST: My take is a
9 property line is a vertical plane. Because if
10 a property line were not that, there would be
11 no such thing as air rights, which we all own.
12 So it's a vertical plane between two
13 demarcation points.

14 MICHAEL GARDNER: Anything else?

15 RICHARD JOHNSTON: Our position has
16 consistently been that the task actually
17 should be taken even lower than five feet at
18 the property line because the line is
19 literally at the ground level.

20 Obviously, the Commission has taken a
21 somewhat different position over the years and

1 as we did the tests higher up but, without
2 prejudice to the previous Commission, it
3 should be lower.

4 PETER LINQUIST: People don't live on
5 the ground, people don't sleep on the ground,
6 they sleep on second and third and fourth
7 floors, and that's where the noise is a
8 problem.

9 MICHAEL GARDNER: Mr. Linquist,
10 what's your perception of whether or not the
11 noise problem is better now than it was in
12 2009?

13 MR. LINQUIST: 2009? When in 2009?

14 MICHAEL GARDNER: Well, when the
15 photos "A" and I think "C" were taken about
16 May of 2009?

17 PETER LINQUIST: Well, I'm looking
18 back at readings in 2009 that were taken in
19 September, and I'm seeing readings of 59, 59,
20 59.

21 So if I'm to believe these readings

1 and compare it to the, what, you know, a 54,
2 55, 56 -- and I don't know what time of day
3 these 59's were taken -- I would have to say,
4 yes, it has improved.

5 MICHAEL GARDNER: That really wasn't
6 my question. My question has got to do with
7 the psychological perception of the noise.

8 PETER LINQUIST: It is wearing us all
9 down, believe me, it is wearing us all down.
10 This whole process has worn us all down but
11 living with this noise on a daily, nightly
12 basis -- it is fine for these people, they get
13 paid to come in here and present a case and
14 all that. I have to go home and sleep there
15 it in and so do my neighbors and that is where
16 the problem is. These people don't live in
17 the neighborhood, they get paid to tell you
18 something.

19 So what you are telling us is that
20 all the steps, including the reconfiguration
21 of their operation with respect to the moving

1 the chemistry functions out or taking all of
2 the equipment off the roof or moving it, we
3 have seen, is from your point of view; the
4 noise problem has not improved since before
5 when they were still doing those chemical
6 operations internally and when all the
7 equipment was on the roof.

8 That time period is between 2010, a
9 year ago, and now is when those changes took
10 place and, no, I cannot tell the difference.
11 The meter says at my house it is one decibel
12 quieter, which is within the statistical range
13 of error of the meter. But the meter says it
14 is one decibel quieter at my house, but
15 exactly the same at the other two houses, the
16 other two receptors, that has not changed.

17 MICHAEL GARDNER: Okay. Thank you.

18 PETER LINQUIST: Thank you very much.

19 MICHAEL GARDNER: Any other members
20 of the public who would like to be heard?

21 CHARLIE MARQUARDT: Charlie

1 Marquardt, 10 Rogers Street, 02142.

2 I'm here to speak on my own behalf
3 and East Cambridge team. We have an awful lot
4 of concern about noise, noise impact on the
5 neighbors, driven primarily, from our
6 perspective, out of development that has
7 occurred and will occur in the next couple of
8 years.

9 If you notice, they are knocking down
10 a lot of buildings in the neighborhood, so we
11 are concerned about the setting of a precedent
12 to allow companies to decide after building
13 they can say "we'll go five decibels higher
14 because it is no big deal." Think we just
15 had testimony that five decibels higher is a
16 pretty big deal. There is a psychological,
17 there's relationship.

18 We heard the word "buffer," there is
19 a "buffer zone" between the different
20 buildings. What we've observed and what I
21 have personally is that noise does not observe

1 a buffer, it goes right through; it doesn't
2 exist, it's just a line on a drawing.

3 And we also want to make sure that
4 there is concern expressed about the new
5 neighbors that will be coming into this
6 neighborhood. Just recently there was a
7 building approved on the corner of Portland
8 and Hampshire Streets that will be six or
9 seven stories tall. So that will be a
10 different type of reading.

11 And whether you consider the line of
12 measurement, the ground or 16 feet, you now
13 have people that will be living at 50, 60 feet
14 up, and I think that could present a different
15 conundrum.

16 MICHAEL GARDNER: The building
17 you're talking about is a residential
18 building?

19 CHARLIE MARQUARDT: Yes, it would be
20 a residential on the second and the floors
21 above; first floor and a parking. And it's

1 3234 Hampshire Street I think is the actual
2 address. So all the monitoring is being done
3 away from that, and I don't know if there's a
4 way to start on that side as well.

5 And we are also worried about the
6 discussion of talking about -- let's take
7 ambient noise out and just measure our own
8 little piece. While that might work
9 scientifically, that is not the ordinance. We
10 are worried about the impact on the people and
11 everybody else that are hearing that noise and
12 it can be caustic.

13 You know, the building I live in,
14 when people move into my building, the first
15 time they hear the engine blast from their jet
16 turbine, it is rudely awakening. So I can
17 only imagine what these folks are going
18 through listening to 55, 53 continuously.
19 It's a background that will not go away.

20 It may get better in the winter when
21 you turn down the air conditioners, but I

1 think this is something that needs to be
2 fixed, not put off for another year or two.
3 Let's make sure that companies understand that
4 Cambridge has a noise ordinance for a purpose,
5 and that purpose is to protect all of us so we
6 can live long and healthy lives and not be
7 driven to either physical or emotional
8 distress. That that's all I have to say.
9 Thank you.

10 MICHAEL GARDNER: Any other members
11 of the public who want to be heard?

12 CAROL BERLIN: Carol Berlin, 257
13 Charles Street.

14 I sat on the rooftop mechanical
15 committee and I live in East Cambridge.
16 Charlie just mentioned that we have constant
17 noise. This is a very tragic play out here
18 because the building is smack in the middle of
19 a residential neighborhood. So the reality is
20 that they really could never get in
21 compliance.

1 There is a big issue as to where they
2 test this noise. They've never changed where
3 it was being tested. There is going to be a
4 lot of development that is coming up. This
5 does set a precedence and I guess that is my
6 concern.

7 I'm sad that Idenix just didn't move
8 back into Kendall Square closer to where
9 everything else is. But we are getting a lot
10 more development now on Binney Street, on both
11 sides of Binney Street, and also with MIT
12 developing out there 26 acres.

13 It is becoming a major issue for East
14 Cambridge. I walk down the street on a
15 regular basis and people start bitching about
16 the goddamn noise and we listen to it 24/7.
17 People have stopped living on their third
18 floors and moved to second floors. The noise
19 is just getting terrible.

20 And this doesn't help this
21 neighborhood. I know this is an issue for

1 them. I don't know what the solution is. But
2 it is just smack in their face. The tragedy
3 is that they tried to reinvent this building
4 and I think this wasn't the right location for
5 it.

6 So I just put out there that we are
7 concerned about noise, the ambient noise.
8 This is a build-out. This stuff does
9 accumulate; it doesn't stop accumulating. And
10 that is a major issue for us. Thank you.

11 MICHAEL GARDNER: Thank you.

12 KIM KAUFMAN: My name is Kim Kaufman.
13 I live at 66 C Hampshire Street. So I live in
14 one of three townhouses that abuts Clark and
15 Hampshire.

16 And I feel that, you know, I want to
17 urge you not to renew the variance. I feel
18 that Idenix is being irresponsible and that
19 they violated the noise ordinance several
20 times. And the only reason that they get back
21 into compliance is when the neighbors call to

1 complain.

2 One example is what Mr. Linquist said
3 about the fencing, and another example is
4 there was this horrible high-pitched whistling
5 sound that was going on for weeks, and I
6 didn't know what it was and it was very
7 disruptive. It would go on about 20 minutes
8 to a half-hour, and all the neighbors were
9 talking about it, trying to figure out what it
10 was.

11 And, finally, we determined it was
12 coming from Idenix. And I called Andrea Boyer
13 -- this was like a few weeks ago -- and she
14 said she would check into it and I believe it
15 stopped.

16 I saw a huge truck out there one day,
17 so I'm assuming they did something to stop it.
18 But that was going on for weeks and weeks, and
19 I don't know that they would have done
20 anything about that. So I don't feel that
21 they've earned the right to continue with this

1 variance. I feel that they would be better in
2 a facility where they could make the noise
3 that they need to make.

4 And the responsibility of the City of
5 Cambridge is to protect the well-being of the
6 people that live there. My daughter sleeps on
7 the fourth floor of our house and I cannot
8 open the skylight because it is too noisy at
9 night, because our skylight looks onto Idenix.

10 So I feel that we shouldn't be giving
11 a variance to this company. Thank you.

12 MICHAEL GARDNER: Thank you.

13 LILA FLORES: Hello, I prefer to
14 stand. My name is Lila Flores, I live at 64
15 Hampshire Street. I come here because when I
16 lay up at night because I can't sleep because
17 of the noise. I am in the second floor of 64
18 Hampshire. My two windows face Idenix roof.
19 22 foot level. And I notice that even with
20 the window shut, even with earplugs, I can
21 hear them, that's how powerful the noise is.

1 So I wonder what can I do to get some
2 piece and quiet. I'm going to come here and
3 give my testimony to give proof to the Council
4 that I cannot sleep and it's having a harmful
5 impact on my life.

6 So the sleepless nights are awful. I
7 cannot sleep at night, I have to lay up there
8 until I finally -- it wears me out. Or I wake
9 up in the middle of the night and I have to
10 stay awake until I'm able to sleep again. And
11 then in the morning, I have very unproductive
12 days.

13 And so really in response to the City
14 ordinance it hasn't been a solution for me, I
15 still can't sleep, and I think you should
16 consider the area for the neighbors. And so
17 my ear is not a sophisticated decibel
18 measurement, but my ear tells me that even
19 before the ordinance, I still can't sleep at
20 night especially in the summer when all the
21 activity increases. And, really, I think that

1 either the measurements are between 50 and 55,
2 right on the border, and my ears can feel
3 that.

4 And so if they have moved the
5 machines, they have moved the machines closer
6 to my window, actually, which explains why I
7 still can't sleep.

8 So, really, if you were in my shoes,
9 anybody in the audience, you wouldn't want any
10 tolerance of the decibels. You would just
11 want calm and peace, right? You would just
12 want to sleep.

13 I'm sorry, I get emotional because
14 I'm a very frustrated neighbor and I'm
15 desperate sometimes, so excuse me. When I
16 think of the solutions, I think about -- I
17 think that they can turn off the machines, and
18 apparently they can't do; and if they can't,
19 maybe they can use some of the power to move
20 there noise production to another place.
21 Maybe keep them quiet. Keep it quiet and move

1 the other ones. Or they can use their money
2 and power to update the equipment for a
3 quieter one, or to move everything inside the
4 walls of their first floor.

5 And as Council, when you make your
6 decision, please consider us neighbors, and
7 that all we want is some peace and calm. And
8 so I hope that you defend our quality of life.

9 And I know that businesses are
10 important for Cambridge, but I think that this
11 time people should come first. And so I
12 really hope that you decide to give this
13 variance -- I hope that whatever happens, you
14 continue to monitor the noise levels that
15 Idenix produces and that also you continue to
16 see what you are doing for us neighbors.

17 And so if this noise keeps me up at
18 night, I feel that another solution should be
19 to keep us all up at night until we find a
20 solution. Thank you.

21 MICHAEL GARDNER: Thank you.

1 MEAGAN BROOK: My name is Meagan
2 Brook and I live at 103 Inman Street and I was
3 a tangential party to a long, drawn-out noise
4 case involving 100 Inman Street which is a
5 building that was grandfathered in. It used
6 to be a Fleishman's Yeast Factory. And it was
7 and is a problem in our neighborhood. And so
8 I sympathize very deeply with the problems
9 these people are having.

10 And what we just heard is how all the
11 people feel under an assault which crosses
12 their property boundaries into their homes at
13 all times and they can do nothing but beg the
14 City of Cambridge to defend them. She said
15 it. That is the word, we ask the City to
16 defend us.

17 And I've asked the Commission for
18 years to defend us. And we've heard over and
19 over again the same arguments about how
20 difficult the noise ordinance is to enforce
21 and the courts and the this and the that. Yes

1 and no. You know, the Dred Scott case lost,
2 but it was right, was it not? Do the history
3 books not tell us the Supreme Court of the
4 United States was wrong in its decision on the
5 Dred Scott case.

6 If you take your stand, the courts
7 will either agree or not. The Commission
8 should stand for the right and the noise
9 ordinance and the clear will of the people to
10 be protected.

11 Now, there is a 50 decibel DBA limit.
12 But research is coming out all the time and it
13 shows that people optimally need 30 or less
14 decibels to sleep properly.

15 And, furthermore, it shows more and
16 more and more that numerous serious chronic
17 health conditions arise over years of poor
18 sleep. And accidents arise from poor sleep.
19 Work accidents, road accidents, domestic
20 accidents, people falling down their stairs,
21 whatever. This is costing our society more

1 than it would cost to control these noise
2 sources in pain and suffering and money, just
3 in money.

4 So you have to start somewhere. This
5 is where the people of Cambridge start. This
6 is it, it's got to start somewhere. Please do
7 not extend this variance.

8 Carol is right, it's a precedent.

9 Richard Scaly said it was not a
10 precedent but it is; that is how people
11 perceive it and, therefore, that's what it is.
12 It's a bad precedent, let's not continue with
13 it.

14 These people actually came and seemed
15 to say at one point -- I don't know want to go
16 on too long, but somebody seemed to say that
17 if they shut all their stuff off, they would
18 still be in noncompliance of the ordinance. I
19 never heard of anything so ridiculous. You
20 can't be accused of causing noise when you are
21 causing none.

1 If they can't get in compliance,
2 they have to get their other research and
3 development neighbors to help them be in
4 compliance. There is a solution here.

5 Mr. Linquist said that first he was
6 told nothing could be done because it was over
7 60, then it was over 55 and nothing could be
8 done. We have all heard this. Something can
9 be done with the will. It's a necessity;
10 necessity is the mother of invention.

11 Thank you so much for your patience.

12 MICHAEL GARDNER: Thank you.

13 BARRY LEVIN: I live at 67 Hampshire
14 Street. And my ears and bed would be about a
15 hundred feet from the north corner of the
16 building, it's 18 feet off the ground. My
17 sense is it has gotten a bit worse since some
18 of the equipment has migrated towards my end
19 of the building.

20 I would also like to say that I, too,
21 was plagued by the funny whistling sound,

1 which was sort of a flutist running up the
2 scale followed by a symbol crashing and a
3 shriek and then maybe 15 to 30 minutes of
4 silence and then starting up all over again.

5 And which at 3:00 in the morning it
6 is not so good, no matter what the ambient
7 noise is. And it probably didn't violate the
8 decibel level. Had it been a real set of
9 musicians, I imagine they could have booked
10 them on some statute for the disturbing the
11 peace. And the general roar of the thing late
12 at night starting maybe at 11 o'clock when the
13 ambient drops off, is certainly perceptible.
14 And to claim that the ambient is canceling the
15 damage from this building is simply
16 ridiculous. It is implausible.

17 I wasn't smart enough to call Andrea.
18 I actually talked to Chris at Idenix. And if
19 he was very nice but we were never able to pin
20 down that whistling noise. And I find it
21 actually implausible that nobody in that

1 building was able to hear it. And that just
2 before this hearing, it finally miraculously
3 stopped. But make of it what you will.

4 But I do think it's a real problem
5 and I think that your continued vigilance and
6 attention to this is really crucial. I think
7 if you grant this variance it's a terrible
8 thing. Thank you.

9 MICHAEL GARDNER: Thank you.

10 LINDA LINQUIST: My name is Linda
11 Linquist and I live at 11 Market Street.
12 Welcome to the Licensing Commission,
13 Mr. Gardner.

14 I am reading a letter from Gerald
15 Urban, who lives at 82 Elm Street. He was not
16 able to be here tonight and he wanted me to
17 submit this testimony aloud for the record.

18 June 28, 2011. I am urging the
19 License Commission to vote not to renew the
20 special variance that was granted to Idenix
21 Pharmaceuticals on July 7th, 2010. Idenix

1 Pharmaceuticals should be required to meet the
2 full requirements of the City of Cambridge
3 Noise Control Ordinance.

4 Cambridge City Code, Section
5 8.16.090(B). I will not review the testimony
6 that I have presented at several hearings over
7 the past few months -- many months.

8 And as a neighbor that was active in
9 the zoning discussions in the 1990's regarding
10 this area of Cambridge, it has never been
11 clearer that this pharmaceutical laboratory is
12 the wrong use for this location.

13 Idenix, in their application for
14 development at this location, said they would
15 abide by the Cambridge Noise Ordinance; and,
16 as of this date, they have not done so.

17 Of course, I am saddened that the
18 threat of a lawsuit caused a special variance
19 to be given to Idenix. We are dealing with
20 multibillion dollar corporations. Novartis is
21 the majority owner of Idenix. And MetLife is

1 the landlord and owner of the property. Both
2 are multibillion dollar corporate entities.
3 We're not dealing with a mop and pop owner
4 that would face financial ruin if they had to
5 abide by the law.

6 Idenix wrote the following in their
7 March 7, 2011 report to stockholders, and I
8 quote: "We have been involved in a dispute
9 with the City of Cambridge, Massachusetts, and
10 its License Commission pertaining to the level
11 of noise emitted from certain rooftop
12 equipment at our research facility located at
13 60 Hampshire Street in Cambridge.

14 "The License Commission has claimed
15 that we are in violation of the local noise
16 ordinance pertaining to sound emissions based
17 on a complaint from neighbors living adjacent
18 to the property.

19 We have contested this alleged
20 violation before the Commission as well as the
21 Middlesex County Massachusetts Superior Court.

1 "In July 2010, the activities at the
2 building -- excuse me -- in July 2010, the
3 License Commission as well as the Middlesex
4 County Supreme Court, the License Commission
5 granted us a special variance from the
6 requirements of the local noise ordinance for
7 a period of one year effective July 1st, 2010.

8 "We may, however, be required to
9 cease certain activities at the building if
10 (A) the noise emitted from certain rooftop
11 equipment at our research facility exceeds the
12 levels permitted by the special variance; and
13 (B) the parties are unable to resolve this
14 matter through negotiations and remedial
15 action; or (C) our legal challenge to the
16 position of the City of Cambridge and the
17 License Commission is unsuccessful.

18 "In any event, we could be required
19 to relocate to another facility which could
20 interrupt some of our business activities and
21 could be time consuming and costly." Unquote.

1 Clearly, Idenix understands that they
2 may have to move their facility if they do not
3 abide by the Cambridge Noise Ordinance. This
4 event would not be a financial disaster for
5 them. Idenix choose this location, agreed to
6 meet the standards of noise ordinance, and now
7 it's time that they are held accountable for
8 their decision to locate their laboratory at a
9 site surrounded by residential neighborhoods.

