

COMMONWEALTH OF MASSACHUSETTS

CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION GENERAL HEARINGS

LICENSE COMMISSION BOARD MEMBERS:

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

STAFF:

Elizabeth Y. Lint, Executive Officer

- held at -

Michael J. Lombardi Municipal Building
831 Massachusetts Avenue
Basement Conference Room
Cambridge, Massachusetts 02139
Tuesday, March 23, 2010
6:00 p.m.

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P R O C E E D I N G S

MS. LINT: License Commission General Hearing, Tuesday, March 23, 2010, 6:00 p.m. We're in the Michael J. Lombardi Municipal Building, 831 Massachusetts Avenue, Basement Conference Room. Before you are the Commissioners: Chairman Richard Scali, Deputy Chief Dan Turner, and Commissioner Robert Haas.

Minutes?

MR. SCALI: Motion to accept the minutes from our last meeting of March 9.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MS. LINT: Review: Continued from March 9, 2010. The License Commission will review the pledge agreement between Everest Crossing d/b/a OM Restaurant, 57 JFK Street, Solmon Chowdhury, Owner, and Crimson Galleria Limited Partnership, Raj Dhanda.

MR. SCALI: OM and Mr. Dhanda come forward and have a seat up here at our table. You're the first to sit at our new table.

MR. MILLER: Stephen Miller of the firm McDermott, Quilty and Miller at 131 Oliver Street in Boston. I am representing Raj Dhanda, the landlord and pledge holder.

MR. DHANDA: Raj Dhanda.

MR. CHOWDHURY: Solmon Chowdhury, Everest Crossing, LLC, OM Restaurant and Lounge.

MR. SCALI: Mrs. Lint, why don't you give us a briefing on this?

MS. LINT: As a result of a bankruptcy situation with OM, documents were coming into the office. I started reviewing them. I pulled the pledge and started reviewing that and turned up

some clauses that I felt were unenforceable, and I didn't quite understand how that had gotten through the Commission as well as the ABCC. Then I pulled the lease and there were clauses in the lease as well that are unenforceable. So I felt it was important to bring the parties together and have an awareness and understanding of where we are.

MR. SCALI: These are clauses that are in the pledge that we approved and that the ABCC approved.

MS. LINT: Yes.

MR. SCALI: And that are also part of the lease.

MS. LINT: Giving control of the license to the landlord.

MR. SCALI: That was my next question; what kind of clause it that? Is there a copy of the pledge information we can look at?

MR. SCALI: Are they marked?

MS. LINT: They're marked.

MR. SCALI: All right. It seems pretty clear. Mr. Miller, I'm sure you have been

privity to -- have you talked to Mr. Miller about these issues?

MS. LINT: Yes.

MR. MILLER: First, for the record, we did not draft these documents, our firm.

MR. SCALI: You did not?

MR. MILLER: We did not. We were recently hired by Mr. Dhanda to review them and advise him. We made it clear that the license can be pledged only for a debt or for a loan, and cannot be pledged to secure obligations under a lease, and at least that part of the pledge and security agreement would be unenforceable. Certainly as far as the debt is concerned that would be an enforceable.

The language in the lease -- there's a lot of things that -- obviously the lease language may or may not be under purview or jurisdiction of the Licensing Board or the ABCC, but more than likely would be under the purview of a Superior Court judge or a Bankruptcy Court judge. We also advised him that we think there are other ways to

do this that would give him the peace of mind that he would like and also -- a right of first refusal for instance, would probably be something that would be much more acceptable, not repugnant to any local boards or the ABCC, and be more acceptable to a Superior Court judge. So that's where we are, Mr. Chairman.

MR. SCALI: This also has come about because we had an application that came to us at our last hearing for a new license in a space in which there is already a license or a tenant has vacated. My concern is that there are a number of licenses for sale in that building. I don't know if Mr. Chowdhury is still considering selling or not. I guess he's still there in the building but I know that Bombay Club has gone and their license is for sale. I know there's another license for sale in the building as well; am I right?

MS. LINT: Wagamama would be interested in selling theirs in order to purchase an All Alcoholic license.

MR. SCALI: I guess the point is, if

Mr. Dhanda is telling people that he somehow owns these licenses or controls these licenses, he does not.

MR. MILLER: He is fully aware of that. I did go through yesterday at our meeting that there is no language in any of the other leases. There's no pledges approved and there's no language in any of the other leases similar to what's in front of you. So Wagamama and Shabu Ya and Bombay all have total control of their own destinies. Whether they choose to purchase another license or sell a license or do whatever they want, that's up to them. Their obligations to my client are strictly through a lease that they have.

MR. SCALI: The other licensees besides OM have no obligation to this landlord?

MR. MILLER: Other than a lease.

MR. SCALI: No debt?

MR. MILLER: No debt, right.

MR. SCALI: They're lease debt.

MR. MILLER: Right.

MR. SCALI: I mean liquor license-

wise.

MR. MILLER: Correct. There's no pledges and no clauses to control those licenses.

MR. DHANDA: And there's no debt on any of those in which I have any interest.

MR. MILLER: The Bombay Club is no longer going to be a tenant there. Their license is for sale. There's another tenant that would like to go in there. As was already stated, Wagamama has a Beer and Wine license they would like to purchase. They'd like to sell their Beer and Wine and purchase an All Alcohol. There's also a new tenant, a Korean steakhouse that is applying for a Beer and Wine license.

MR. SCALI: I guess I want Mr. Dhanda to understand this: He does not control those licenses; he cannot tell prospective tenants that he controls the licenses or somehow can get those licenses for them. There are people who are coming in who are applying for new licenses when there a licenses already in the building. And the rumor that I'm hearing is that Mr. Dhanda is telling them

that I can get you these licenses, don't worry about it, and you can come on in and apply. From what I see at Bombay Club there's a build-out going on up there already too, some new tenant going in there. I wouldn't advise your tenant to do that if I were you.

MR. MILLER: At their own risk.

MR. SCALI: Really at their own risk because we're not likely to grant new licenses where there are licenses available.

MR. MILLER: Yesterday I was given a few licenses that are available by Mrs. Lint. So I passed it on to Mr. Dhanda.

MR. SCALI: I think maybe there's - I want to say this delicately so people are not insulted -- there's a tone kind of going on in that building; that tenants are unhappy and there's a lot of upheaval, and the landlord is not friendly. I guess it -- that's frankly none of our business if landlords are friendly to their tenants or not at all. But I guess when they're implying that somehow they have control of licenses, and are

therefore threatening tenants to do certain things, that's when we step in because that's when we know that our licenses are a privilege and not a right.

So I guess I want to make sure that your client is aware of what the law is. It seems like you advised him and he know exactly what he's supposed to be doing. It sounds like it's clear now; that he understands what's happening.

MR. MILLER: We've only recently come on board but we will be doing hopefully some of the work on these in the future. We are spending time with Mr. Dhanda, taking him through the process a little bit and explaining where the line is drawn and what can be in documents and what can't.

As you said yourself, I think a lot of it may be rumor. There might be people who are disgruntled that the economy isn't so good, and business isn't so good, et cetera, et cetera.

MR. SCALI: It sounds like there are a lot of disgruntled tenants in the building from what I'm hearing.

MR. MILLER: That being said, we will

be in compliance, Mr. Chairman.

MR. SCALI: Any questions?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. CHOWDHURY: If I may say a few words?

MR. SCALI: You want to be heard, yes.

MR. CHOWDHURY: One of the biggest difficulty that I know -- well, we've been trying to sell our liquor license, and because our liquor license is -- actually, let me go back a little bit if that's okay.

MR. SCALI: Sure.

MR. CHOWDHURY: When we purchased our liquor license the person who actually drew up all these documents was represented which is the law firm of Holland and Knight. Somehow they represented Crimson Galleria, which is the landlord, but somehow we also paid their commission. So apparently they represented both of us. So the documents are drawn up by them and I have proof that they charged us a commission for

all these things. I've been in touch with the Attorney General's Office so they are --

MR. SCALI: It doesn't sound like a very smart way to go.

MR. CHOWDHURY: Exactly. I got in touch with the Attorney General's Office so they are actually meeting with me to go over all these things also.