10 "As for their good faith efforts,
11 they have been forced to make the changes they
12 have made in their operations due to the
13 advocacy of the community. No good faith
14 there.

15 "The changes in their rooftop
16 equipment has been heartbreakingly slow in
17 coming. They have not made some of the
18 changes that are way overdue, such as working
19 with MetLife, their landlord, to update and
20 move the noisy air conditioner on their roof,
21 which generates a huge amount of noise and

1 which should be replaced and relocated with
2 more modern equipment.

3 "Both Idenix and MetLife are
4 profiting from the special variance issued by
5 the License Committee because the property is
6 now available for pharmaceutical laboratory
7 use, thereby increasing its value.

8 "From the beginning, this has been a
9 David and Goliath story. It's time that the
10 License Commission due what is right: Stand
11 up for the community, enforce the noise
12 ordinance as written, and do not let
13 billionaire corporate interests and the
14 threats of lawsuits stop the Commission from
15 protecting residential neighborhoods from
16 disruptive and damaging noise. Vote against
17 any effort to make permanent the special
18 variance. Vote to end the special variance.
19 Enforce the noise ordinance. Gerald Burgman
20 June 28, 2010."

21 MICHAEL GARDNER: Thank you, ma'am.

1 A copy of that letter is in our records and is
2 on file. And I allowed you to read it into
3 the record for purposes of having the audience
4 here.

5 Any there any other members of the
6 public who would like to be heard on this
7 matter? No?

8 I would like to give Idenix
9 representatives an opportunity to respond to
10 some of the comments, but I would also like to
11 hear if Ms. Boyer has got any additional
12 information you feel would be helpful for us
13 to know.

14 ANDREA BOYER: I would just like
15 to --

16 MICHAEL GARDNER: If you could come
17 forward and identify yourself.

18 ANDREA BOYER: Andrea Boyer,
19 investigator for the City of Cambridge License
20 Commission.

21 I was there to verify what was on and

1 what was not on. And what was in the report
2 is true, and I just want to make sure from our
3 side that we do have that for the record, that
4 I was able to concur with their findings.

5 MICHAEL GARDNER: Thank you.

6 Any response? And I'm particularly
7 interested in the issue of a so-called noisy
8 air conditioner and the responsibility for
9 that, the whistle, and another response to the
10 comments and complaints that you've heard
11 along with us.

12 ANDREA BOYER: The whistle issue has
13 been fixed by the way.

14 PAUL FANNING: So the whistle issue
15 has been fixed?

16 MR. GARDNER: So tell us about the
17 whistle issue a little bit, if you could,
18 since it's been a sort source of concern
19 apparently about how long it went on before
20 there was any action taken.

21 PAUL FANNING: Sure.

1 MICHAEL GARDNER: Which presumably
2 relates in part to the good faith issue.

3 SAM WILD: Sam Wild, facility
4 director.

5 The issue from the noise and the
6 whistling they are talking about with the
7 venting system off the liquid nitrogen tank.
8 The jacket on this system has to vent for the
9 system to work properly and to maintain proper
10 pressure.

11 What we have done is we brought in
12 the company that installed the tank. We have
13 asked for their input. And it turns out to be
14 a high pressure liquid nitrogen tank. And
15 we've added a regulator to the line, which
16 would bring that pressure down and not allow
17 it to vent the way it was venting. That was
18 our solution.

19 PAUL FANNING: Other items, there has
20 been some comments that we move the equipment
21 over to the Hampshire Street side, which I

1 just wanted to point out isn't the case.

2 We've either removed the equipment or
3 in some cases moved it back towards the CDM
4 building, and in one case, moved it in the
5 middle of some sound attenuation, but not over
6 to the Hampshire Street side.

7 And Novartis is not a majority
8 shareholder of Idenix. I just want to point
9 that out.

10 Other items, I think in terms of the
11 efforts that we've made, good faith-wise, and
12 I know they may have gotten lost a little bit,
13 but we've not actually done as-found readings.

14 We have intentionally turned all our
15 equipment on to be the loudest it possibly
16 could. And in some cases, we had a discussion
17 with our consultants about whether we were
18 actually overstating because it would be an
19 extremely warm night.

20 So I just want to reinforce that
21 those readings are very much just readings

1 that you will not typically find. And if you
2 actually go out on a given night, they are
3 going to be lower because a number of those
4 units will not be firing except on a really
5 warm evening.

6 Secondly, the idea of moving some of
7 the equipment -- we've talked a lot about
8 other options. Moving equipment inside is
9 possible to an extent but not completely.
10 There is certain units that you need to have
11 on the roof. And our consultants can talk
12 more about why you need to have air, you need
13 to have the supply, so there's certain fans
14 that actually need to be on the roof.

15 There are also certain requirements
16 from the chemical storage perspective that we
17 don't think from a safety perspective are not
18 willing to necessarily let the temperature
19 rise too high because it could create safety
20 issues and some violations in regard to
21 chemical storage.

1 So just by the nature of having some
2 chemistry and biological operations, we need
3 to have those units operating. And in some
4 cases, they have to be on the roof.

5 I also want to point out that we
6 aren't the first pharmaceutical company to be
7 there. There was there a pharmaceutical
8 company before Idenix, so it was a laboratory
9 operation when we moved in there in 2004.

10 We will continue to look at options
11 and continue to do things. I don't want to
12 leave the Commission with the notion that we
13 won't continue to explore, but as recently as
14 today we talked about things of what else
15 could we do. And to the extent that there are
16 some things that will help, we'll do that.

17 I answered a question earlier that
18 are there capital improvements that will
19 guarantee to get us in compliance.

20 MR. GARDNER: I never asked you a
21 question about guaranteeing. I asked you

1 about whether there were capital improvements
2 that could -- capital changes that could make
3 improvements in the situation, I think.

4 PAUL FANNING: Okay. Then let me
5 tell you that there are, there is always
6 things that we could continue to do; whether
7 they would improve it or not, I don't know.

8 In other words, are there certain
9 capital things -- we put VFDs, for example,
10 and didn't get much of an improvement.

11 In fact, some of these things are
12 very difficult to say whether they gained us
13 improvement. Could we put more VFDs on? Yes
14 we could do that.

15 MICHAEL GARDNER: Could you explain
16 what a VFD is?

17 PAUL FANNING: Yes. Variable
18 frequency drive. So it may take some of
19 the -- it can take some of the whining out of
20 a motor.

21 And also increasing wiring, we've

1 done as well. I didn't mention that, but that
2 was something we did in 2009, but didn't get
3 much of a pick-up. So we've explored a lot of
4 things.

5 And so there are some things that we
6 can still continue to do, but there are -- the
7 fact of the matter is that the wall is still
8 the best option. And that was something that
9 was, I'll say, discouraged or we decided that
10 really wasn't viable. But it is possible that
11 we can go back revisit that.

12 In the absence of a wall, we'll
13 continue to look at other things, but they are
14 incremental. They ones we talked about as
15 recently as today wouldn't get us to 50, let's
16 put that it way.

17 MICHAEL GARDNER: Could you talk a
18 little bit more about the so-called noisy air
19 conditioner?

20 PAUL FANNING: The loudest unit I
21 mentioned earlier RTU 12, that was replaced.

1 That was the oldest and loudest piece of
2 equipment, and we actually did replace that.
3 Moving it to a new location, a much quieter
4 unit behind, a clear story.

5 The remaining units, there are some
6 older exhaust fans, that is true. But air
7 conditioning units, I have to look at the age
8 of them. But RTU 12 is the one that was 20
9 years old. The others, as far as I know, are
10 not anywhere near as old as that.

11 MR. GARDNER: Well, you will recall
12 that you and Mr. Linquist had somewhat of a
13 less than illuminating dialogue about whether
14 there is a particular unit. And you said you
15 thought you knew which one he was referring
16 to. He was implying it wasn't yours, it was
17 the landlord's, and that it was a major
18 contributor to the noise.

19 I'm trying to find out what
20 information you can provide us about the
21 matter that was the subject of that colloquy.

1 PAUL FANNING: Sure. I believe that
2 one is a unit we call No. 4. And that was one
3 of the ones that we've been talking about
4 recently.

5 There are some fans at the top of
6 that. We talked about putting some shielding
7 around the top, will that gain us three DB?
8 No. I don't think it will even get us one DB.
9 But that is something we have talked about
10 recently. If it's the same unit that
11 Mr. Linguist is talking about. It is either
12 that or another unit, I'd have to clarify
13 which exact unit. But I think when I asked if
14 it's the deck level, I think it is unit four.

15 MICHAEL GARDNER: Okay. Other
16 questions?

17 GERARD MAHONEY: One quick question.
18 To what extent has the landlord participated
19 or contributed to solving this problem?

20 PAUL FANNING: Well, we have -- we
21 update them. As far as the remediation

1 efforts, we've been spearheading and taking,
2 I'd say, the lead to date. But they are
3 involved.

4 In fact, our lead, we require
5 approval for certain things to happen on the
6 roof, so --

7 RICHARD JOHNSTON: The leaves test.

8 PAUL FANNING: Right. So we'll go
9 to our landlord to make sure that -- for
10 example, cleaning up that corner and removing
11 the RTUs and removing the exhaust fans -- or
12 moving those exhaust fans, because we did all
13 those things recently. And we had to go to
14 MetLife for their approval before we did it.
15 So they are clearly involved.

16 GERARD MAHONEY: But not really like
17 a -- I wouldn't characterize that as much of a
18 hands-on approach; is that correct? Would you
19 agree with that?

20 PAUL FANNING: I would say that we
21 are definitely in the lead on the

1 implementation, yes, or have been so far.

2 GERARD MAHONEY: Thank you.

3 MICHAEL GARDNER: Anything further
4 from Idenix?

5 RICHARD JOHNSTON: Yes. As
6 commissioners who have been here previously
7 know, this issue has gone on for a number of
8 years. And the company went through a number
9 of changes in order to get the variance in
10 2010.

11 The Commission set certain
12 conditions, based upon the fact that it came
13 to a conclusion that the balance of hardships
14 favored granting the variance to Idenix.

15 Idenix has lived up to the terms and
16 conditions of the variance that was granted
17 last year, there hasn't been any suggestion
18 that things have really gotten worse.
19 Certainly the formal record for the Commission
20 in terms of complaints does not register any
21 significant increase in problems over the last

1 year.

2 So I would suggest that the balance
3 of hardships remains the same as it was last
4 year or, if anything, favors Idenix because of
5 the fact that they have made improvements over
6 the last year in compliance with what the
7 Commission asked them to do.

8 As you've heard, Idenix is not
9 intending to remain static about this. If the
10 variance is granted, as Mr. Fanning has said,
11 Idenix will continue to look at other
12 possibilities. To the extent that people have
13 suggestions, Idenix is certainly willing to
14 listen to those suggestions.

15 I think a large portion of what we
16 all hear from the neighborhood is a sense of
17 frustration about things that have happened to
18 the neighborhood that make it something other
19 than a residential neighborhood.

20 But it wasn't Idenix who zoned that
21 building for laboratory space. It wasn't

1 Idenix who has approved other buildings to
2 come into the neighborhood, whether it be the
3 immediate neighborhood or in the more distant
4 East Cambridge vicinity.

5 And all of the things in the
6 neighborhood contribute to make the sound
7 levels more difficult.

8 And there is been a lot of discussion
9 about whether the background noises should be
10 separated out from what Idenix does. And
11 maybe that solution will not come tonight or
12 tomorrow. But as Mr. Berens said, when Boston
13 confronted that issue, they recognized that
14 people had to be given a certain liberty to
15 live up to the amount allowed by the noise
16 ordinance.

17 And if you take the arguments here to
18 the logical conclusion, assuming as Mr. Berens
19 has shown, that the background levels are at
20 or above 50 already in that area, it means
21 that if someone wants to come in and turn on

1 their air conditioner on the third floor, for
2 whatever reason, they are in violation because
3 the ambient right around them is over 50.
4 Even if all they add is a half a decibel or a
5 quarter decibel, they are in violation ever
6 much as Idenix would be without variance.

7 And certainly I don't think the
8 people are advocating that they not be allowed
9 to put on air conditioners because of that
10 theoretical possibility.

11 And the same applies to Idenix.
12 Idenix has obtained the variance. Idenix has
13 done what it can as far to be able to keep the
14 decibel level as low as possible and will
15 continue to think about and implement where
16 possible.

17 But Idenix should not be made the
18 scapegoat for other things by way of
19 developments that are happening, not only all
20 over East Cambridge, but in large portions of
21 metropolitan Boston.

1 So in conclusion, I would submit that
2 for all the reasons that the Commission voted
3 last year to grant the variance for one year,
4 the Commission should grant the variance or
5 grant an extension of the variance for another
6 year.

7 MICHAEL GARDNER: Okay. I believe
8 that Mr. Linquist has indicated a request to
9 respond.

10 PETER LINQUIST: I would just like to
11 say that this was not a flawless year. Two
12 months after they were granted the variance,
13 they took the curtains off and they did not
14 replace them until April. So they took them
15 off in September, and did not replace them
16 until April.

17 Ms. Boyer, did I call you in October
18 of 2010?

19 ANDREA BOYER: Yes, you did. There
20 was actually a letter sent out that I can give
21 you a copy of.

1 PETER LINQUIST: And when I called
2 you, did I ask you to please come and take
3 readings?

4 ANDREA BOYER: You may have.

5 PETER LINQUIST: And the other think
6 I asked at that time is that I would like a
7 hearing about this after the readings are
8 taken.

9 ANDREA BOYER: And that was addressed
10 in the letter that Elizabeth Lint wrote to you
11 also, about the explanation about the
12 curtains, and then the weather.

13 And there was a warning letter sent
14 to Idenix stating not to let that happen
15 again, and the curtain issue be addressed
16 also, but making sure it's not removed again.

17 PETER LINQUIST: So my point then is
18 that Council was wrong. It was not an
19 event-less year with perfect performance on
20 the part of Idenix. They chose to take things
21 down, they chose not to put them back up for

1 seven months. Thank you.

2 MICHAEL GARDNER: Thank you.

3 Despite the lateness of the hour and
4 given the importance of the hour, I'll give
5 Idenix, if you want, the chance to respond to
6 the issue of the curtains and the hurricane.

7 PAUL FANNING: It is true, we didn't
8 execute 1/00 percent on that one. The
9 hurricane was coming, we took the bottoms off
10 to allow for air flow to go underneath. And
11 we got the letter from Mrs. Lint and we
12 responded that it wouldn't happen again.

13 MICHAEL GARDNER: I guess when it
14 became clear that the hurricane wasn't going
15 to arrive, the explanation as to why the
16 curtains weren't put back in the original
17 status? Was it a matter of money? Management
18 slippage?

19 PAUL FANNING: No. Our units weren't
20 going on -- it was more the temperature at
21 that point, our units weren't kicking on.

1 MICHAEL GARDNER: Is it the normal
2 plan for the curtains to come down for the
3 winter season?

4 PAUL FANNING: Yes, that's correct.

5 MR. GARDNER: And for both snow
6 maintenance on the protection of the curtains
7 or the fact that they don't need the air
8 conditioning? Just educate up a little bit,
9 please.

10 PAUL FANNING: It is both. You don't
11 want to have snow. It is basically to allow
12 for air floor to allow for poor weather in the
13 winter conditions and you don't need them.

14 So we constructed the sound curtains
15 so that they can be taken down reasonably
16 quickly if there is, let's say, a hurricane.
17 To get them up and get them back down.

18 And then from, let's say, October
19 through April, our intention is we don't need
20 them so we are going to take the bottom part
21 off to allow for air flow or snow to go

1 underneath them.

2 MICHAEL GARDNER: Thank you.

3 And I'd be interested to know whether
4 the Commissioners will be willing to grant a
5 temporary variance until the time of our
6 decision hearing which I believe is July 7th;
7 is that right?

8 ELIZABETH LINT: It is July 7th. It
9 is July 7th and I was just flipping through
10 paperwork, and I think the original variance
11 was July 7th. So it would still be in effect
12 until that date.

13 MICHAEL GARDNER: If we don't need to
14 extend the temporary variance until July 7th,
15 is there any interest in continuing the matter
16 until the July 7th decision hearing?

17 ROBERT HAAS: I would vote for a
18 continue, just under advisement --

19 ANDREA BOYER: Excuse me. It is July
20 1st, sir.

21 MICHAEL GARDNER: So I'm interested

1 in whether or not the Commissioners are
2 willing to extend a temporary -- to make a
3 temporary extension of the variance until July
4 the 7th, and take the matter under advisement
5 until that date?

6 ROBERT HAAS: Seconded.

7 MICHAEL GARDNER: So there has been a
8 motion made and seconded to grant a temporary
9 extension of the variance until the decision
10 hearing on July 7th, and to take the matter
11 generally under advisement until that decision
12 hearing on July 7th.

13 All those in favor of that motion
14 signify by saying "aye."

15 ROBERT HAAS: Aye.

16 GERARD MAHONEY: Aye.

17 MICHAEL GARDNER: None opposed, so
18 the motion carries. The variance will be
19 extended until July 7th and we'll take the
20 matter up at that point.

21 I thank all of you for your

1 participation and patience and your forceful
2 advocacy this evening.

3 At this point, we'd like to take a
4 brief recess of five minutes. And so without
5 objection, we'll recess for five minutes. And
6 we'll ask those of you who are waiting to
7 please extend your patience.

8 (Brief recess at 8:11 p.m.)

9
10 (Back on the record)

11 * * * * *

12 ELIZABETH LINT: Okay.

13 Informational matter continued from
14 July 14, 2011, El Coloso Market. Hung Pham,
15 property owner at 102 Columbia Street. Due to
16 complaints received by the License Commission
17 alleged that the machinery on the property is
18 in violation of the Cambridge City Noise
19 Ordinance.

20 MICHAEL GARDNER: And I wonder,
21 Ms. Boyer, if can you give us an update on the

1 developments since we last met.

2 ANDREA BOYER: Yes, I can. At our
3 last meeting it was brought to the attention
4 that maybe when one unit was moved that
5 another unit that was also existing, may also
6 still be a violation.

7 And I went maybe a day or two later
8 after this hearing, and had the one unit
9 turned off and got readings of the unit that
10 would remain.

11 It did show that it would be
12 problematic. It was on the roof line, so I
13 wasn't able to help the lot line, but at the
14 roof line, it was a violation.

15 At that time, it was recommended that
16 one was going to be removed so that there
17 would be units downstairs.

18 So the one next to it was removed and
19 put at ground level. And then the one that
20 was left, that was loud, which was an air
21 conditioning unit, that really had nothing to

1 do with the two noise violations; that was
2 boxed just based on a recommendation to take
3 away all the noise.

4 So right now, and according to the
5 neighbors, there is not a lot of sound, just
6 like maybe a normal air conditioning unit that
7 is left.

8 MICHAEL GARDNER: This says, "moved
9 to ground level" and this one says "removed."
10 So there is two units, one is just gone, it
11 doesn't exist any more, and the other one was
12 moved to the ground level and a box was placed
13 around an air conditioning unit.

14 ANDREA BOYER: Yes. And then there's
15 the third one, removed, there's one way back.

16 MICHAEL GARDNER: It says, "B" --

17 ANDREA BOYER: It says "boxed." It
18 was boxed. And then there was one that was to
19 the far right of those two, the one that was
20 moved to ground level, but that's not plugged
21 in at all, it doesn't work. It's just not on.

1 The last situation that we have is
2 the one that was moved to ground level, that's
3 in an alcove. And no one has complained yet
4 about the noise in the back, but I am
5 requesting that that is just boxed like the
6 other one so that there will be no problems in
7 the future.

8 Mr. Pham is not here today. I will
9 call him tomorrow or the next day and ask him
10 to have that done or through the owner.

11 And then I would like to recommend
12 that -- this is on the last, agenda in July,
13 but if it is boxed by then then we can remove
14 it and no one would have to show up. We've
15 done that in the past in certain cases.

16 MICHAEL GARDNER: Do you understand
17 this, sir?

18 MR. PHAM: Yes.

19 MICHAEL GARDNER: And is this
20 satisfactory to you?

21 MR. PHAM: Yes.

1 MICHAEL GARDNER: And are there
2 currently any outstanding complaints?

3 ANDREA BOYER: I got an e-mail saying
4 that it's been good, there is not as much
5 noise.

6 MICHAEL GARDNER: So your
7 recommendation is to continue the matter
8 generally until the last meeting in July?

9 ANDREA BOYER: Yes.

10 MICHAEL GARDNER: To give the
11 opportunity for the boxing of the unit in the
12 alcove on the ground level?

13 ANDREA BOYER: Correct. And I
14 haven't received any complaints about that
15 one, but if it's a violation, if someone were
16 to complain, but it could be just better to
17 try to address it all one at a time.

18 MICHAEL GARDNER: Before we take
19 action on this, are there any members of the
20 public who would like to be heard on this
21 matter?

1 Seeing none, the pleasure of the
2 Commission?

3 ROBERT HAAS: We have it on already.

4 MICHAEL GARDNER: Yes. Well, I'd be
5 interested in an endorsement of this,
6 Ms. Boyer's plan, unless you feel that that is
7 too micromanaging?

8 ROBERT HAAS: Will that resolve --

9 ANDREA BOYER: Yes, it should.

10 ROBERT HAAS: Then I would make a
11 motion to complete the work in time for the
12 scheduled hearing, and then we can review it
13 at that time and decide whether or not the
14 noise is still a problem. *

15 ANDREA BOYER: And if it doesn't
16 exist any more, we can take it off.

17 MICHAEL GARDNER: The motion having
18 been made?

19 ROBERT HAAS: Seconded.

20 MICHAEL GARDNER: The motion made and
21 seconded to continue the matter to allow the

1 additional improvements.

2 All those in favor signify by saying
3 aye?

4 ROBERT HAAS: Aye.

5 GERARD MAHONEY: Aye.

6 MICHAEL GARDNER: None opposed, so
7 we'll procedure accordingly.

8 Thank you for your cooperation, sir,
9 and the steps you've taken to deal with this
10 serious issue.

11 MR. PHAM: Thank you.

12 * * * * *

13 ELIZABETH LINT: Application for
14 Thelonius Monkfish, Ltd, Jamme K. Chantler,
15 manager, holder of a common victualer license
16 at 524 Massachusetts Avenue, has applied for a
17 new wine and malt beverages as a restaurant
18 license at said address. This address is
19 located in Cap No. 3.

20 MICHAEL GARDNER: Good evening. If
21 you would both please state your names for the

1 record and spell them.

2 Bernard Goldberg, attorney for the
3 applicant, 620 Massachusetts Avenue,
4 Cambridge.

5 JAMME CHANTLER: My first name is
6 Jamme, J-a-m-m-e. My last name is Chantler,
7 C-H-A-N-T-L-E-R. I'm the general manager of
8 Thelonius Monkfish, Ltd.

9 BERNARD GOLDBERG: If I may amplify
10 on his position, he is the president,
11 treasurer, clerk, and director of the
12 corporation which is also Thelonius Monkfish,
13 Ltd., at 524 Massachusetts Avenue in
14 Cambridge.

15 And it's a comparatively new
16 restaurant. They initiated the operation in
17 February of 2011.

18 So far as Mr. Chantler is concerned,
19 he has a great deal of experience in
20 restaurants situated in Cambridge. He is the
21 president and other offices of the Pepper Sky,

1 which is on Pearl Street in Cambridge, and he
2 has operated that for six years successfully.

3 And he now has put all of his efforts
4 into the new restaurant, Thelonius Monkfish,
5 Ltd.

6 He made something of it, and I don't
7 want to belabor the point, and the hour is
8 late, but I thought it was very poetic. He
9 described his restaurant as a jazz-themed
10 restaurant, as you can understand with the
11 name, which is made up of a sushi and Asian
12 fusion kitchen.

13 I have menus here. The smaller one
14 is for a sushi menu, and the larger one is for
15 the Japanese-Thai fusion type restaurant. And
16 I will give those to Ms. Lint and she can pass
17 those out to you for your review.

18 As far as the restaurant is
19 concerned, I'm going to read quickly what he
20 described the restaurant as.

21 The seating capacity is 49 and the

1 interior features reclaim Old Grove oak, old
2 barn board, plush brown leather chairs.

3 Owner Chantler believes that great
4 food and jazz are characterized by spontaneity
5 and joy. Nothing warms the paddle like an
6 explosion of flavor or the heart like a burst
7 of song. He and chef owner, are passionate
8 about jazz and ethnic flavors, and that is why
9 they branded the unique take on sushi and
10 Asian specialties.

11 We love to jam on Asian culinary
12 themes. Our menu reflects both our respect
13 for gusto and tradition and our sense of play
14 and innovation.

15 Being a jazz-themed sushi bar, we can
16 honestly say our fish is so fresh it blows its
17 own horn.

18 And that's the way he looks at his
19 restaurant and operates that to the taste and
20 delight of a lot of his customers. As a
21 matter of fact, I have here, and I'll give

1 this to Ms. Lint for the file, the undersigned
2 are in favor of the beer and wine license.
3 There are over 600 names here, and I checked
4 off for review all of those that are Cambridge
5 residents. And there are about 60 to 70
6 percent of Cambridge residents which he
7 gathered over the past two weeks. So I'll
8 leave that in the file.

9 In addition, I might add that Michael
10 Besanti of Four Burgers, which is a most
11 recent restaurant in Central Square, has a
12 letter here in favor of it.

13 And, in addition, I have a motion by
14 the City Council of Cambridge with a
15 resolution to accepting the new restaurant,
16 and it's signed by eight city councillors in
17 connection with the new restaurant of
18 Thelonius Monkfish. And that is to be put in
19 the file.

20 I also have a certificate of merit
21 from the Historical Society for its

1 achievement in the outstanding renovation of a
2 commercial façade.

3 And, in addition, Mr. Chantler is a
4 member of the Chamber of Commerce, is also a
5 member of Central Square Community
6 Development -- not community development, but
7 the business association -- and has
8 participated in community endeavors with
9 regard to his product line.

10 As far as the Cambridge Rindge and
11 Latin School are concerned, I think he
12 indicated to me that the field down in -- off
13 of Western Avenue was a site for a health
14 dedication and basketball playing, and he
15 provided food there. So he is involved in
16 community endeavors and wants to continue with
17 that activity.

18 I think it's a wonderful restaurant,
19 people enjoy it, and I think that he would be
20 in a noncompetitive basis if he were not given
21 the opportunity to compete with other

1 restaurants in the neighborhood if he did not
2 get a beer and wine license.

3 So I advocate that the Board look
4 kindly on his application and give him the
5 beer and wine license so he can continue to
6 serve the citizens of Cambridge as well as the
7 community itself. Thank you.

8 MICHAEL GARDNER: Does the Pepper Sky
9 have a beer and wine license?

10 BERNARD GOLDBERG: No, they do not.

11 MICHAEL GARDNER: And so what is your
12 experience with operating, managing, or being
13 involved in a restaurant serving beer and
14 wine?

15 JAMME CHANTLER: I managed a
16 restaurant called Thai Sweet Basil in Andover,
17 Massachusetts, for two and a half years, and
18 we had beer and wine there.

19 And as far as managing, that is
20 pretty much it. As far as working with beer
21 and wine, I was a waiter for many years as

1 well.

2 ROBERT HAAS: When you were at the
3 other restaurant, was the liquor license in
4 your name when you had the restaurant.

5 JAMME CHANTLER: No.

6 MICHAEL GARDNER: I would be
7 interested in the process by which you gained
8 all those signatures. Were they customers?
9 Tell us how that happened.

10 JAMME CHANTLER: Well, just people
11 who had finished eating, when they were
12 leaving and we were saying thank you to them
13 or whatever, and we said, "Would you like to
14 support us in getting a beer and wine
15 license?" and they said "Yes," and then they
16 signed it. Essentially that's how it went.

17 MICHAEL GARDNER: And I'm not sure I
18 understood the verb "accepting" the
19 restaurant. I'm not sure what action the City
20 Council actually took.

21 BERNARD GOLDBERG: That was a

1 resolution. I think you have the
2 resolution --

3 ELIZABETH LINT: Yes. You just gave
4 me the letter. You didn't give me the
5 resolution.

6 GERARD MAHONEY: What is the size of
7 your staff, your current wait staff, or number
8 of employees?

9 JAMME CHANTLER: The wait staff is
10 four.

11 BERNARD GOLDBERG: And the cooking
12 staff is how many.

13 JAMME CHANTLER: Four.

14 BERNARD GOLDBERG: Four and four.
15 And the capacity is 49 seats.

16 MICHAEL GARDNER: The counsel action
17 was to go on record welcoming Thelonius
18 Monkfish to Cambridge and wishing them well as
19 they expand and prosper.

20 BERNARD GOLDBERG: Thank you.

21 I think, Ms. Lint, do you have any

1 support from --

2 ELIZABETH LINT: I do. I have a
3 letter from Mayor Marr, and he says that,
4 "Since opening in February 2011, Thelonius
5 Monkfish has been a welcome addition to
6 Central Square and the type of establishment
7 we want to encourage in the Square. Thelonius
8 Monkfish has added to the vibrancy in the
9 community and I hope you will favorably view
10 this addition."

11 I also have a letter from the
12 Cambridge Chamber of Commerce, also in support
13 of the application, from Kelly Thompson Clark.
14 She says, "The restaurant looks to add much
15 needed neighborhood establishment that will
16 offer creative and affordable cuisine. A beer
17 and wine license will add to their customer
18 service options and add a boost of vitality to
19 the nightlife of Central Square.

20 As you know, over the last couple of
21 years it has been challenging to entice new

1 businesses into the Square. The economy has
2 made it difficult for businesses to expand or
3 locate to the area. They are thrilled to see
4 things picking up and the fact that a new
5 eating establishment will go into Central
6 Square is great news for the community."

7 And I have a letter from John
8 Clifford and Council, also in support of the
9 application as well as Paul Barron.

10 BERNARD GOLDBERG: I might add that
11 Councilor Chung has been out to the restaurant
12 on several different occasions and has ordered
13 take-out food, according to Mr. Chantler. So
14 that could be, not a verbal report or written
15 report, but certainly noticed.

16 MICHAEL GARDNER: Thank you. Any
17 other questions?

18 ROBERT HAAS: I have no questions.

19 MICHAEL GARDNER: So what challenges
20 do you see from being the manager of record
21 for the first time in handling beer and wine?

1 JAMME CHANTLER: Well, I would want
2 to make sure that the waiters follow correct
3 protocol. So I will hire someone to come and
4 teach safety with using alcohol. For example,
5 not giving more than a certain amount of
6 alcohol, and knowing the symptoms or signs of
7 someone who is drunk or whatever, and making
8 sure that we don't add to that problem in the
9 community.

10 BERNARD GOLDBERG: And he is also
11 concerned about the age of underage drinking.

12 MR. CHANTLER: Yes.

13 MICHAEL GARDNER: Any members of the
14 public who would like to be heard on this
15 matter?

16 DANIEL GOLDSTEIN: My name is Daniel
17 Goldstein and I'm the owner of the Clear
18 Conscious Cafe in Central Square and the vice
19 president of the Central Square Business
20 Association.

21 And I think that having Jamme

1 Chantler in Thelonius Monkfish in Central
2 Square is positive, and he is a responsible
3 community member, and I would be an advocate
4 to have him have a beer and wine license.

5 MICHAEL GARDNER: Any complaints in
6 the operation of Pepper Sky over the years?

7 ELIZABETH LINT: Not that I'm aware
8 of.

9 MICHAEL GARDNER: That you are aware
10 of, sir?

11 JAMME CHANTLER: No.

12 BERNARD GOLDBERG: Neither am I.

13 MICHAEL GARDNER: Any complaints in
14 the operation of this restaurant since it
15 opened in February?

16 ELIZABETH LINT: No.

17 (Discussion off the record.)

18 MICHAEL GARDNER: Are you, sir, aware
19 of the cap criteria and will you address each
20 of those points?

21 BERNARD GOLDBERG: Yes, I am. I

1 think the need would be for the -- if he
2 doesn't get that license, he is in a very
3 competitive situation because of all of the
4 licenses in Central Square. And support --
5 the list that I have here of 600 some odd
6 signatories, and the support of the City
7 Council and the community residents, I think
8 indicate that the support is there. And the
9 need for support and lack of harm, certainly
10 lack of harm -- I don't see any harm coming
11 from operating a sushi and Japanese and Thai
12 type of a restaurant.

13 MICHAEL GARDNER: And this is in the
14 cap area, right? And tell us about any
15 efforts to purchase an existing license.

16 BERNARD GOLDBERG: Well, to my
17 knowledge, there are no existing beer and wine
18 licenses in Central Square that he could
19 purchase. His expenditure was great in the
20 sense that he had an open space that was
21 formerly a Taylor Cleanser type of an

1 operation, and there was an empty store and he
2 spent a great deal of money with regard to
3 restoring it and opening it up with new
4 furnishings and the like.

5 And to purchase a beer and wine
6 license, of which there are none, would be
7 most expensive for him and, there being none,
8 would be futile.

9 MICHAEL GARDNER: When you say there
10 are none, do you mean that there are none for
11 sale?

12 MR. GOLDBERG: None that I'm aware
13 of.

14 MICHAEL GARDNER: What type of
15 license are you seeking?

16 BERNARD GOLDBERG: A beer and wine
17 license.

18 MR. GARDNER: No value, no transfer.

19 BERNARD GOLDBERG: Yes. Thank you.

20 MICHAEL GARDNER: Are you familiar
21 with the type of training required by the City

1 of Cambridge to behold a beer and wine license
2 and to serve alcohol?

3 JAMME CHANTLER: No.

4 ELIZABETH LINT: Also 21 Proof
5 training. We'll send you the information that
6 will be required. They'll come to you.

7 MICHAEL GARDNER: Well, that is the
8 kind of thing -- it would make me feel more
9 confident if you knew what you are supposed to
10 do in advance of getting the license, there is
11 a certain training program that the City has
12 and you're enthusiastic about taking it.

13 BERNARD GOLDBERG: It's a good
14 comment because he would be very enthusiastic
15 with regard to taking whatever is necessary to
16 make him sure that he is operating the
17 restaurant properly with a beer and wine
18 license.

19 MICHAEL GARDNER: Any other
20 questions?

21 GERARD MAHONEY: I have none.

1 ROBERT HAAS: No.

2 MICHAEL GARDNER: The pleasure of the
3 Commission?

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

6 GERARD MAHONEY: Seconded.

7 ELIZABETH LINT: No value, no harm.

8 MICHAEL GARDNER: So there has been a
9 motion made and seconded to approve a no
10 value/no transfer beer and wine license for
11 these premises with you as the manager,
12 provided that you take the 21 Proof training
13 that Cambridge provides.

14 ROBERT HAAS: That would include your
15 wait staff as well.

16 JAMME CHANTLER: Sure.

17 MICHAEL GARDNER: The motion having
18 been made and seconded, all those in favor
19 signify by saying aye?

20 ROBERT HAAS: Aye.

21 GERARD MAHONEY: Aye.

1 MICHAEL GARDNER: So it is
2 conditionally granted and we wish you luck.

3 ELIZABETH LINT: Do you want a
4 six-month review on this?

5 MICHAEL GARDNER: Ms. Lint, having
6 advised us of our typical plan to do a
7 six-month review -- I think -- let's take
8 administrative notice of that and schedule it
9 for a review in December.

10 BERNARD GOLDBERG: Okay.

11 JAMME CHANTLER: Thank you.

12 ROBERT HAAS: Has Mr. Goldberg
13 explained to your client the implications of
14 your "no value, no harm" and no transfer --
15 you can't use it for any pledge or anything
16 like that?

17 BERNARD GOLDBERG: I already did.
18 Thank you.

19 * * * * *

20 ELIZABETH LINT: Application for
21 Handi Indian Restaurant, Incorporated, doing

1 business as Harvest of India. Avtar Singh,
2 Manager, holder of a common victualer license
3 at 1001 Massachusetts Avenue, has applied for
4 a new wine and malt beverages as a restaurant
5 license at said address. This address is
6 located at Cap No. 2.

7 MICHAEL GARDNER: Please state your
8 name for the record, and spell it and also
9 your address.

10 WILLIAM GOLDBERG: William Goldberg,
11 attorney for Handi Indian Restaurant, 620
12 Massachusetts Avenue in Cambridge,
13 Massachusetts.

14 AVTAR SINGH: My name is Avtar Singh,
15 and I'm the president of Handi Restaurant.

16 MICHAEL GARDNER: Tell us about your
17 plans and tell us about the history of your
18 restaurant, I guess.

19 WILLIAM GOLDBERG: For purposes of
20 brevity, if the stenographer can read back
21 what the prior attorney said --

1 (Off the record.)

2 This is a comparatively new
3 operation. It was opened approximately almost
4 a year ago. Mr. Singh has a restaurant now
5 existing in Central Square called Shalimar,
6 and he has owned that restaurant for a number
7 of years. There has been no violations with
8 respect to the operation of his restaurant.

9 He was assistant manager of that
10 restaurant. And it's a family-owned
11 restaurant. And as the opportunity came up
12 for a space that was available at 1001
13 Massachusetts Avenue, there was an inclination
14 by his son, who was in school, that he would
15 like to continue and further the same kind of
16 an operation and serve the type of food that
17 is being served at Shalimar, which is an
18 Indian restaurant, Indian food.

19 And consequently there was a space
20 available and so he entered into a long-term
21 lease for the premises. He remodeled the

1 promises. It cost him approximately \$125,000.

2 If you had the opportunity to go see
3 the premises, you would note the newness in
4 the picturesque type of restaurant that it is.

5 The restaurant is in Area 2. And
6 prior to making the application for the
7 no-value license before your Board, Mr. Singh
8 made due diligence with respect to determining
9 whether or not there was any availability of a
10 license in Area 2, which is Harvard Square.