One of our biggest difficulty is first thing is we want to sell our liquor license and we've been trying to do that for six months. I have e-mails and letters to the Bankruptcy Court that if we try to sell our liquor license that our lease will be terminated, et cetera, and things like that.

The second thing is I understand there is a pledge. In order for us to figure out how much we actually owe for like the last nine months, we've been trying to get a payoff and we still haven't got any payoff from them. One thing we would like to do is if there is a pledge, if it's valid then we would like to have a payoff in

writing so we actually know what was lended[sic] to us, how much went to the lawyer's office for fees or commission, and actually how much we've paid so far and how much we owe, and things like that need to be clear. It's been very very difficult for me to get any kind of documents or information.

MR. SCALI: Let me just understand. You're talking about money that was loaned to you by the landlord for the license?

MR. CHOWDHURY: At the beginning in 2004, when we signed our lease I was financially doing really well and I didn't really need to borrow any money from anybody to purchase the liquor license but it was forced onto me to borrow the money to purchase the liquor license. That was the only way the lease would be given to us. I left the location so we agreed that we didn't know that in the future we were going to get into these difficulties. Certainly I had many warnings and I didn't listen, but now I'm paying the price for it.

MR. SCALI: So you didn't have to borrow the money but the landlord said to you, you

have to borrow money from me?

MR. CHOWDHURY: Absolutely.

MR. DHANDA: Absolutely incorrect.

MR. CHOWDHURY: I spent over a million-and-a-half dollars in renovation and easily I could have spent another \$150,000, \$200,000 on a liquor license.

MR. HAAS: So it there currently a lien on that license?

MR. CHOWDHURY: Yes, there is.

MR. MILLER: So you made a business decision to borrow the money; correct?

MR. CHOWDHURY: It was mostly forced into it.

MR. MILLER: If in fact you're correct, which I don't think is the jurisdiction of this Board, but if in fact he's correct, he made a business decision. If in fact, which my client denies, he said I'll loan you the money, you buy the license or you don't get the lease, he made a business decision. If he was represented by counsel or he wasn't represented by counsel, I

still don't think it's the jurisdiction of this Board.

MR. SCALI: The jurisdiction of this Board, if it is true, I'm not saying it is. If it is true that say the landlord somehow thought he had some control over the license by saying I'm not giving you a lease unless I have a pledge on the license; that's not proper business dealings.

MR. MILLER: Or I'm going to loan you the money to purchase. But it's six years later, Mr. Chairman. There's a lot of water under the bridge.

MR. SCALI: I think we've made it quite clear that landlords do not have control of licenses.

MR. MILLER: And we agree, and we will be in full compliance I can assure you of that. I think a lot of this is certainly, you know, six years later.

MR. SCALI: Mr. Chowdhury, I know you're in Bankruptcy Court and you're trying to work that out. Are you trying to sell the license

so you can stay there or move?

MR. CHOWDHURY: I'm in the process of purchasing another license and my goal is to sell my current license so I can get rid of this pledge or somehow I can figure something out.

MR. SCALI: So you need a payoff amount to be able to pay Mr. Dhanda back on the loan and then that will release you from the debt?

MR. CHOWDHURY: Yes, whatever the difference is.

MR. DHANDA: No such request has been made.

MR. MILLER: You don't have a written request that you gave us for a payoff?

MR. CHOWDHURY: I have many e-mails to prove, many e-mails that went to his counsel to request that.

MR. SCALI: I'm sure you could take care of that very easily. You could write that today?

MR. MILLER: It shouldn't be very difficult.

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

I think there was one other issue too that we brought up at our last hearing but you weren't here, Mr. Dhanda. There was an issue that Mrs. Lint had brought up with regard to a fee that's charged for the liquor license, a monthly fee. Is there a monthly fee on that?

MR. CHOWDHURY: I think that's basically we're paying a \$3,200 monthly payment for the pledge basically, which is the monthly payment that goes --

MR. SCALI: That's the payment for the loan?

MR. CHOWDHURY: Exactly.

MR. SCALI: So that is not an issue?