11 And he made inquiry of the Harvard Square
12 Business Association, he made inquiry of the
13 Cambridge License Commission, and there was no
14 availability of any malt and wine licenses
15 available.

16 And, to my knowledge, there are none
17 available, and to my additional knowledge, if
18 there was one available it would be very
19 expensive to purchase that kind of a license.

20 And, as the prior speaker said, it is
21 an economic disadvantage not to have a malt

1 and wine or beer license.

2 I do have a list of signatures of
3 persons who have been at the restaurant, and
4 I'll give that to Ms. Lint. It's not as many
5 as the prior speaker had for some reason, but
6 it is maybe about 100 or 200 signatures. And
7 the persons that have signed it basically live
8 in and around the area, Dana Street, Ellery
9 Street, Putnam, and the surrounding
10 environment which is supporting this
11 application.

12 Mr. Singh has been tip trained with
13 respect to being assistant manager at the
14 Shalimar Restaurant, he is familiar with the
15 laws pertaining to the sale of alcohol to
16 minors, and regarding the other requirements
17 of that that will allow the sale of alcohol
18 and deny the sale of alcohol.

19 We are dealing here with a history of
20 where there is not availability of any of
21 these beer and wine licenses. And Mr. Singh,

1 I've explained to him that in the event that
2 the License Commission granted a no-value
3 license, what that means is that he has no
4 right to sell that license; if he were to sell
5 the restaurant, it's not part of the business
6 sale.

7 In talking with -- I talked with
8 Ms. Chilson of Harvard Square with respect to
9 this matter, and she could not be here, she
10 had a prior engagement, but she indicated that
11 she was supportive. And she also told me that
12 the pursuit by the Cambridge License
13 Commission in granting non-value licenses is
14 well welcomed in the community.

15 Interestingly, how Cambridge has
16 become such a mecca for restaurants of all
17 kinds, and the people who frequent these
18 restaurants would like to have a drink to the
19 particular character of the restaurant.

20 And so we seek your approval of a
21 non-value license, and commend the License

1 Commission for this kind of a procedure to
2 grant to people who want to bring restaurant
3 and food character to the city by issuing
4 these non-value licenses. Thank you.

5 MICHAEL GARDNER: Thank you. I'm not
6 exactly sure I have an understanding of your
7 role at Shalimar. You're an assistant
8 manager. Does that mean you are not the
9 manager of record?

10 AVTAR SINGH: My wife, she is the
11 manager.

12 MICHAEL GARDNER: Any complaint
13 history at Shalimar?

14 ELIZABETH LINT: Not at Shalimar.

15 MICHAEL GARDNER: Any prior complaint
16 history with the applicant?

17 ELIZABETH LINT: We did have an issue
18 several months ago. One of my staff members
19 was walking by and there was a sandwich board
20 saying they were a BYOB. I had to have one of
21 the investigators go down and speak to him and

1 he said, "No, oh, no. Mr. Salon (sic) told me
2 I could do that." Well, we all know that
3 would never happened. And then I had to speak
4 to them myself. And if he owns another
5 restaurant that has alcohol, he fully knows
6 that there is no BYOB in Cambridge. So that
7 was a grave concern.

8 And then there is another concern --

9 MICHAEL GARDNER: So would you
10 address, sir, the history of this complaint
11 that Ms. Lint spoke about, including your best
12 memory of when it occurred and why.

13 AVTAR SINGH: I am not on location.
14 I don't know the people. They -- I don't
15 know. I have two weeks on location so I'm not
16 going there. My partner -- my partner, the
17 employee --

18 THE STENOGRAPHER: Excuse me. I
19 cannot understand what he is saying.

20 WILLIAM GOLDBERG: Okay. The
21 employee. My partner -- if I may --

1 MICHAEL GARDNER: Mr. Goldberg, we
2 have a member of the audience who may or may
3 not have information on this point. I'd defer
4 to you.

5 AUDIENCE MEMBER: I'm the chef and --
6 I'm the chef and over there is my manager is
7 off site. So many people you have beer and
8 wine. I'm working inside. He say, I have no
9 beer and wine, but you can bring your wine.
10 That guy is fired. Not anybody inside people
11 with beer and wine and drinking (sic).

12 MICHAEL GARDNER: I'd ask you to
13 identify yourself for the record, state your
14 name and spell it. Will you do that? And
15 I'll try to summarize what I understood your
16 testimony to be.

17 But please identify yourself for the
18 record.

19 VINAY KUMAR: My name is Vinay
20 Kumar.

21 MICHAEL GARDNER: And can you spell

1 it.

2 VINAY KUMAR: V-i-n-a-y, K-u-m-a-r.

3 MICHAEL GARDNER: And did I
4 understand that you are a chef at the
5 restaurant?

6 VINAY KUMAR: Yes, sir.

7 MICHAEL GARDNER: And that you
8 understood that --

9 VINAY KUMAR: He was not there. I'm
10 in the kitchen.

11 MICHAEL GARDNER: And this is
12 Valentine's Day?

13 VINAY KUMAR: Valentine's Day. So
14 many people called: Do you have beer and
15 wine? Like neighborhood people. Do you have
16 beer and wine? Then I'm inside working.

17 There is so many people, he's talking
18 about "do you have beer and wine." He said,
19 "you bring it." I have no beer and wine. You
20 bring it on, beer and wine. This is why --

21 MICHAEL GARDNER: And the person who

1 did that was an assistant manager?

2 VINAY KUMAR: No manager, he was
3 working outside.

4 MICHAEL GARDNER: And he was an
5 employee.

6 VINAY KUMAR: Yes.

7 MICHAEL GARDNER: And he is fired?

8 VINAY KUMAR: No. He was working one
9 day. He is not in there any more. He is not
10 in the city.

11 MICHAEL GARDNER: I'm sorry. I'm
12 still not sure I understand what you're
13 saying.

14 VINAY KUMAR: I'm so many generations
15 in my restaurant. He is hired, he is out. So
16 I had the help wanted and he is hired. He
17 knows about the Indian food, he said. So many
18 people, he said, "Do you have a beer and
19 wine?" I have no beer or wine. I have no
20 beer or wine. Before he is working in a
21 restaurant, he has beer and wine. That's why

1 the people, he bring out. And I say it is not
2 allowed, the beer and wine. He is out
3 (inaudible)

4 MICHAEL GARDNER: So what, if
5 anything, did you learn from that experience?

6 AVTAR SINGH: I never in my
7 experience at Shalimar, I never do, no
8 violations in 25 years, nothing.

9 MICHAEL GARDNER: As the manager here
10 it is really your responsibility to make sure
11 that the staff or anybody who is an agent of
12 yours to also understand those rules, isn't
13 it?

14 AVTAR SINGH: Yes, I understand.

15 MICHAEL GARDNER: Mr. Goldberg, do
16 you have anything else to add?

17 WILLIAM GOLDBERG: I would just add
18 that this information is new to me, and I have
19 haven't had a chance to discuss it. Of
20 course, obviously, it's a serious matter that
21 has been addressed to the License Commission

1 and I don't think it will ever happen again.

2 The manager was not at the restaurant
3 at the time. If I understood what was said by
4 Mr. Kumar, they have -- I've gone by the
5 restaurant and there is a gentleman that was
6 handing out the menus at the restaurant.

7 And I think it may not have been the
8 same gentleman, but I think the gentleman that
9 had been fired took it upon himself to place
10 the sign on that BYOB without the knowledge of
11 this gentleman here.

12 I don't know that there was a
13 complaint made, there probably was a complaint
14 made by the License Commission and it just
15 abated itself. One singular incident that
16 occurred. And I hope that the Commission and
17 the members of the board understand that it
18 was a singular incident and never will happen
19 and hasn't occurred since that time, and act
20 accordingly.

21 ROBERT HAAS: It wasn't referred --

1 are you aware of that, Mr. Goldberg?

2 ELIZABETH LINT: I can't show that to
3 him (indicating).

4 MICHAEL GARDNER: I think you can
5 with permission of the subject.

6 ELIZABETH LINT: Not according to --

7 MICHAEL GARDNER: I'll defer that to
8 you. So I am never really sure how to deal
9 with these in a public forum.

10 There is a report of a matter
11 approximately seven years old, that appears to
12 have resolved itself, but it's a matter of
13 some concern to the Commission.

14 Are you aware of what we are talking
15 about, sir?

16 AVTAR SINGH: Yes.

17 MICHAEL GARDNER: I leave it to you
18 with respect to any information you chose to
19 share about it in this forum.

20 WILLIAM GOLDBERG: The Commissioner
21 wants to know if you are aware of the

1 circumstance that occurred seven years ago,
2 to give him some explanation and detail. Are
3 you aware of it?

4 AVTAR SINGH: Yes, yes.

5 WILLIAM GOLDBERG: Tell the
6 Commissioner, please.

7 ELIZABETH LINT: Generally, we would
8 have him write me a letter.

9 ROBERT HAAS: So write a report and
10 explain the circumstances from your standpoint
11 and some assurances that it's not going to
12 impact your ability to hold a wine and beer
13 license.

14 WILLIAM GOLDBERG: Okay.

15 MICHAEL GARDNER: Anything else you
16 have to add?

17 WILLIAM GOLDBERG: I don't believe
18 so. I think that, in summary, I think that
19 what's been learned here is a lesson and will
20 not be repeated. I don't have any idea what
21 happened seven years ago, but maybe it can be

1 explained by Mr. Singh. So I hope that the
2 board is understanding, and perhaps a letter
3 may clarify some of the issues that was
4 involved approximately seven years ago.

5 ROBERT HAAS: How long did your
6 family own Shalimar?

7 AVTAR SINGH: For 25 years.

8 ROBERT HAAS: How long have you been
9 affiliated --

10 AVTAR SINGH: I started it myself and
11 my son comes in.

12 ROBERT HAAS: Who is the manager of
13 the restaurant now?

14 AVTAR SINGH: Myself and my wife.

15 MICHAEL GARDNER: I thought I
16 understood the wife was the manager.

17 WILLIAM GOLDBERG: The wife is the
18 manager of Shalimar. He is the manager of the
19 new restaurant. They work together as a
20 family.

21 MICHAEL GARDNER: And the son works

1 for you under your license?

2 AVTAR SINGH: Yes.

3 ROBERT HAAS: What kind of a
4 license --

5 AVTAR SINGH: Full liquor license.

6 ROBERT HAAS: Did you buy that
7 license?

8 AVTAR SINGH: When we bought the
9 restaurant, 25 years ago.

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

13 Seeing none, could we perhaps
14 consider a motion to review this, take this
15 matter under advisement until the July 7th
16 hearing?

17 GERARD MAHONEY: So moved.

18 ROBERT HAAS: Which means you would
19 have to file the paperwork prior to July 7th
20 to Ms. Lint.

21 MICHAEL GARDNER: Motion has been

1 made to take this matter under advisement
2 until July 7th. Is there a second?

3 GERARD MAHONEY: Seconded.

4 MICHAEL GARDNER: All those in favor
5 signify by saying aye?

6 GERARD MAHONEY: Aye.

7 ROBERT HASS: Aye.

8 MICHAEL GARDNER: So we'll take the
9 matter under advisement.

10 And I think you can understand what
11 you need to do. And Ms. Lint is available if
12 you need any further clarification.

13 * * * * *

14 ELIZABETH LINT: Application for J.H.
15 Restaurant Cambridge, LLC d/b/a John Harvard's
16 Brew House, Steen Sawyer, Manager, holder of
17 an all alcoholic beverages as a restaurant/
18 brewery license at 33 Dunster Street has
19 applied for a change of manager from Steen
20 Sawyer to Argemiro J. Santa, at said address.

21 MICHAEL GARDNER: Good evening.

1 Please identify yourself first for the record
2 and spelling your name, please.

3 ARGEMIRO SANTA: My name is Argemiro
4 J. Santa, A-R-G-E-M-I-R-O, S-A-N-T-A.

5 KAREN SIMAO: K-A-R-E-N, S-I-M-A-O.
6 McDermott, Susie and Miller.

7 MICHAEL GARDNER: So, if you would,
8 please, tell us what you are proposing.

9 KAREN SIMAO: This is an application
10 for the transfer of manager of record at this
11 particular location as was submitted in the
12 application packet.

13 Mr. Santa does not have any direct
14 experience in alcohol service. That being
15 said, I do think that it is noteworthy to
16 point out the fact that Mr. Santa has been
17 with the company for 20 years. In fact, he is
18 originally from Columbia, came to this
19 country, started as a dishwasher, has moved
20 his way up to head chef. And during the
21 course of that, over several years, has been

1 involved in operations generally but not in a
2 management position.

3 With the passing of Mr. Sawyer, the
4 company has been very pleased with Mr. Santa's
5 ability to follow protocol from the company's
6 perspective, and have given him an opportunity
7 that he is very happy to accept to move up to
8 a management position.

9 He is very well aware of how
10 seriously the company takes alcohol service,
11 as well as this Commission, and the State
12 Board, so he has done some in-house training,
13 and the day-to-day operations he has been
14 involved in.

15 The in-house training on some of that
16 has already occurred. He is scheduled for
17 tips training next week and he is aware of the
18 21 Proof program. He would like to get as
19 much training as possible under his belt.

20 With that being said, he is an
21 incredibly intelligent person, has a very

1 practical sense of what is and is not
2 acceptable, although it was not in this
3 country, I do think it was noteworthy.

4 We've had these conversations that he
5 was a restaurant owner and alcohol service in
6 Columbia. And he very clearly says "I know
7 that the rules are different. And in Columbia
8 it presented its own challenges. For example,
9 they are allowed to carry alcohol on the
10 street, and he has to monitor not letting that
11 happen into his own restaurant.

12 So he has an acute awareness of what
13 the rules are and how you need to work with
14 the situation to make sure that you are
15 complying with them.

16 MICHAEL GARDNER: Thank you.

17 ROBERT HAAS: I'm a little bit
18 surprised, given the nature of what John
19 Harvard's Brew House is, that they would
20 select a person to hold a liquor license who
21 has no prior experience.

1 So I'm just curious: Why would they
2 take that risk at this point?

3 KAREN SIMAO: I don't think it is a
4 risk. I think it is rewarding a loyal staff
5 member who has been with them for, as I
6 mentioned, for 20 years, and has really been
7 involved in the process.

8 Their philosophy is that: We train
9 people, we grow people, and this is an example
10 of what that is.

11 He is also very -- Mr. Santa is also
12 very much aware of the pending alleged
13 violations before this board. And corporate
14 has discussed that with him and he understands
15 how serious of an allegation that is. And,
16 again, he is really well aware of the
17 implications that come with that.

18 We've all seen managers of record
19 with years of experience and that sometimes
20 means that they become complacent. And so I
21 do think that there is something to say about

1 somebody with a fire in the belly that has
2 moved up the ranks and is ready to seize a
3 very good opportunity.

4 GERARD MAHONEY: Have you always
5 worked at the Cambridge facility or have you
6 worked at the other John Harvard's?

7 ARGEMIRO SANTA: I've been in
8 training before I opened all of the John
9 Harvard's Brew House. Because before they
10 used to have like 13 restaurants.

11 GERARD MAHONEY: How many restaurants
12 do they currently have?

13 ARGEMIRO SANTA: Like on and off,
14 it's like 10.

15 MICHAEL GARDNER: So you can't be
16 there all hours of the day and night, seven
17 days a week, during the operations?

18 ARGEMIRO SANTA: Yes, I do.

19 KAREN SIMAO: He feels like he is
20 there all the time.

21 MICHAEL GARDNER: Well, we don't

1 think you can -- how do you ensure compliance
2 when you are not there?

3 KAREN SIMAO: The management, the
4 associate manager that is in place, there is
5 no change to that. This is strictly a manager
6 of record level change.

7 So, for example, the general manager
8 who has been there, Ken, who I know many of
9 you folks in this room are familiar with, as
10 well as Ms. Boyer, he is still in place. So
11 this switch is really only removing
12 Mr. Sawyer, and everything else remains the
13 same.

14 So Ken, who has been there for many
15 years, as well as their assistant managers,
16 everyone else is staying the same.

17 ROBERT HAAS: So tell me what your
18 current job is? What is your responsibility
19 currently now?

20 ARGEMIRO SANTA: Right now I'm in the
21 kitchen, the kitchen chef. But right now I'll

1 be involved in learning how to --

2 ROBERT HAAS: I'm not sure -- I'm not
3 sure I buy the argument of the fire in the
4 belly. I mean, there is certain
5 responsibilities that are associated with
6 being responsible for the proper management of
7 the liquor license.

8 So aside from the tips training, I
9 don't know if that is going to give him the
10 training -- I mean, that is my concern.

11 KAREN SIMAO: I think there are three
12 layers of training here that are more than
13 this Commission perceives as the manager of
14 record.

15 And I also notice the Board has
16 approved people without experience in the
17 past, and it depends on the applicant before
18 you, obviously. But the three layers of
19 training really are the in-house training, the
20 tips training, and then the training done
21 through the City here.

1 I think that that, coupled with the
2 fact that this is not a new restaurant
3 operation, there is a system in place here,
4 and that there is supporting management, which
5 goes to the Chairman's question, which is a
6 very valid one, and are all key elements to
7 make this equation work.

8 I think that if this were a new
9 restaurant operation, there was no management
10 team in place, there was not a history of
11 operation spanning over two decades, that
12 would be a different story. I would be making
13 a different presentation to you.

14 But for all those reasons, they feel
15 that he has performed every time he has been
16 asked to do something, whether it is in
17 compliance in the kitchen as head chef, or in
18 front of the house, which is what he mentioned
19 they had him involved in this progression,
20 they are not just plucking him from the
21 kitchen and doing this; there has been a

1 progression of front of the house work that he
2 has dealt with in terms of staff and employees
3 and day-to-day operations. And so part of
4 that has been dealing with alcohol service and
5 making sure it is done correctly.

6 He has not had an official title that
7 this Board is now being asked to grant him.
8 And with that we feel, as does the company, as
9 does Mr. Santa, that the training is
10 imperative; if you're going to take on that
11 kind of title, you need to have the real
12 training on this.

13 ROBERT HAAS: Did you ever work the
14 bar?

15 ARGEMIRO SANTA: No.

16 ROBERT HAAS: You never worked the
17 bar?

18 KAREN SIMAO: And I would suggest
19 that he wouldn't be the first manager of
20 record that --

21 ROBERT HAAS: Again, I'm concerned,

1 given the fact that you've alluded that there
2 has been an issue with that regard and that is
3 City investigating.

4 And I'm just trying to get to a
5 comfort level in terms of being sure that he
6 fully understands the role and responsibility
7 of the manager of record for an establishment
8 that does serve alcohol.

9 KAREN SIMAO: And I think I that
10 understand the point. I alluded to the
11 disciplinary hearing, not because I think that
12 it's up for consideration today, they are two
13 separate and distinct hearings. But I
14 understand the line of questioning --

15 ROBERT HAAS: So they theoretically
16 have had a seasoned manager, and now you are
17 looking at an individual who has had no prior
18 experience to take that role and
19 responsibility.

20 And, again, given the complexity in
21 my mind of a restaurant, that may be the

1 nature of that business. But I'm surprised
2 the company is putting someone forward to
3 manager of record for an alcohol license, that
4 is my concern.

5 KAREN SIMAO: Again, we stand by the
6 fact that the disciplinary hearing has not
7 occurred yet, but we stand by the fact that
8 there was no violation.

9 MICHAEL GARDNER: So let me ask you:
10 What do you see as the principal challenges
11 you will face in taking on this role?

12 ARGEMIRO SANTA: I want to do it very
13 responsibly. I want to -- I know how it
14 works. I know how to serve alcohol. And I
15 want to be very responsible. I want to be
16 involved and be responsible and taken very
17 seriously.

18 MICHAEL GARDNER: Thank you.

19 GERARD MAHONEY: What happened to
20 Steen Sawyer?

21 KAREN SIMAO: Steen is still -- he

1 has worked for the company, both at this
2 location and the Framingham location, and he
3 made some career decisions to move on; unlike
4 many times where there is a quick departure.
5 That was not the case here.

6 So he was as much involved in the
7 day-to-day actions. Argemiro is on the
8 premises, he is there 60 to 72 hours a week.
9 I mean, this is the guy who is there all the
10 time. So we really want to make sure that the
11 person on the license is, in fact, there.

12 So there was no bad parting with
13 Mr. Sawyer at all, it was a career decision
14 for him. I actually believe he was moving to
15 another state.

16 MICHAEL GARDNER: Any members of the
17 public who would like to be heard on this
18 matter? Any other questions or anything else
19 you would like to add?

20 KAREN SIMAO: I have nothing further,
21 Mr. Chairman. If you have any further

1 questions, I certainly understand questions
2 posed by the Commissioner.

3 I would submit that it is not the
4 first time that a manager or record has been
5 approved without either having been a
6 bartender or -- I've represented people who
7 we've have come and they've gone through the
8 tips training and certification and,
9 ultimately leave. The company understands
10 that their license hinges on their ability to
11 have a manager of record who is going to
12 comply with your regulations and ABCD's
13 regulations.

14 And whether or not that is a good
15 business decision for them, they feel that it
16 is, and that's what I can represent to you.

17 And as a person certainly having
18 spent some time with Mr. Santa and really
19 speaking with him about how the operation
20 works and the importance of training, I know
21 that he is nervous, it's a little intimidating

1 coming before the Board for the first time.
2 But he is taking the training very seriously,
3 and so he understands how serious alcohol
4 service is.

5 MICHAEL GARDNER: So I'd ask Ms. Lint
6 or any other members of the Board, have we
7 ever granted approval of a general manager, a
8 transfer, with any conditions or subject to a
9 short review, have people come back in three
10 months and tell us about their experience?

11 ELIZABETH LINT: Sure. Absolutely.

12 ROBERT HAAS: I think I would feel a
13 lot more comfortable having a short review
14 period, just to make sure that we have a
15 sense, again, what is your reaction to it, and
16 what some of the challenges are that are
17 associated with this.

18 It is one thing to have some
19 knowledge about a liquor establishment, now
20 are responsible. You know, what does that
21 mean? So I think that would be good. At

1 least it would make me feel more comfortable.

2 KAREN SIMAO: And, obviously, we
3 won't be opposed to that at all.

4 I presume that is when the period
5 would start to run, when it's in the official
6 capacity?

7 MICHAEL GARDNER: The pleasure of the
8 committee?

9 ROBERT HAAS: Make a motion to
10 approve the application for a change of
11 manager upon the completion of 21 Proof
12 training with a three-month review.

13 GERARD MAHONEY: Seconded.

14 MICHAEL GARDNER: So the motion has
15 been made and seconded to approve the transfer
16 of the general manager, subject to the 21
17 Proof training and subject to a three-month
18 review in which we would expect you will come
19 back and talk to us about your experience,
20 what you've learned, what the concerns are,
21 what the challenges have been, and how you've

1 done.

2 ARGEMIRO SANTA: Okay.

3 MICHAEL GARDNER: Motion having been
4 made and seconded, all those in favor signify
5 by saying aye?

6 ROBERT HAAS: Aye.

7 GERARD MAHONEY: Aye.

8 MICHAEL GARDNER: Not opposed. So we
9 wish you well. It looks like you've got an
10 awful lot to learn and in a challenging
11 environment. And the training will take you
12 so far, but we expect you to learn a lot from
13 the existing staff.

14 ARGEMIRO SANTA: Thank you.

15 KAREN SIMAO: Thank you very much.
16 Have a good evening.

17 * * * *

18 ELIZABETH LINT: Application for
19 Massachusetts Institute of Technology, Dennis
20 Collins, Director of Housing, has applied for
21 a lodging house license with food at 305

1 Memorial Drive for 263 rooms and 496
2 occupants. Applicant is also seeking
3 exemption from the resident manager
4 requirement.

5 MICHAEL GARDNER: If you would so
6 kindly state and spell your names for the
7 record and your affiliation.

8 DENNIS COLLINS: My name is Dennis
9 Collins, D-E-N-N-I-S, C-O-L-L-I-N-S, and I am
10 the Director of Housing at MIT.

11 SONIA RICHARDS: My name is Sonia
12 Richards, S-O-N-I-A, R-I-C-H-A-R-D-S, and I'm
13 the program manager with the department of
14 facilities at MIT.

15 MICHAEL GARDNER: Okay. Tell us your
16 plans.

17 DENNIS COLLINS: We have a resident
18 hall at 305 Memorial Drive that we closed in
19 2008 for completion renovations, and that will
20 be opening on August 12th of 2011. So we are
21 requesting to re-apply for the lodging house

1 license to have it opened.

2 MICHAEL GARDNER: Any history of
3 complaints or other concerns, Ms. Lint?

4 ELIZABETH LINT: Well, it's been
5 closed for two years or more than two years.
6 So not that I have any knowledge of it, but --

7 GERARD MAHONEY: I'm somewhat
8 familiar. It's undergone a total gut rehab
9 basically to total reconstruction brought up
10 to code for safety enhancements, et cetera.

11 MICHAEL GARDNER: Do you hold other
12 lodging house licenses in Cambridge for
13 similar functions?

14 DENNIS COLLINS: Yes. We have 19
15 other residence also. And I'm on record for
16 those as well.

17 MICHAEL GARDNER: And our general
18 experience with MIT for running such
19 facilities?

20 ELIZABETH LINT: They are very
21 responsive to the Commission, I would say.

1 The residents have -- we generally have not
2 had any problems with them, it's the frats
3 that tend to be the issue.

4 MICHAEL GARDNER: If you would, sir,
5 just you or either of you, tell us what the
6 implications are and the pluses and minuses of
7 having a resident manager and why you are
8 seeking to not have one.

9 DENNIS COLLINS: I have staff in the
10 building and on campus 24 hours a day, seven
11 days a week. There is a new house master in
12 the building. I have graduate resident's
13 assistants, so I have one for every 40
14 students living on the floors with them.
15 Anything that goes on in that building,
16 registering parties, goes through my office.

17 I have resident managers working the
18 4:00 to 11:00 shift, the 11:00 to 7:00 shift,
19 and during the day. I also have a night
20 watchman in every one of my residence halls at
21 night from midnight to 8:00 in the morning

1 overseeing anything that is going on. And
2 then they all report to me.

3 So anything that has gone on in these
4 buildings is my full responsibility.

5 MICHAEL GARDNER: And the resident
6 manager just simply means somebody who is
7 living there as well as working there?

8 DENNIS COLLINS: Correct.

9 MICHAEL GARDNER: And I take it,
10 because of the staffing levels you don't think
11 you need that?

12 DENNIS COLLINS: That's correct. And
13 I came before the Board in the spring of 2010
14 for the same request for the other 19
15 residents halls.

16 MICHAEL GARDNER: So none --

17 DENNIS COLLINS: None at all. That
18 building had a lodging house like this for
19 years. It didn't have one on record, the only
20 ones are the new ones we've opened since 2002
21 has ever reported as having somebody in-house.

1 MICHAEL GARDNER: Any members of the
2 public who would like to be heard on this
3 matter? Seeing none, pleasure of the
4 Commission?

5 GERARD MAHONEY: Make a motion that
6 the application be approved as submitted.

7 ROBERT HAAS: Seconded.

8 MICHAEL GARDNER: Motion having been
9 made and seconded to approve the application.
10 All those in favor signify by saying aye?

11 ROBERT HAAS: Aye.

12 GERARD MAHONEY: Aye.

13 MICHAEL GARDNER: We wish you well
14 and welcome to your students.

15 * * * * *

16 ELIZABETH LINT: Application for
17 Restaurant Associates LLC, doing business as
18 Caspersen Hall Cafe at Harvard Law School.
19 Colleen Duddy, Manager, has applied for a
20 common victualer license to be exercised at
21 1585 Massachusetts Avenue. Said license if

1 granted would allow food and non-alcoholic
2 beverages to be sold, served, and consumed on
3 said premises with a seating capacity of 623
4 (426 inside seats and 197 seats on a seasonal
5 outdoor patio on private property). The hours
6 of operation will be 7:30 a.m. to 9:00 p.m. on
7 Mondays through Fridays and 8:00 a.m. to 4:00
8 p.m. on Saturdays and Sundays.

9 MICHAEL GARDNER: If you could all
10 state your names and spell them for the
11 record.

12 COLLEEN DUDDY: My name is Colleen
13 Duddy, C-O-L-L-E-E-N, D-U-D-D-Y, general
14 manager.

15 Alexandra, A-L-E-X-A-N-D-R-A, Offing,
16 O-F-F-I-N-G, Harvard University planning and
17 project management.

18 TERRY CAPLARIO: Terry, T-E-R-R-Y,
19 Caplario, C-A-P-L-A-R-I-O, manager.

20 MICHAEL GARDNER: Tell us about your
21 plans.

1 COLLEEN DUDDY: So we're here today
2 about the position to amend our current
3 license, which is up-to-date, it is under the
4 old name of Harkness Commons. So we will
5 reapply for a common victualer license for a
6 name change, and also to extend the seating.

7 We have added a roof deck, which has
8 an additional 119 seats. So our old license
9 was for the 426 indoor and 197 outdoor on the
10 downstairs patio. With the renovation that
11 Harvard Law has undergone, they have built a
12 roof deck for us, for the students, 119
13 students; therefore, we have applied for a new
14 common victualer license.

15 MICHAEL GARDNER: So the 119 seats on
16 the roof deck, those are outside as well?

17 COLLEEN DUDDY: Mm-hmm.

18 MICHAEL GARDNER: History of
19 complaints?

20 ELIZABETH LINT: None at all.

21 MICHAEL GARDNER: Have you maintained

1 your operation during the construction or have
2 you shut down?

3 COLLEEN DUDDY: We are actually
4 operating a temporary cafe out of Town Hall,
5 which we have a current license for. So we
6 have closed down the Harkness Commons, but we
7 are operating a temporary cafe right now.

8 GERARD MAHONEY: Will this facility
9 be open to the public?

10 COLLEEN DUDDY: It's the intention
11 for the Harvard students, but we don't close
12 our doors to the public. But the facility is
13 for Harvard students, but we don't turn the
14 public away.

15 MICHAEL GARDNER: So it's truly a
16 restaurant, it is not a dorm or you are not
17 serving food to residents? I'm trying
18 understand your operation.

19 COLLEEN DUDDY: It is very similar to
20 a university cafe. So there's numerous
21 stations, the kids come in, they grab what

1 they want to eat, there's a salad bar, things
2 of that nature. And they go through a
3 check-out counter at the end. It's very
4 similar to most university cafes.

5 ROBERT HAAS: When do you plan on
6 opening your operation?

7 COLLEEN DUDDY: August 26th is the
8 anticipated opening date. The roof deck will
9 not open until 2012.

10 GERARD MAHONEY: When the students
11 return to campus?

12 COLLEEN DUDDY: They are returning to
13 the Pound temporary cafe. So they will have
14 about a week of the temporary cafe, and a week
15 later -- the planning was little bit better in
16 those terms but unfortunately a week late.

17 ELIZABETH LINT: We tried to. We've
18 had meetings about this throughout the course
19 of their preparations. And I should also tell
20 you that Ms. Duddy is not new to Cambridge,
21 that she's been managing other establishments

1 as well. So we certainly know who she is.

2 GERARD MAHONEY: I have nothing
3 further.

4 MICHAEL GARDNER: Any members of the
5 public who would like to be heard on this
6 matter?

7 Anything else you would like to add?

8 COLLEEN DUDDY: We're just excited to
9 get into the new building.

10 GERARD MAHONEY: Motion to approve as
11 submitted.

12 ROBERT HAAS: Seconded.

13 MICHAEL GARDNER: So the motion to
14 approve was submitted which, as I understand
15 it, is the name change and increase in
16 capacity.

17 ELIZABETH LINT: And do I have the
18 abutter notifications as well.

19 MICHAEL GARDNER: Motion have been
20 made and seconded, all those in favor signify
21 by saying aye?

1 ROBERT HAAS: Aye.

2 GERARD MAHONEY: Aye.

3 MICHAEL GARDNER: So with none
4 opposed, we wish you well.

5 COLLEEN DUDDY: Thank you very much.

6 * * * * *

7 ELIZABETH LINT: Application was
8 continued from April 26, May 17 and June 9,
9 The Upper Crust Harvard Square, LLC, d/b/a The
10 Upper Crust. Jordan Tobins, manager, holder
11 of a wine and malt beverages as a restaurant
12 at 49B Brattle Street has applied for a
13 transfer of stock. Applicant is also applying
14 for a change of manager from Jordan Tobins to
15 Maura Smith.

16 You may recall there was an issue
17 with the manager application. I spoke where
18 Jeffrey Blum, who had been representing The
19 Upper Crust strictly for the change of stock.

20 But he contacted me today and he did
21 submit a letter and he said to "Please be

1 advised that The Upper Crust Harvard Square,
2 LLC, wishes to withdraw the application for
3 appointment of manager to be heard this
4 evening before the Board, and will submit a
5 new application shortly. This is a decision
6 management reached moments ago.

7 We also seek final approval for the
8 change of stockholders which was heard last
9 month and approved but tabled until today.

10 And that was may memory of what had
11 happened also.

12 ROBERT HAAS: So are they re-thinking
13 the --

14 ELIZABETH LINT: They will be
15 reapplying for a new manager.

16 MICHAEL GARDNER: Can you remind us
17 what the transfer of stock involved, briefly.

18 ELIZABETH LINT: I could try.

19 MICHAEL GARDNER: I take it no one is
20 here this evening?

21 ELIZABETH LINT: No. He asked to be

1 excused since it had already been approved and
2 it was strictly a formality. They were adding
3 a stockholder. But that's what it appears to
4 be, they were just adding a stockholder.

5 MICHAEL GARDNER: I'm wondering
6 whether a motion would be in order to confirm
7 the approval of the transfer of stock in
8 recognition of the withdrawal of the manager
9 change, simply subject to confirmation by
10 Ms. Lint of the record of prior action of the
11 Board.

12 ROBERT HAAS: Make a motion to accept
13 the transfer of stock as posed. Also
14 acknowledge the fact that the application for
15 change of manager has been withdrawn.

16 GERARD MAHONEY: Seconded.

17 MICHAEL GARDNER: Motion having been
18 made and seconded to approve under the
19 conditions. All those in favor signify by
20 saying aye?

21 ROBERT HAAS: Aye.

1 GERARD MAHONEY: Aye.

2 And you'll review the record,
3 Ms. Lint, and take appropriate action --

4 ELIZABETH LINT: Yes.

5 * * * * *

6 ELIZABETH LINT: Application for
7 L'Impasto, LLC, doing business as L'Impasto.
8 Richard Passini, manager, has applied for a
9 common victualer license to be exercise at
10 2263 Massachusetts Avenue. Said license if
11 granted would allow food and non-alcoholic
12 beverages to be sold, served, and consumed on
13 said premises with a seating capacity of 30
14 (24 seats inside and 6 seats on a seasonal
15 outdoor patio on public property). The hours
16 of operation will be 11:00 a.m. to 10:00 p.m.
17 seven days per week.

18 MICHAEL GARDNER: Thank you. It
19 would be helpful to us if you would just state
20 and spell your names for the record.

21 RICCARDO PASSINI: My name is

1 Riccardo Passini, R-I-C-C-A-R-D-O,
2 P-A-S-S-I-N-I.

3 ANNALISA AVOLA: My name is Annalisa,
4 A-N-N-A-L-I-S-A, Avola, A-V-O-L-A, attorney
5 for Riccardo Passini.

6 DEAN PAPADENETRIOU: My name is Dean,
7 D-e-a-n, last name is Papadenetriou, spelled
8 P-A-P-A-D-E-N-E-T-R-I-O-U. I'm an attorney in
9 Boston, counsel to the owner of the property.

10 MICHAEL GARDNER: Tell us about the
11 plans, please.

12 ANNALISA AVOLA: Riccardo recently
13 purchased this restaurant from Attorney
14 Papadenetriou's client. Right now it is under
15 construction. His plan is to open a small
16 restaurant serving pizza, homemade fresh
17 pasta, breads and some other entrees which --
18 I believed he submitted a proposed menu. It's
19 a very small restaurant. Probably intended to
20 do take out in the beginning and then slowly
21 to build up. I believe the seating capacity

1 is about 20 right now. So it's a very small
2 restaurant.

3 So right now under construction,
4 hopefully opening up in maybe two or three
5 weeks. That's pretty much it.

6 Mr. Passini has a month's experience
7 as the executive chef at Fury in the North
8 End, and other restaurants such as Umbria,
9 also in Boston.

10 He obtained his education in Italy.
11 And he worked in Morocco and Thailand as a
12 chef also.

13 MICHAEL GARDNER: Is this your first
14 experience as the owner operator of the
15 restaurant.

16 RICCARDO PASSINI: Yes, sir.

17 MICHAEL GARDNER: And what challenges
18 do you see in that new role?

19 RICCARDO PASSINI: It is going to be
20 my challenge and to provide to myself that I
21 can own a restaurant and provide good food and

1 good service.

2 MICHAEL GARDNER: And tell us about
3 your plans for things like traffic for
4 supplies in and out, rubbish or trash removal,
5 steps to make sure you are compliant with road
6 dent control.

7 RICCARDO PASSINI: Can you --

8 ANNALISA AVOLA: I'll restate your
9 question.

10 He wants to know your plans for trash
11 control and also what you are going to do with
12 your trash, where are you going to put it?

13 RICCARDO PASSINI: The building has
14 a backyard and they put the trash, garbage,
15 disposal in that.

16 And what was of the other question?

17 MICHAEL GARDNER: How your supplies
18 will be coming in and out?

19 RICCARDO PASSINI: The restaurant has
20 like a back door, so it's going to be like a
21 private street.

1 MICHAEL GARDNER: An alleyway
2 perhaps?

3 DEAN PAPADENTRIOU: It's a private
4 driveway. It's shared as a right-of-way with
5 the residents on the other side of the
6 driveway. So it's not a parking lot; it's not
7 a parking area. It is just supposed to be a
8 driveway for deliveries and taking out the
9 trash.