MR. CHOWDHURY: No. I mean we've been making a monthly payment. I would just like to have a statement somehow figuring out how much is going toward interest and how much is going toward principle. It's just a standard business practice, or it should be.

MR. HAAS: Are you represented by counsel?

MR. CHOWDHURY: I'm not financially doing that well so I'm just here representing myself.

MR. SCALI: So your intention is just to stay there but to get another license? Obviously you can't get another license until you sell this one.

MR. CHOWDHURY: Of course, yeah.

MR. SCALI: I'm kind of confused about how that -- I mean can't you just pay Mr. Dhanda off and release the lien and not have to get another license?

MR. CHOWDHURY: Well, yeah.

MR. SCALI: Is that why Mr. Dhanda is saying yes, meaning pay off the --

MR. CHOWDHURY: Somehow I would also like to, if it's possible, I could return the license to him.

MR. SCALI: It's not his.

MR. MILLER: You can give it back to

us. That's fine.

MR. MILLER: And then he still owes the money.

MR. SCALI: It sounds like a big mess here. I can feel a lot of legal litigation going on.

MR. DHANDA: I'd like to comment that he was represented by counsel all along in all transaction.

MR. CHOWDHURY: The same counsel that represented you, Holland and Knight, also represented us apparently. And they are the ones that charged a fee for representing us.

MR. SCALI: Any other questions, Commissioners?

MR. HAAS: What's the timeline in terms of you trying to get this all resolved? Do you have any appreciation of what that's going to look like?

MR. CHOWDHURY: One of the biggest issues I have is things just dragging on for so long. It's been almost eight or nine months that

I'm trying to resolve this issue and nothing really happened. I would love to do it as soon as possible. If somehow also if that pledge is valid and if we could separate that from the lease, then I'm okay with it also.

MR. SCALI: According to Mrs. Lint, you can't take back the pledge, but there are clauses in there that are invalid. We can't enforce the clauses that would be invalid, but we certainly would enforce the debt owed on the license. So if you straighten out the debt with Mr. Dhanda, I don't see why that would be an issue Mr. Miller; right?

MR. MILLER: That's correct. And as you know, Mr. Chairman, this is in bankruptcy and bankruptcy judges have almost unlimited power to make it up as they go along. Fortunately I don't practice in the Bankruptcy Court so if this quote come out, they won't come and get me. They kind of create law on a daily basis. I'm not familiar with what's going on in the bankruptcy.

MR. SCALI: And unfortunately, I'm

sure you can advise your client that his property is tied up until those licenses are transferred off. So nothing is going in there from us until something goes out of there, whether they're there or not. That means until Bombay Club's license is sold, nothing can go in where that license is. Until OM's license is out of there, nothing can go in that property. That's why I would advise your client to settle the matters, and get people where they want to be. Then he can bring his new tenants in or whatever he wants to do, whatever his choice is as landlord. That's the way it works.

MR. DHANDA: May I comment that when you have rumors and if you want to confirm them, you just have to communicate with me.

MR. SCALI: Mrs. Lint will be happy to communicate with you. She's legal counsel here and she would be happy to speak with you.

MR. DHANDA: I also want to comment on the disgruntled nature of things you referred to. Mr. Chowdhury here has bounced checks for hundreds of thousands of dollars.

MR. MILLER: We'll leave that out.

MR. SCALI: Like I said, I don't know what's truth and what's not. I just hear the rumors from the street. It doesn't sound good but it may not be true. It just sounds like something's got to happen with the tenants going on there. It sounds like you want some new tenants in there but until you resolve the issues with the old tenants, nothing is going to happen.

MR. DHANDA: The only other question I have is the other folks that are in other spaces, I have no involvement in any liquor license in those situations. I intend to have none. I have tried to have none. So they should be treated, as I see it, anybody who applies for a license and whatever they choose for that person and the space are irrelevant issues. If somebody is coming into a space that was occupied by Shalaz for example, and they've applied for license, I would guess that that spaces has nothing to do with Bombay's.

MR. SCALI: It has everything to do with our liquor cap and the number of licenses.

If there are licenses for sale, those have to be resolved or sold first before we grant new licenses. So we're not likely to grant any new licenses.