10 GERARD MAHONEY: What was the prior
11 restaurant that was there?

12 DEAN PAPADENTRIOU: There was --

13 GERARD MAHONEY: I'm trying to
14 visualize whether the building is.

15 DEAN PAPADENTRIOU: Okay. It's North
16 Cambridge on Massachusetts Avenue, it's the
17 block next to Pemberton Market.

18 GERARD MAHONEY: It used to be the
19 White Hen Pantry there, at the corner of State
20 Street there?

21 DEAN PAPADENTRIOU: That block but --

1 GERARD MAHONEY: It's in the block
2 opposite St. John's Church?

3 DEAN PAPADENTRIOU: Yes.

4 MICHAEL GARDNER: And it was not a
5 restaurant before?

6 DEAN PAPADENTRIOU: It was. It has
7 been a restaurant and other food businesses
8 for at least the 30 years that my family has
9 owned that building.

10 ROBERT HAAS: So you are retaining
11 ownership of the building?

12 DEAN PAPADENTRIOU: Yes. I'm here to
13 support this application and I can speak to
14 that point.

15 MICHAEL GARDNER: And have you sent
16 out of the notices to the abutters and brought
17 proof of the notices back?

18 ANNALISA AVOLA: Yes. My client --
19 there was one abutter, which when we called
20 the City Hall they gave us the name of the
21 abutter, which was just one abutter which was

1 his building. We sent the notice and he sent
2 it in the mail because we got the return
3 service immediately. I think he sent it out
4 Thursday.

5 ELIZABETH LINT: I don't have them.

6 MICHAEL GARDNER: Explain the abutter
7 situation.

8 DEAN PAPADENTRIOU: From the outside
9 it looks like one building, but it actually
10 has a firewall right in between there and it
11 was sold as two parcels. My family pushed the
12 first part, including this part of the
13 building five-store front in I think 1983.
14 And then purchased the other two on the corner
15 where the Griffin Real Estate Office is in
16 around 1989 or so.

17 So right now it is under one
18 ownership but technically it's two tax
19 parcels.

20 ANNALISA AVOLA: What about in back

21 --

1 DEAN PAPADENTRIOU: On Dover Street,
2 that is the property where we share the
3 right-of-way.

4 MICHAEL GARDNER: Is that with
5 residents? We need abutter notices for them,
6 don't we?

7 ELIZABETH LINT: Yes, absolutely.
8 And that street is in my mind from
9 past applications where there are abutters
10 there that like to be heard.

11 MICHAEL GARDNER: I recall lots of
12 concerns about rodent control.

13 ELIZABETH LINT: In that area?

14 MICHAEL GARDNER: Mm-hmm, around in
15 that area.

16 So is the appropriate thing to put
17 this matter over to the 19th, in terms of
18 notices to abutters and give people the
19 opportunity -- is that sufficient time?

20 ELIZABETH LINT: Yes. The only thing
21 that I would say is that if it was just simply

1 checking to see who actually -- I would go
2 over to assessors and look at the map.

3 ROBERT HAAS: But only --

4 ELIZABETH LINT: But I know Dover
5 Street.

6 ROBERT HAAS: I think there is
7 probably more abutters that need to be
8 notified.

9 ANNALISA AVOLA: I mean, I don't
10 know the area, so when I called the assessor's
11 office that was the only address that they
12 gave me. At first they couldn't find the
13 address and then they transferred me to
14 someone else.

15 ELIZABETH LINT: And we also would
16 need a DPW sidewalk permit which also requires
17 City Council approval, and there is only one
18 City Council hearing in August.

19 MICHAEL GARDNER: That is for the
20 sidewalk seats. So can the application be
21 split to proceed just internally and then to

1 come back to amend for the sidewalk?

2 ELIZABETH LINT: It could be
3 conditional.

4 MICHAEL GARDNER: Well, DPW can
5 give -- can do their review, right?

6 ELIZABETH LINT: Exactly.

7 MICHAEL GARDNER: By the 19th. We
8 could conceivably consider it on the 19th, and
9 potentially approve conditional on City
10 Council approval of the sidewalk?

11 ELIZABETH LINT: Yes.

12 MICHAEL GARDNER: We are sort of
13 talking out loud here about how to help you
14 deal with this procedural problem. And I take
15 it that your desire is to get opened when you
16 can.

17 You say there is construction going
18 on now?

19 ANNALISA AVOLA: Yes.

20 MICHAEL GARDNER: And when is it
21 expected that you would, in fact, be in a

1 position to open?

2 ANNALISA AVOLA: We are not really
3 sure. Probably -- we are hoping two to three
4 weeks. We're hoping. And some of the
5 construction has been delayed; not to his
6 fault.

7 MICHAEL GARDNER: It is pretty clear
8 you can't open in two or three weeks because
9 of this process.

10 ANNALISA AVOLA: Exactly.

11 MICHAEL GARDNER: Would a motion be
12 in order to defer this matter to the July 19th
13 meeting to give the applicant the opportunity
14 to perfect the abutters' notices and to carry
15 the permitting process for the outdoor seating
16 as far as they can prior to that point?

17 ELIZABETH LINT: Yes.

18 GERARD MAHONEY: So moved.

19 ROBERT HAAS: I just want to make a
20 comment. I seconded.

21 MICHAEL GARDNER: The motion has been

1 made and seconded.

2 And Commissioner Haas?

3 ROBERT HAAS: My question to you
4 would be, since we know this street to be
5 Dover Street, that it would behoove you and
6 your client to have some conversation with the
7 abutters.

8 Because I think what you want to try
9 to do is to avoid having people who don't have
10 a lot of answers coming to a meeting or a
11 hearing and have them here -- so whatever you
12 can do to mitigate that would be helpful
13 probably.

14 So figure out who the abutters are
15 and maybe kind of touch base with them and
16 make sure that there's no issues or concerns
17 that --

18 MICHAEL GARDNER: My guess is that it
19 is going to be around rodent control and
20 trash.

21 ROBERT HAAS: And so you want to make

1 sure that those things are going to be
2 addressed properly.

3 ELIZABETH LINT: I think it is also a
4 delivery issue.

5 ANNALISA AVOLA: Okay.

6 MICHAEL GARDNER: So you need to make
7 sure that you have a plan about how frequently
8 trash is going to be picked up, matters of
9 control over the dumpster lids, and keeping
10 them rat-proof, and general issues of
11 cleanliness and tidiness in the area.

12 If you're going to have a take-out
13 operation, what kind of steps you can take to
14 mitigate the careless disposal of paper and
15 other products.

16 Motion having been made and seconded
17 to defer the matter to July 19th. All those
18 in favor signify by saying aye?

19 RICHARD HASS: Aye.

20 GERARD MAHONEY: Aye.

21 MICHAEL GARDNER: None opposed. So

1 sorry we can't deal more directly with it this
2 evening, but we hope your course is clear.

3 So if you have any questions, please
4 discuss them with Ms. Lint. And it might be a
5 good idea to confirm with her about your
6 abutters.

7 ANNALISA AVOLA: Thank you.

8 * * * * *

9 ELIZABETH LINT: Application for Go
10 Cafe, LLC, doing business as Rafiki Bistro.
11 Daniel Goldstein, manager, holder of an all
12 alcoholic beverages as a restaurant license
13 and common victualer license at 1682
14 Massachusetts Avenue has applied to amend his
15 common victualer license to include a
16 seasonable patio, four tables and eight seats,
17 on the public sidewalk for service of food and
18 non-alcoholic beverages.

19 MICHAEL GARDNER: Sir, if you could
20 state and spell your name.

21 DANIEL GOLDSTEIN: My name is Daniel

1 Goldstein. That is spelled D-A-N-I-E-L,
2 G-O-L-D-S-T-E-I-N. I'm many owner and the
3 operator of Rafiki Bistro, which is at 1682
4 Massachusetts Avenue.

5 MICHAEL GARDNER: Tell us about your
6 plans.

7 DANIEL GOLDSTEIN: The idea is really
8 just to add seating in front of the
9 restaurant. The 1600 block has really morphed
10 in maybe the past 24 months. So Temple Bar is
11 there; they've added beautiful outdoor
12 seating. I have good relationships with the
13 Lee Brothers, Charlie Christopher in Hull.
14 They have added seating in West Side Lounge to
15 compliment what they have done across the
16 street at the Cambridge Common. Peter
17 Lombardi is my next-door neighbor. They have
18 got an endless construction project that's
19 going on. But it's also improving the
20 condition of the street. And Jack's Stereo is
21 disappearing, and that will get a face lift.

1 And, all of a sudden, that block has really a
2 very nice appeal to it.

3 And we wanted to contribute to that.
4 And we think it is good for business, we think
5 it is good for the image of the neighborhood,
6 and it represents -- it's starting to look
7 like it's representing a destination for
8 people to go to.

9 MICHAEL GARDNER: And have you gone
10 to the DPW for a permit?

11 DANIEL GOLDSTEIN: I have talked to
12 the DPW. I'm here a little bit out of
13 order -- so I've had approval at the City
14 Council, and I've notified my abutters, I've
15 spoken with all my abutters. I think I have
16 good standing as a community member in this
17 new community; I've been there for 14 months.
18 And I need to have the DPW come out and give
19 their approval.

20 But there is already existing seating
21 next door to me; no obstructions between the

1 front of 1682 and the curb, so there is no
2 tree wells, there's no bicycle racks, there's
3 just a parking meter. So I need to have them
4 come out, but I don't anticipate it being a
5 problem.

6 ELIZABETH LINT: That's actually
7 easier because it's not for alcohol service.
8 You don't have the same space issues with the
9 barriers everywhere.

10 ROBERT HAAS: So you wouldn't be
11 serving alcohol outside?

12 DANIEL GOLDSTEIN: I think my
13 strategy in the beginning is about supporting
14 it. And I've talked to the local
15 restaurateurs about having a nice experience
16 in coming to that part of what lies between
17 Porter and Harvard. And maybe next year, when
18 I take advantage of a full season, I'll come
19 before you again and ask to change it to offer
20 alcohol. But at the moment, my intention is
21 not to serve alcohol out there.

1 MICHAEL GARDNER: Are there any other
2 questions?

3 GERARD MAHONEY: I have none.

4 MICHAEL GARDNER: Is there anything
5 else you want to add, sir?

6 DANIEL GOLDSTEIN: No.

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

10 Pleasure of the Commission?

11 ROBERT HAAS: Make a motion to
12 approve the application contingent upon DPW
13 approval.

14 GERARD MAHONEY: Seconded.

15 MICHAEL GARDNER: Motion having been
16 made and seconded to approve the application
17 conditional along with DPW approval. All
18 those in favor signify by saying aye?

19 RICHARD HASS: Aye.

20 GERARD MAHONEY: Aye.

21 MICHAEL GARDNER: Unopposed. So we

1 wish you well as you proceed in winding your
2 way through the process.

3 DANIEL GOLDSTEIN: Thank you for your
4 good wishes.

5 * * * * *

6 ELIZABETH LINT: Application for
7 Life Alive Cambridge, LLC, doing business as
8 Life Alive Urban Oasis & Organic Cafe. Heidi
9 Feinstein, manager, holder of a beer and malt
10 beverages as a restaurant license and common
11 victualer license has applied to amend her
12 common victualer license to include a
13 seasonable outdoor patio for three tables and
14 12 seats on the public sidewalk for services
15 of food and non-alcoholic beverages.

16 MICHAEL GARDNER: Good evening. If
17 you could, could you just please state and
18 spell your name for the record and describe
19 your role.

20 HEIDI FEINSTEIN: My name is Heidi
21 Feinstein. My role is owner/operator of the

1 this business.

2 I'm hoping to get three round tables
3 with 12 chairs out front to do what Daniel
4 said, contribute to the beauty and experience
5 of being in Central Square.

6 MICHAEL GARDNER: And could you just
7 describe your restaurant, how long you've been
8 operating it and what the experience has been
9 so far.

10 HEIDI FEINSTEIN: We've been opened
11 for ten months and it's been amazing. I think
12 we've been really embraced by the community.
13 We have lines out the door. It's been a tough
14 to two weeks, I can't get my air conditioner
15 fixed, but otherwise it's been a joy. It's an
16 organic vegetarian cafe.

17 MICHAEL GARDNER: Are you at the
18 corner of Inman and Mass. Ave?

19 HEIDI FEINSTEIN: Yes. Right across
20 the street.

21 MICHAEL GARDNER: I don't have an

1 address here, so I didn't want to the presume
2 too much.

3 ELIZABETH LINT: The sheet -- it was
4 in your packet.

5 GERARD MAHONEY: What is the
6 address?

7 HEIDI FEINSTEIN: 765 Massachusetts
8 Avenue. It's across from City Hall and the
9 post office, right next to 1369.

10 MICHAEL GARDNER: Right next to 1369?
11 And does it have seats out there or whose
12 seats are those?

13 HEIDI FEINSTEIN: Yes. Just the
14 space is different because of the curb cuts
15 and there is other things there.

16 MICHAEL GARDNER: So there is no
17 seats there now?

18 HEIDI FEINSTEIN: No.

19 MICHAEL GARDNER: There's no tables
20 or anything there now?

21 HEIDI FEINSTEIN: No. I started the

1 process in March -- and it has been confusing.
2 You know, I've been back and forth with Vinny.
3 And then he came and we talked and we created
4 a whole plan.

5 And then his boss, Bill Dwyer, came,
6 and he was like "No, no, no." And they have
7 been kind enough to move some things for me.
8 The solar power trash they had to move just
9 like a little bit to give me the space for a
10 table, but -- it's a tough area.

11 MICHAEL GARDNER: It is pretty small.

12 HEIDI FEINSTEIN: Yes, it's really
13 small. So Bill and Vinny said three tables
14 with 12 seats. And we came up with that and
15 they gave me the permit.

16 ELIZABETH LINT: I need a copy of it.

17 HEIDI FEINSTEIN: You don't have it?

18 ELIZABETH LINT: You need the permit
19 and we need a copy of it.

20 HEIDI FEINSTEIN: Okay.

21 MICHAEL GARDNER: And is there a City

1 Council approval that is required as well or
2 has that happened yet?

3 ELIZABETH LINT: Yes, yes. The last
4 I heard from both Bill and Vinny, it was kind
5 of still up in the air. And I am speaking
6 with them on a regular basis about this.

7 MICHAEL GARDNER: Do you know when
8 the --

9 ELIZABETH LINT: Because there were
10 already tables and chairs out on the street,
11 and then a bench.

12 HEIDI FEINSTEIN: Yes, right. And I
13 guess, you know, I was speaking to both of
14 them about this.

15 I went to Vinny in March, and he came
16 and we created a plan. And I thought that I
17 had approval for that. And I went to City
18 Council, and it was put on the City Council.
19 And I was told, again, by word of mouth, that
20 it was approved.

21 And then I went to Vinny, I paid the

1 money, I thought -- and then I went to Chris
2 and I misunderstood Chris. I went to your
3 office and I thought that it was all okay.

4 So it was a misunderstanding on my
5 part with Chris, but I really thought -- and I
6 even went to a workshop.

7 ELIZABETH LINT: Yes, you did.

8 HEIDI FEINSTEIN: I went to a
9 workshop trying to streamline this process,
10 and it was really crazy for me.

11 So I really don't know what to say
12 except that I did misunderstand Chris and
13 thought that I was allowed to put out those
14 tables.

15 And then the bench that I put out was
16 approved last year when I got my license. I
17 applied for that bench with flower pots on
18 either side and a sandwich board before I even
19 opened. So I had the bench out when I first
20 opened and the bench was wobbly, so I put it
21 inside. And so I bought a new bench and I

1 thought that I --

2 So when our tables were told to be
3 put inside, which we did immediately, I said
4 to leave the bench out. So it has been
5 misunderstandings and a long process.

6 ROBERT HAAS: What you need now is a
7 copy of the DPW permit. We need some
8 indication that the City Council did, in fact,
9 take action on your application.

10 HEIDI FEINSTEIN: How do I get --
11 I'll call Vinny. But how do I get the --

12 ELIZABETH LINT: All she needs is
13 the DPW permit because they wouldn't issue it
14 without City Council approval. So if she has
15 City Council approval, they'll issue the
16 permit.

17 And I need copy of that and I need a
18 copy of the letter affidavit.

19 HEIDI FEINSTEIN: Okay.

20 MICHAEL GARDNER: That is the form
21 that was in the packet that says you sent all

1 of the --

2 HEIDI FEINSTEIN: That's what told me
3 to photocopy it and send it to the people.

4 ELIZABETH LINT: I'll check on that.

5 HEIDI FEINSTEIN: So I was told, I
6 guess -- I mean, it's been so long now -- I
7 think it is two months ago now that the City
8 Council approved it; and I was told that it
9 was approved.

10 So how do I -- will Vinny be able to
11 help my with that? Do I go to the city
12 clerk's office?

13 ELIZABETH LINT: Yes, the city
14 clerk's office, the city clerk or the city
15 council.

16 MICHAEL GARDNER: The city clerk has
17 the records of the City Council.

18 And we express our concern and
19 sympathy for you about the complicated process
20 that you had to go through. It can be
21 confusing and we take note of what happened

1 with you.

2 Are there any other questions?

3 ROBERT HAAS: No.

4 GERARD MAHONEY: I have none.

5 MICHAEL GARDNER: Any members of the
6 public who would like to be heard on this
7 matter?

8 AUDIENCE MEMBER: May I ask one quick
9 question.

10 MICHAEL GARDNER: You can, but only
11 if you identify yourself for the record and
12 spell your name.

13 ROBERT WINTERS: My name is Robert
14 Winters, R-O-B-E-R-T, W-I-N-T-E-R-S. That's
15 the first time I've been asked to spell it.

16 Is the proposal in any way
17 obstructing the pedestrian flow, because there
18 is a crosswalk and a crosswalk going right
19 through --

20 HEIDI FEINSTEIN: They would never
21 allow that. We were very -- like, even the

1 handicapped ramps -- so they can get to the
2 crosswalks, were not anywhere on the corner,
3 we are exactly off the brick. So it has been
4 difficult to find a space.

5 ROBERT WINTERS: That's it.

6 MICHAEL GARDNER: Thank you.

7 ROBERT HAAS: I make a motion to take
8 the matter under advisement. You need to get
9 everything resolved by July 7th.

10 HEIDI FEINSTEIN: So there is no way
11 that I could get this stuff to you tomorrow
12 and then, like, be approved pending on me
13 getting the permit to you, getting City Hall's
14 approval and the permit from Vinny with the
15 affidavit to your office tomorrow? If I can
16 do that can I be approved?

17 MICHAEL GARDNER: Well, that would
18 require an action of the Commission, and I
19 wonder if you just want to address that as an
20 alternative resolution.

21 ROBERT HAAS: I make a motion to

1 approve your application contingent upon the
2 completion of certification, and also the DPW
3 permit for the outside seating.

4 GERARD MAHONEY: Seconded.

5 MICHAEL GARDNER: So the motion
6 having been made and seconded to have a
7 conditional approval of the application upon
8 submission of the appropriate permits and
9 affidavit.

10 All those in favor signify by saying
11 aye?

12 ROBERT HAAS: Aye.

13 GERARD MAHONEY: Aye.

14 MICHAEL GARDNER: Unopposed. And as
15 I guess the closest neighbor to City Hall, at
16 least that I've had the experience of working
17 with so far, we wish you well and good luck in
18 your venture.

19 HEIDI FEINSTEIN: Thank you.

20 * * * * *

21 ELIZABETH LINT: Application for

1 Raymond Graham, doing business as Unlimited
2 Motors, has applied for a used car dealers
3 license, office only, at One Mifflin Place.

4 There is a moratorium on these
5 licenses. However, this is an existing
6 license and Mr. Graham is going from being a
7 corporation to being a DBA. So there is no
8 change.

9 MICHAEL GARDNER: If you could, sir,
10 just please state your name and spell your
11 name for us and your affiliation with the
12 business.

13 RAYMOND GRAHAM: My name is Raymond
14 Graham, R-A-Y-M-O-N-D, G-R-A-H-A-M. My
15 affiliation is I'm the owner. I was president
16 of the corporation, and I'm just removing the
17 other officers and going into business for
18 myself.

19 MICHAEL GARDNER: Is there going to
20 be any change in the business operations?

21 RAYMOND GRAHAM: No.

1 MICHAEL GARDNER: Any impact on the
2 neighbors or anything at all that would affect
3 how the business is perceived in the
4 neighborhood?

5 RAYMOND GRAHAM: No. Same office,
6 same everything, nothing will be changed.

7 GERARD MAHONEY: So you currently
8 conduct your business at that location?

9 RAYMOND GRAHAM: Yes. I've been
10 there since 2008.

11 MICHAEL GARDNER: Any complaints or
12 issues?

13 ELIZABETH LINT: No.

14 MICHAEL GARDNER: Any other
15 questions? Any member of the public who would
16 like to be heard? No.

17 Anything else you would like to add,
18 sir?

19 GERARD MAHONEY: Motion to approve is
20 submitted.

21 ROBERT HAAS: Seconded.

1 MICHAEL GARDNER: Motion having been
2 made and seconded to approve the change in the
3 business model, all those in favor signify by
4 saying aye?

5 GERARD MAHONEY: Aye.

6 ROBERT HAAS: Aye.

7 MICHAEL GARDNER: Unopposed. We wish
8 you well. Sorry you had to wait so long.

9 RAYMOND GRAHAM: Thank you very much.

10 * * * * *

11 ELIZABETH LINT: Application for
12 Barismo, Inc., doing business as Dwelltime.
13 Jaime Van Schyndel, manager, has applied for a
14 common victualer license to be exercised at
15 364 Broadway. Said license, if granted, would
16 allow food and non-alcoholic beverages to be
17 sold, served, and consumed on said premises
18 with a seating capacity of 20. The hours of
19 operation will be from 7:00 a.m. to 7:00 p.m.
20 seven days per week.

21 MICHAEL GARDNER: Good evening. If

1 you would be so kind to state and spell your
2 names for the record and also identify your
3 role in this matter.

4 HONG XUE: Hong Xue, H-O-N-G, X-U-E.
5 Treasurer and kitchen manager.

6 JAIME VAN SCHYNDEL: My name is Jaime
7 Van Schyndel, that's spelled J-A-I-M-E, V-A-N,
8 S-C-H-Y-N-D-E-L. I'm the general manager of
9 Barismo.

10 ISRAEL FRIDMAN: My name is Israel
11 Fridman, I-S-R-A-E-L, F-R-I-D-M-A-N. Barismo
12 shareholder.

13 MICHAEL GARDNER: Tell us about the
14 plans, please.

15 ISRAEL FRIDMAN: We are opening a
16 lunch-focused cafe. We are not going to be
17 serving alcohol. We are looking for 20 seats.
18 So we are looking at sandwiches, soup, salad,
19 and a limited coffee and tea. Morning hours
20 with a pastry program and baked goods. A
21 small kitchen and a bar in the front to serve

1 coffee drinks.

2 MICHAEL GARDNER: Has the space
3 operated in this fashion before or is this a
4 new use?

5 ISRAEL FRIDMAN: This is a new use.

6 MICHAEL GARDNER: And so you'll have
7 a stove?

8 ISRAEL FRIDMAN: Yes.

9 MICHAEL GARDNER: And all the
10 hoodings.

11 HONG XUE: Well, it's going to be
12 straight out baked goods; so it's not going to
13 be an electric oven running. There will be
14 convection -- because it's going to be
15 sandwiches so it's a lot of cold.

16 GERARD MAHONEY: No grease cooking?

17 HONG XUE: No.

18 MICHAEL GARDNER: And could you
19 describe, the two of you, what your experience
20 has been in running or working in this kind of
21 business in the past.

1 HONG XUE: I'm actually a chef. So I
2 graduated from the Cambridge School of
3 Culinary Arts. And I've been working in the
4 food industry for several years. And I also
5 teach at the Cambridge School of Culinary Arts
6 right now as a chef instructor.

7 So I do work here, it's been about
8 eight years now. And my family runs a
9 restaurant business, so I grew up around a
10 food background.

11 MICHAEL GARDNER: And you, sir?

12 JAIME VAN SCHYNDEL: I'm currently
13 the general manager, but I've also managed
14 several other coffee shops over the last
15 several years. So I have done smaller -- some
16 local places, Simond's up the street on
17 Massachusetts Avenue. So I've been doing this
18 for a little while.

19 MICHAEL GARDNER: And what are your
20 plans with respect to deliveries, trash
21 control --

1 JAIME VAN SCHYNDEL: For deliveries
2 we are having a side door installed so that we
3 are not interfering with the back of the
4 space. So it's on Broadway, it's the old
5 Hughley Auction House. And there is a side
6 entryway for larger deliveries, but we are
7 also having a hatch installed on the front.
8 We intend to apply for a loading space. But
9 the hatch would be where most of the
10 deliveries would come in so we are not
11 interfering with traffic on the side or --

12 GERARD MAHONEY: Well, when you say
13 "hatch," are you referring to like a sidewalk
14 hatch that would go down into the basement?

15 JAIME VAN SCHYNDEL: It's going to be
16 built not into the sidewalk, but into the
17 front of the building where the -- what do you
18 call it -- like a bulkhead. So we are
19 building it into the bulkhead and it's going
20 to be about 36 inches with rails. The ceiling
21 in the basement is fairly low, so it's not a

1 large distance to get past.

2 And as far as waste, pests, we would
3 sign on for regular pest control. But we are
4 going to build an enclosed area to handle
5 waste because there is no storage area out
6 back. So we would defer to the advice of
7 special services for that.

8 MICHAEL GARDNER: And when do you
9 plan to open?

10 JAIME VAN SCHYNDEL: At this point,
11 six to ten weeks. Construction ends in the
12 first few stages, getting the bar completed
13 and the equipment installed.

14 GERARD MAHONEY: So you are talking
15 about Labor Day?

16 JAIME VAN SCHYNDEL: Yes. We'll see.
17 We are already auditioning staff and, given
18 the scale of the shop, it's going to be an
19 interesting project. I've managed shops of a
20 slightly similar size before, but not
21 necessarily this much space.

1 MICHAEL GARDNER: Any other
2 questions?

3 ELIZABETH LINT: I have the abutter
4 notifications but not the affidavit.

5 MICHAEL GARDNER: So you understand
6 in our packet we tell you to send out all the
7 notices to the abutters, and then we ask you
8 to sign a document that swears that you sent
9 all those notices to the abutters.

10 HONG XUE: Oh, I did. I actually
11 bring it in and drop it off.

12 ELIZABETH LINT: I'll check on that.
13 I don't have it, but I'll check on that.

14 HONG XUE: And also the receipt of
15 the 28th.

16 ELIZABETH LINT: Okay. I'll check on
17 that.

18 MICHAEL GARDNER: Are there any
19 members of the public that would like to be
20 heard on this matter? Mr. Winters? And
21 please state your name for the record.

1 ROBERT WINTERS: It's "Winters" with
2 an "s." And I live at 366 Broadway, directly
3 next door.

4 THE STENOGRAPHER: Excuse me. I
5 can't hear you.

6 GERARD MAHONEY: Please come forward
7 and keep your voice up.

8 ROBERT WINTERS: My name is Robert
9 Winters and I live at 366 Broadway, which is
10 directly next door to the property.

11 And I did have a statement I wanted
12 to make, if I may. And I even brought a copy
13 for the record.

14 I am the most direct abutter to the
15 property in question. My building is at 366
16 Broadway, it stands only a few feet from the
17 neighboring building. And all residents of
18 366 Broadway share some concerns about any
19 possible generation of noise or other
20 nuisances that could possibly result from a
21 changing use of the neighboring building.

1 I'm speaking for all the residents at
2 366 Broadway, which include six adults and
3 two, soon-to-be three, very young children
4 aged 2 and under.

5 All of my tenants and I welcome the
6 return of this building to active use. Let's
7 be real clear about that.

8 For over three decades I've enjoyed a
9 very cordial and cooperative relations with
10 the previous occupants of the public auction
11 house. We have shoveled each other's
12 sidewalks, and I still have their phone number
13 on my kitchen bulletin board for contact in
14 case of emergencies and crime; that's been the
15 nature of things.

16 And I'll also say that, without any
17 prompting, I've actually cleaned their gutter
18 for the last 25 years just as a convenience.
19 Why not?

20 Several neighbors and I have
21 effectively served voluntarily essentially as

1 a night watchman for the property all these
2 years. Ours has been the ideal partnership
3 for a mixed residential/commercial district,
4 and I look forward to the possibility of
5 enjoying a similar cooperative relationship
6 with the new occupants of the building.

7 I've been aware of the proposal of a
8 cafe, through, through second and third hand.
9 It is sort of curious to say here that the
10 first actual notification that I have received
11 as a direct abutter happened within the past
12 week when I received the official
13 notification.

14 Up to this point, not a person
15 affiliated with this has discussed any of the
16 particulars about what is being proposed with
17 me. That is not meant as a condemnation in
18 any way, but it's a curiosity; especially
19 since I'm sort of well-known as a rather
20 cooperative neighbor, and so it left me rather
21 curious.

1 When I got that letter, I asked my
2 tenants for any feedback that they would like
3 to give at this meeting. And they sent me a
4 few things and I simply want to read off what
5 my tenants offered.

6 They would like that there should be
7 neither a fan nor air conditioning noise at
8 night. None. They want no loud music or
9 music audible outside at any time of day.

10 They have some concerns, and we hope
11 that there would be no issues with fumes
12 associated with food and drink preparation or
13 that, if there are, that any problems should
14 be dealt with swiftly and completely.

15 There should be no external trash or
16 garbage storage. No trucks idling. My
17 understanding is that this is a 7:00 a.m. to
18 7:00 p.m. proposal. They don't want to hear
19 any trucks backing up or otherwise being a
20 disturbance either before 7:00 a.m. or after
21 7:00 p.m.

1 They do not want any trucks or
2 customer's cars blocking Broadway Terrace,
3 which -- this is the first I've heard of a
4 side door, that would seem to imply blocking
5 Broadway Terrace.

6 Something of great concern to me and,
7 hopefully, this will not be a concern, but
8 there should be no employees or customers
9 loitering or smoking anywhere around 364
10 Broadway, including but not limited to, in
11 front of the building, in the rear of the
12 building, in the alleyway between 364 and 366
13 that we share, on Broadway Terrace, or the
14 neighboring properties.

15 And any outside trash, garbage, or
16 discarded food created by customers or
17 employees, including our neighbor's
18 properties, is to be dealt with swiftly and
19 completely.

20 John also put in that any graffiti on
21 the building is to be dealt with swiftly and

1 completely. And, in a slightly comic note,
2 I'll point out that I generally have been the
3 one to remove graffiti from one side of the
4 building for the past 20 years.

5 In terms of noise generation, our
6 cluster of buildings that face East Street,
7 Broadway and Broadway Terrace, all have rear
8 porches facing our abutting rear yards. And
9 it is the nature of this space that any and
10 all sounds produced in this rear yard area or
11 adjacent properties are plainly audible to all
12 residents of all of these buildings,
13 especially during the warm weather months when
14 the windows are open.

15 Across Broadway is the Longfellow
16 School Building, which has a brick exterior
17 and a courtyard that very effectively reflects
18 any and all sounds back across the street.
19 Conversations on the street, out front, are
20 plainly audible even at the rear of the
21 building; that is the nature of the beast.

1 And most of us do not use air
2 conditioners and prefer open windows in the
3 summertime. The sound of air conditioning and
4 similar apparatus in the neighborhood of our
5 building can be extremely disturbing. It is
6 essential that a piece of our shared space not
7 be disturbed by any equipment associated with
8 the proposed commercial activity. To do so
9 would irreparably harm the peace, both inside
10 and outside of our home.

11 I also live on the second floor of
12 366 Broadway and I look out directly onto the
13 roof of 364 Broadway. I can practically reach
14 out and touch it. It's imperative that there
15 be no mechanical equipment installed on this
16 roof and that it will not be in any way
17 audible.

18 Furthermore, since the proposed
19 change of use will involve food preparation,
20 something that has been not at this location
21 in many decades, if ever, we ask that

1 appropriate steps be taken so that we are not
2 unreasonably subjected to the byproducts of
3 the proposed use.

4 As I mentioned earlier, I've been the
5 ideal residential neighbor of a neighboring
6 business for over three decades. I've always
7 acted cooperatively and neighborly, and it's
8 my intention to maintain the same relationship
9 with my new neighbors. We look forward to the
10 reactivation of this building, but we must
11 insist that our reasonable concerns be met as
12 a precondition to support any proposed use.

13 MICHAEL GARDNER: Thank you.

14 So I take it you haven't had much
15 conversation with Mr. Winters or his tenants
16 or other abutters?

17 I've got to give them a chance to
18 respond.

19 JAIME VAN SCHYNDEL: I don't believe
20 we -- we haven't at this point. We did talk
21 with Chris Bassler and a few other people and

1 they advised us to go to the Neighborhood
2 Association at a certain point.

3 At this point where we were in the
4 process things had accelerated to the point
5 where we needed to hit this milestone to
6 continue the process, so we chose not to at
7 this point. But we'll be going to the
8 Neighborhood Association to talk about the
9 proposed plan and get some feedback.

10 We are not going to go into this
11 blind and mad. When we do our menu and when
12 we do start to approach this, in terms of what
13 the community wants, we do intend to reach out
14 and approach everyone and say, "What to do
15 think about what we are doing? And "How can
16 we change things to fit?"

17 In terms of the music, that is not in
18 our plans to have it loud. I can't speak to
19 the capacity of people inside in terms of
20 noise if people are talking and having
21 conversations, but it's not our intention to

1 have loud music or to be that style of cafe.
2 We are not a loud, hipster vibe. We are going
3 with a more subtle classical, softer music,
4 profile jazz, Spanish speaking, a softer side
5 of things. And we are going to approach that.
6 It's not in our wheelhouse to have any loud
7 music.

8 We are having the glass windows
9 replaced, so that we can open them and we
10 won't be running air conditioners as much.

11 ROBERT WINTERS: Did I hear you
12 correctly that you are proposing to have
13 windows that open onto the street from in
14 front?

15 JAIME VAN SCHYNDEL: Yes.

16 ROBERT WINTERS: I would like to go
17 on record that I am vehemently opposed to that
18 application. If that is the case, I'm
19 vehemently opposed to that.

20 MICHAEL GARDNER: Thank you. I'll
21 leave it at that because I have another member

1 of the public that would like to be heard.

2 So if you would, please identify
3 yourself.

4 STEVEN RECKHOW: I am Steven Reckhow,
5 R-E-C-K-H-O-W. I live just around the block
6 on 305 Harvard Street. I own this building
7 and also the -- I developed the triple decker
8 directly behind it, which I have interacted
9 with Robert for over two years.

10 And we -- I think Robert would agree
11 -- that we transformed that triple decker from
12 being a, you know, something that dragged the
13 neighborhood down to something that built the
14 neighborhood up. We won a historic
15 preservation award for redoing it. It's the
16 state of the art in energy efficiency.

17 My wife and I have lived on that
18 block for 20 years. This is, you know, part
19 two of selecting a tenant that fits the
20 neighborhood, and fits our identity as people
21 who want to create a neighborhood around us

1 that is efficient and meets people's needs.

2 The building is being refit from what
3 it was before. For 62 years it was an auction
4 house where people from out of town came in,
5 delivered trucks in the backyard, and the
6 backyard was potholes, and actually behind the
7 triple decker they had a steel container back
8 there that they wheeled stuff into for
9 storage.

10 The building itself was a wreck.
11 Asphalt siding and whatever, and that is where
12 their employees worked.

13 We dedicated all the space between
14 the triple decker and this commercial space to
15 residential. We completely transformed that
16 space. The people who now own those units
17 have adopted that space, it's completely
18 changed. They are putting out window boxes,
19 on what's going to be their space. They own
20 the backyard now.

21 We gave that area over to them

1 effectively. We told these folks -- we told
2 anybody who wanted to rent the space, "You
3 can't use the backyard, you can't infringe on
4 the residential space the way the previous
5 auction house did." We want to respect this
6 as a residential neighborhood.

7 We are putting a side door in so
8 that, you know, when a delivery truck runs up,
9 they can run down Broadway Terrace -- I mean,
10 we are taking about a 50-foot run here -- to
11 make deliveries.

12 We are also putting this hatch in at
13 the sidewalk, which is -- it's the same thing
14 that you see like if you go down to the
15 Harvard Bookstore on Mass. Avenue, where
16 deliveries come in; you know, it's just a
17 short door at the sidewalk, and they run
18 things down below.

19 And the deal with these folks is,
20 nothing goes out through the back door,
21 nothing goes through, no trash outside, no

1 deliveries, no trash going out the back way.
2 We want to preserve that as the residential
3 thing.

4 As far as the front façade, this
5 place, it was built in 1928, basically, and it
6 was, you know, it's a one-story brick
7 building. And something happened at some
8 point, I think the flashing at the roof failed
9 and all the brick façade fell off.

10 And something happened, and they put
11 up -- when we bought it, it had fiberglass
12 fake shingles as the façade. We went to the
13 Historic Preservation and said, you know, "Can
14 we pull this off and see if we can pull it
15 back to the historic way that it was?"

16 So when we started to pull it off, it
17 looked good to begin with, and then it came
18 down to like plywood, and we pulled the
19 plywood off. And then it turned out that all
20 of the original brick had been ripped off, all
21 of the original transom windows had been

1 destroyed.

2 At that point, we went to the City
3 and worked with a community development on the
4 façade improvement program.

5 We went through their design process.
6 We had researched the historic nature of the
7 façade, and they set us up with our architect
8 and we got the plans.