MR. MILLER: He's going to have to buy one before they grant any new licenses, if there's license available.

MR. SCALI: If someone is trying to sell a license in your building particularly, or even in the Square, or wherever else, why are we going to grant new licenses while there are licenses available?

MR. DHANDA: Some of the licenses they're looking for aren't full liquor license; they are Beer and Wine licenses. There aren't any Beer and Wine licenses up for sale other than Wagamama.

MR. SCALI: Wagamama's is for sale.

MR. DHANDA: Wagamama wants to upgrade, and if they want to make a deal, whatever they want to do, that's certainly -- Bombay is being, from what I gather, I haven't seen any

paperwork, I'm not involved in it but I've been told that full market value offer has been made to them and they are not wanting to sell it because they are gone and they're not happy that another similar cuisine restaurant came.

MR. SCALI: It sounds like maybe you ought to sit down with your old tenants and your new tenants and try to resolve a deal. Maybe Mr. Miller can assist you. I don't know. Maybe that's the way to go. Like I said, in the meantime, your property is tied up in this dispute. It's not our job to resolve your tenant issues but we're not likely to grant any licenses to anybody when their license is for sale. That's just the law. I'm not trying to be upsetting or mean; I'm just telling you the truth of the legal matters.

Anything else?

MR. HAAS: Nothing else.

MR. TURNER: Nothing.

MR. SCALI: Does anybody else want to be heard in this matter? Anybody else from the public?

Pleasure of the Commissioners on this?

MR. HAAS: I don't think there's much we can do at this point in time until some of these issues get resolved. So as you indicated, Mr. Chairman, it's kind of a holding pattern now until some matters get resolved between existing licenses on the property. Mr. Chowdhury's issues with respect to legal action have to get contemplated right now and what he wants to do with the license that he has in his possession. So I'm not sure we can do anything.

MR. SCALI: Take it under advisement? Place on file?

MR. HAAS: I think we should place it on file at this point.

MR. SCALI: I guess we've put you all on notice that this is what's required and this is the law, and you can go from there.

MR. HAAS: I make a motion that we place the matter on file and just kind of outline our position with respect to the current lease and our position with respect to the status of the

licenses; that as long as there are licenses available that we expect those licenses to be sold before granting new licenses.

MR. SCALI: That's the motion.

MR. HAAS: Second it.

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

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Thank you all very much. Good luck. I hope you all work it out.

MS. LINT: Application: Third Street Associates, Inc. d/b/a Brattle House Tavern, Peter Lee, Manager, holder of an All Alcoholic Beverages as a Restaurant license (not yet opened) at 14 JFK Street has applied for a change of d/b/a/ from Brattle House Tavern to Russell House Tavern, at said location.

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

MR. GOSZ: Attorney William Gosz for Third Street Associates, Inc.

MR. SCALI: So Brattle House doesn't like Brattle House; they don't like the name.

MR. GOSZ: Russell House seems to have a better ring to it.

MR. SCALI: I'm just curious. What's the difference between Brattle House and Russell House? Is it significant?

MR. GOSZ: I don't think there's any significance.

MS. LINT: I know the answer. I spoke with Mr. Rafferty before and I asked him. He said

as they continued to do research they kept finding references to Russell in that area.

MR. SCALI: So that's a person?

MS. LINT: Yes.

MR. HAAS: So it has historical significance?

MS. LINT: Historical significance, exactly.

MR. SCALI: I was just curious if it was to marketing ability.

MR. GOSZ: I guess it all ties in. Mr. Rafferty neglected to inform me of that information prior to my departure from the office.

MR. SCALI: So no other changes, just the d/b/a change?

MR. GOSZ: Correct.

MR. SCALI: Anybody from the public want to be heard on this matter? No hands. Questions?

MR. TURNER: No question.

MR. HAAS: No questions.

MR. SCALI: Motion.

MR. HAAS: Motion to approve.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you, Mr. Gosz.

MS. LINT: I have a request to put the next one at the end of the agenda.

MR. GOSZ: I'd like to waive that request. My client did manage to make it on time this evening.