9 We went through the hearings with the
10 Historic Preservation to restore it basically
11 to the façade that it was before, including
12 putting in again, you know, a 42-foot long
13 transom light over, you know, all of windows
14 that are there. All of the windows and doors
15 stayed exactly where they are. What we are
16 doing is we are replacing them with double-
17 glazed low E windows.

18 The windows that are now like just
19 single pane, they will open. It's kind of
20 like what happens. I mean, that's what you
21 see in Central Square and Harvard Square, it's

1 the way that commercial spaces -- they like to
2 see opening spaces. They don't have to be
3 open, they can be open. Fundamentally, it is
4 New England, they don't open all that often
5 but they are going to be really energy
6 efficient.

7 Also, on the issue of HVAC, what was
8 in there before was -- it was a cold stove.
9 You know, the heating system, a steam system,
10 that was replaced in 1984 with an oil-fired
11 steam system, which obviously you can't -- you
12 know, that's not a viable way to run a
13 commercial space.

14 Once again, like we did in the triple
15 decker, we are going for ultimate energy
16 efficiency, and it does indeed require a
17 compressor on the roof; I mean, that's just
18 what happens.

19 And it's the most quietest unit that
20 we can find, it is 17 Sear. I mean, this is
21 like way over Energy Star. We are going over

1 the top on everything we can do to make this
2 fit into the neighborhood.

3 And we -- you know, I have to take
4 the flack for these guys on talking to the
5 neighbors. Having worked on the triple decker
6 back behind there for -- well, we are into
7 three years now, and Robert can back me up on
8 this stuff. And I know everybody in the
9 neighborhood and we live just around the
10 block. I talk to people all the time. Some
11 of your tenants, Robert, do actually know who
12 is coming in. And it is just this thing
13 about, you know, you can't tell people who is
14 coming in ahead of time because we didn't have
15 a lease signed.

16 But the overwhelming response -- I
17 mean, actually other than Robert, everybody is
18 like, "Wow, you are bringing in a cafe.
19 That's a wonderful thing." So Robert and I
20 will talk later.

21 HONG XUE: We ask Chris about --

1 (inaudible).

2 ISRAEL FRIDMAN: Well, Chris Bassler
3 was not really encouraging. He was
4 enthusiastic about our proposal. We've been
5 in touch with him regularly, lots of e-mails
6 have come back and forth, and we are following
7 all of the regulations and all of the
8 guidelines to the T.

9 Truly, we held back a little bit from
10 contacting the neighborhood, we are looking
11 for the right time to do it. And as Jaime
12 just said before, the process accelerated a
13 lot lately, more than our expectations. And
14 we were planning on doing it soon -- that is
15 just the way things happened.

16 MICHAEL GARDNER: I'll just ask the
17 question to anyone here who thinks they might
18 have experienced a -- or can provide an answer
19 in terms of whether or not people are using
20 air conditioning, or whether or not there is a
21 roof unit, or whether or not windows are open.

1 Is our authority limited to the
2 question of whether there is a violation or
3 potential violation of the noise ordinance?

4 ELIZABETH LINT: Well, I think it is
5 important to note, first of all, that there is
6 no application for any type of entertainment
7 license.

8 MICHAEL GARDNER: I did note that.

9 JAIME VAN SCHYNDEL: We are not that
10 far along yet.

11 MICHAEL GARDNER: Well, you were
12 talking about music and the type of music, and
13 I noted that there was no entertainment
14 license here, so that is a separate question.
15 You certainly couldn't have music without an
16 entertainment license.

17 I guess I'm asking about, you know,
18 sort of a neighbor saying, "Well, we don't
19 want any air conditioning and we don't want
20 any units on the roof. Is our authority
21 limited to "you don't go about 50 decibels?"

1 ELIZABETH LINT: Well, we are
2 controlled by the noise ordinance and the
3 units on the roof certainly are in Zoning's
4 purview, not ours. But, again, it is the
5 noise ordinance, so that would be the
6 nighttime 50 decibels.

7 And as far as windows being opened,
8 the noise ordinance also tells us that sound
9 of noise can't be plainly audible from 50
10 feet.

11 GERARD MAHONEY: I have a question
12 for the gentleman. You own the building,
13 correct?

14 JAIME VAN SCHYNDEL: Yes.

15 GERARD MAHONEY: What is the status
16 with regard to ISD with regard to permits for
17 construction renovation?

18 JAIME VAN SCHYNDEL: All the trades
19 have permits.

20 GERARD MAHONEY: So permits have
21 been issued?

1 JAIME VAN SCHYNDEL: Yes.

2 MICHAEL GARDNER: Including for this
3 hatch-type entryway?

4 JAIME VAN SCHYNDEL: That part has
5 not. That is, you know -- we are going
6 through one more iteration with it.

7 GERARD MAHONEY: Subject to a design
8 change, I guess?

9 JAIME VAN SCHYNDEL: Yes. Well, not
10 a design change; just a redefinition kind of a
11 thing.

12 GERARD MAHONEY: I understand.

13 MICHAEL GARDNER: I'm wondering
14 whether this is appropriate to take under
15 advisement for the July 7th decision meeting
16 and to give an any opportunity for -- based on
17 any information generated this evening -- for
18 either the parties who are present or for
19 others who may have an interest to provide
20 written material or opinion about the matter?

21 ROBERT HAAS: So it seems to me the

1 first place you want to start is with your
2 immediate neighbor. I think you need to
3 reassure him that some of these things are
4 non-issues; and then to work through some of
5 the concerns he has and reassure him that it's
6 not going to disturb him or his tenants.

7 And it seems to also that if you're
8 going to have a meeting, it would be great to
9 have your neighbor with you who supports your
10 proposal as opposed to trying to have that
11 conversation with your other neighbors in the
12 neighborhood and still have an abutting
13 neighbor that has concerns over the property.

14 So I know you mentioned you would
15 want to talk to Mr. Winters. I think you
16 should do that, but also think you should talk
17 about your business concepts and try to
18 reassure him that it's not going to have an
19 impact on the quality life of him and his
20 tenants. And hopefully you will have the same
21 relationship you had prior with your

1 neighbors. I think that's what you want.

2 ISRAEL FRIDMAN: We want to be a
3 community space. We want to be like a
4 Simond's.

5 ROBERT HAAS: But I think it is
6 going to take some effort on your part to have
7 that conversation, and try to figure out what
8 the right answer is so you can live peaceably
9 and also enjoyably.

10 JAIME VAN SCHYNDEL: Especially if
11 you are sitting through the first people on
12 the list, yes, definitely.

13 MICHAEL GARDNER: I don't actually
14 know how that's done. How you can design the
15 equipment and install it and then find out how
16 loud it is.

17 I take it there is has got to be ways
18 to try to get expert opinion, but I'm
19 perplexed about an issue like that,
20 particularly with such a close abutter.

21 I'm just talking, so I'm happy to get

1 any comments back, sir.

2 STEVE RECKHOW: I think that Robert
3 and I have worked together over the last two
4 and a half years on the triple decker behind
5 his house. And he and I have a good way to
6 talk together and that we can find a way that
7 this will be agreeable between us.

8 Wouldn't you say, Robert?

9 ROBERT WINTERS: I don't know. That
10 would be my hope. But, again, I'm somewhat
11 mystified at the fact that you haven't uttered
12 the word "cafe," although I've known about it
13 for some time, with all this closeness and
14 friendliness.

15 STEVE RECKHOW: I thought that I had
16 actually.

17 MICHAEL GARDNER: I see two potential
18 options for the Commission to consider here.
19 One, is to take this matter under advisement
20 until July 7th. Another option to potentially
21 consider is to continue the matter to July

1 19th. And I'm wondering if the Commissioners
2 have an opinion with respect to that?

3 ROBERT WINTERS: If I may suggest,
4 since many of the people from the Neighborhood
5 Association, but they will all express a lot
6 of concerns about this. And I wasn't kidding
7 when I see we welcome an active use, and even
8 the notion of a cafe we'd welcome.

9 It was some of these other ancillary
10 aspects that were of the greatest concern;
11 primarily, that of noise generation.

12 I think that those members of the
13 Neighborhood Association certainly have not
14 had an opportunity to weigh-in on this at any
15 public meeting.

16 So it seems to me to take it under
17 advisement to a decision meeting wouldn't
18 provide them that opportunity.

19 MICHAEL GARDNER: So I'm wondering
20 whether how comfortable the applicant feels if
21 we continue this matter generally to the July

1 19th meeting?

2 JAIME VAN SCHYNDEL: I think there is
3 other ways to address the issues, and I'll be
4 happy to sit down with all the abutters and
5 work as much as I can to address all the
6 concerns and incorporate them, even to the
7 point of showing them some of the business
8 plans of what we are trying to do with our
9 menu.

10 We are trying to keep a low profile
11 and not trying to be a burden on the
12 neighborhood, not coming in with an attitude
13 of maybe loud and flashy. And, yes, we'll
14 shovel the sidewalks and do the things that
15 matter and we'll listen to our neighbors.

16 MICHAEL GARDNER: So what's the
17 compelling reason to not delay it for another
18 12 days, to allow more community process, and
19 give us a chance to hear more directly about
20 the progress that you've been able to make,
21 including having the opportunity to have 12

1 more days to try to accommodate things?

2 I'm trying to understand what the
3 compelling reason is to not go with the 19th?

4 JAIME VAN SCHYNDEL: I would think we
5 can do it, it is just a matter of whether or
6 not -- what would change between now and then
7 other than we can reach out to the
8 neighborhood, and I believe we can reach out
9 to the neighborhood in the following week.

10 MICHAEL GARDNER: Well, one of things
11 that would change is there would be an
12 opportunity for us to hear directly from
13 people, so there is an institutional advantage
14 to us.

15 JAIME VAN SCHYNDEL: What would you
16 be looking for from us to present to resolve
17 the air conditioners? What other things do we
18 need to present to you?

19 MICHAEL GARDNER: Well, ideally, the
20 best outcome is if they have a public hearing
21 and we get overwhelming support from the

1 neighbors about this exciting new idea. You
2 know, that isn't obviously always possible and
3 that part of our job to listen and consider
4 and try to understand and come to a balance
5 and appropriate view.

6 STEVE RECKHOW: I'm sorry, had I
7 known, there are -- the three new owners in
8 the triple decker that directly abut the
9 property, have all personally expressed
10 support for this project.

11 And, had I known, I could have
12 brought them, as well as two adjacent tenants
13 or owners on Broadway Terrace. And, actually,
14 Robert, I think one of them is one of your
15 tenants.

16 MICHAEL GARDNER: Okay. I got it.

17 STEVE RECKHOW: And they could show
18 up on short notice.

19 MICHAEL GARDNER: Thank you. The
20 pleasure of the Commission?

21 ROBERT HAAS: To continue until July

1 19th.

2 MICHAEL GARDNER: Is that in a form
3 of a motion.

4 ROBERT HAAS: That's my inclination.

5 MICHAEL GARDNER: Okay. That's my
6 inclination as well. I'm looking for
7 a motion.

8 ROBERT HAAS: I make a motion to
9 continue it to July 19th.

10 GERARD MAHONEY: Seconded.

11 MICHAEL GARDNER: Motion having been
12 made and seconded to continue the matter, I
13 take it, generally, until July 19th.

14 Just in terms of the discussion
15 point, I think what we are hopeful in terms of
16 that is that you have more time to do what can
17 be a difficult process of communication and
18 discussion with a variety of people with a
19 variety of interests, some of them very
20 strongly expressed, and some perhaps unknown;
21 and that you can then come back to us and

1 report more fully on your progress.

2 I see you've got your hand raised, so
3 before we take a vote, I'll give you an
4 opportunity to say something.

5 HONG XUE: Would it be okay if we
6 actually have signatures from all the
7 neighbors and the support if we can?

8 JAIME VAN SCHYNDEL: A large portion
9 of our client base already lives in the
10 neighborhood.

11 MICHAEL GARDNER: Actually, we are
12 not particularly in the business of giving you
13 advice, specifically about how to do this, but
14 if you've spent any time here this everything,
15 you've seen that we do accept signatures. And
16 I take it from your body language that you
17 have spent some time here this evening.

18 Motion having been made and seconded,
19 all those in favor signify by saying aye?

20 ROBERT HAAS: Aye.

21 GERARD MAHONEY: Aye.

1 MICHAEL GARDNER: None opposed. So
2 we'll continue the matter generally until July
3 19th.

4 And let's just go off the record for
5 a minute and we'll take a quick break.

6 (Brief recess.)

7 MICHAEL GARDNER: We've been off the
8 record a few minutes, but we're about to go
9 back on. We've taken a brief adjournment.

10 * * * * *

11 ELIZABETH LINT: A disciplinary
12 matter continued from May 17 and June 14,
13 Afkor, Inc., doing business as Cafe Anatolia.
14 Alp Hocagil, manager, holder of a common
15 victualer license at 251 Cambridge Street due
16 to a report from the Traffic, Parking and
17 Transportation Department regarding
18 outstanding parking tickets and Afkor, Inc.'s,
19 failure to adhere to the payment plan.

20 So I can report that as of this
21 morning, he is paid in full.

1 ROBERT HAAS: Good.

2 MICHAEL GARDNER: So, as I recall,
3 sir, if you wouldn't mind, please, stating
4 your name for the record and spelling it.

5 ALP HOCAGIL: My name is Alp Hocagil.
6 My first name is spelled A-L-P, and my last
7 name is spelled H-O-C-A-G-I-L.

8 MICHAEL GARDNER: You are the holder
9 of the common victualer license?

10 ALP HOCAGIL: Yes, I'm the holder.

11 MICHAEL GARDNER: And as I recall one
12 of things we were concerned about was that at
13 different points you were using multiple
14 vehicles with the possibility of having
15 tickets issued on multiple vehicles or on
16 different ones, including on a relative's.
17 And we were concerned about whether or not you
18 could meet the payment plan and, if you got a
19 way going forward so you could avoid tickets
20 in the future.

21 And we have heard from Ms. Lint that

1 all the tickets are paid, which is good. Just
2 what is going to happen tomorrow?

3 ALP HOCAGIL: I don't have a -- I'm
4 just using a friend's car, it's more than a
5 month. I park in the spot where I used to
6 park since a year, which is right on the
7 McGrath Highway, next to the parking lot. And
8 I was renting that place.

9 Now, it's been more than a few months
10 and I have a delivery guy already doing the
11 deliveries, that is why I don't have any
12 problem.

13 And the other concern about Ms. Lint
14 says that it's my brother's car. He was
15 helping me out sometimes. So I know he has
16 some tickets, and I already talked to him in
17 May I think, he paid some of the tickets, but
18 I will take care of that one, too. I will
19 talk to him. He was back home, he came back,
20 like, last Saturday, a week ago, but I will
21 talk to him and take care of that.

1 MICHAEL GARDNER: Okay. Any other
2 questions?

3 ROBERT HAAS: No. But the only other
4 thing I would say to you, I'm not prepared to
5 go through this again. We went through a long
6 history with you and so I'm warning you that
7 if you find yourself in this situation again,
8 I'm probably not going to be as patient.

9 ALP HOCAGIL: No, no. I'm in the
10 process to sell. I'm going back to school,
11 hopefully in September.

12 So, actually, I'm going to be here
13 the next hearing day for the license
14 application --

15 GERARD MAHONEY: You are selling the
16 business?

17 ALP HOCAGIL: Yes. I have to go back
18 to school (inaudible) I have a master's
19 degree, so I'm going back to school.

20 MICHAEL GARDNER: Okay. Sorry you
21 had to wait so long for tonight, but it's

1 important to get these obligations taken care
2 of.

3 And I take it we'll put the matter on
4 file, if that's the appropriate action. But
5 it will be in the record with respect to, as
6 Commissioner Haas said, should there be any
7 other trouble. Is that right, Ms. Lint?

8 ELIZABETH LINT: Yes, you can do
9 that.

10 GERARD MAHONEY: So moved.

11 MICHAEL GARDNER: Unless there is
12 another alternative?

13 ROBERT HAAS: No. I think as long
14 as the parking tickets are paid and, to your
15 point -- because part of the problem is not
16 just parking around your store, but when you
17 are making deliveries and stuff like that,
18 you're --

19 ALP HOCAGIL: Well, the biggest
20 problem is when I was doing deliveries around
21 lunchtime. But I'm already out. Hopefully

1 I'm going to sign tomorrow the P & S.

2 MICHAEL GARDNER: All right.

3 Seconded? So the motion has been made and
4 seconded to put the matter on file, with the
5 notation in the record, should there be any
6 additional difficulties, what will happen.

7 All those in favor signify by saying
8 aye?

9 ROBERT HAAS: Aye.

10 GERARD MAHONEY: Aye.

11 MICHAEL GARDNER: The aye's have it.
12 There is none opposed. So that's the action
13 we'll take and I wish you well in figuring out
14 a way to sell or change the business.

15 ALP HOCAGIL: Thank you very much.

16 MICHAEL GARDNER: Before we motion to
17 adjourn, there is one scheduling matter there
18 I'd like to raise.

19 There is currently a License
20 Commission Hearing scheduled for August the
21 16th and a decision hearing for the August

1 25th.

2 My plans are that I will be in town
3 on the 9th of August but I don't expect to be
4 in town on the 16th of August, and I thought
5 there was some issues about whether there were
6 other vacation plans.

7 ROBERT HAAS: I want my vacation on
8 the 12th.

9 ELIZABETH LINT: I thought we already
10 changed it?

11 MICHAEL GARDNER: Oh, did you?

12 ELIZABETH LINT: I think they changed
13 it. I'll check, but I think they did.

14 MICHAEL GARDNER: Okay. So we are
15 going -- if it's fine with you, we'll move the
16 date to the 9th?

17 ROBERT HAAS: Yes, I'm fine for the
18 9th.

19 MICHAEL GARDNER: Okay. Do we need
20 a motion to change the schedule? But we'll
21 just take administrative notice that the time

1 date is going to be changed to the 9th.

2 ELIZABETH LINT: Yes, I'm fairly
3 certain that I did, but I'll look.

4 MICHAEL GARDNER: Okay. A motion to
5 adjourn is always in order.

6 GERARD MAHONEY: So moved.

7 MICHAEL GARDNER: The motion has been
8 made and seconded to adjourn, and we would
9 adjourn at approximately 10:47 p.m.)

10

11 (Whereupon, at 10:47 p.m., the
12 License Commission Hearing was adjourned.)

13

14

15

16

17

18

19

20

21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

C E R T I F I C A T E

COMMONWEALTH OF MASSACHUSETTS
SUFFOLK, SS.

I, Evelyn M. Slicius, a Certified
Shorthand Reporter and Registered Professional
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, skills and ability.

IN WITNESS WHEREOF, I have hereunto set
my hand this 5th day of July, 2011.

Evelyn M. Slicius
Notary Public
Certified Shorthand Reporter
License No. 127193
My Commission Expires:
May 15, 2013

**THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT
DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME
BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL
AND/OR DIRECTION OF THE CERTIFYING REPORTER.**