MS. LINT: Application: Sakar International, Inc. d/b/a Chutney's, Ujwal Dhaubhadel, Manager, has applied for a Common Victualer license to be exercised at 36 JFK Street. Said license, if granted, would allow food and nonalcoholic beverages to be sold, served, and consumed on the said premises and to have a seating capacity of 28. the hours of operation would be 6:00 a.m. to 2:00 a.m. Monday through Saturday and 6:00 a.m. to midnight on Sundays.

MR. SCALI: We have Mr. Gosz again here, and the manager is here. Are you also the owner?

MR. GOSZ: No. The owner is right here. This is Mr. Consogra(phonetic), Sanjay Consogra. Mr. Consogra is also the owner of the Subway in the same location across from this little food court. His plan is to open up this Indian-style restaurant. I do believe if you'd like, I have copies of menus for you just to take a look and see what type of food he is serving.

MR. SCALI: Mr. Consogra, you are the

owner of Subway in the mall?

MR. CONSOGRA: In the garage.

MR. SCALI: And this is in the same building?

MR. CONSOGRA: Yes. It's right across the hall.

MR. SCALI: Right across the way, okay. This is a new venture. Was there a restaurant there before?

MR. GOSZ: Flat Patties was there before.

MR. SCALI: So tell us their experience first, Mr. Gosz.

MR. GOSZ: Mr. Consogra owns and operates several Subways and other establishments in the Commonwealth, four to be exact. Mr. Ujwal is the current manager of the Subway in Newton and he will be relocating to manage this new venture in Cambridge.

MR. HAAS: Do you own the Newton store as well?

MR. CONSOGRA: Yes.

MR. SCALI: Are all your restaurants Subways except for this one?

MR. CONSOGRA: Yes.

MR. SCALI: So this is a different venture altogether?

MR. CONSOGRA: Yes.

MR. SCALI: So this is like veggie wraps and meat wraps, a spicier type menu; right?

MR. CONSOGRA: Yes.

MR. SCALI: More Indian food type wraps?

MR. CONSOGRA: It's going to be all Indian taste with the same presentation as a wrap.

MR. SCALI: Hours of operation are 6:00 a.m. to 2:00 a.m. Monday through Saturday, and 6:00 to 12:00 on Sunday, a seating capacity of 20 seats. Is this a fast food or is it full-service?

MR. CONSOGRA: It's fast food.

MR. GOSZ: No. It's full-service. You're going to have people eating at the establishment with cups, plates, forks, knives.

MR. SCALI: So the majority of your

revenue is going to be from eating on the premises; right?

MR. GOSZ: Given the set up there are plenty of -- you know, there's 28 seats in the food bar for people to eat at the establishment.

MR. TURNER: Mr. Chair?

MR. SCALI: Deputy Chief.

MR. SCALI: Through you to Attorney Gosz, do we have a floor plan?

MR. GOSZ: Yes.

MR. TURNER: I'm curious because it's a very small space and I'm curious about 28 seats.

MR. GOSZ: They are using the same layout that Flat Patties has as far as when they were open so they're not changing much. That's what was previously approved by the Commission and what they are currently planning on using and utilizing.

MR. TURNER: Thank you.

MR. SCALI: Does anybody from the public want to be heard in this matter? Questions, Commissioners?

MR. HAAS: No questions.

MR. SCALI: Concern with the 2:00
a.m.?

MR. HAAS: How late is the subway open
now that's there?

MR. CONSOGRA: Right now it's
midnight.

MR. SCALI: Flat Patties, they open
until 2:00, weren't they?

MS. LINT: No. Remember there was
that issue with the landlord. I think they're a
1:00.

MR. SCALI: Do you have a lease with
the landlord signed already.

MR. GOSZ: Yes. The lease is in
agreement. There are no issues with the landlord.

MS. LINT: Oh no, they do have a 2:00
a.m. They wanted a 4:00 a.m.

MR. SCALI: So the landlord has signed
off on 2:00 a.m.?

MR. GOSZ: They're fine with it.

MR. SCALI: In terms of trash and

deliveries, done through the back of the building?

MR. GOSZ: In accordance with the requirements of the lease that's pretty much laid out for all the tenants in that particular area.

MR. SCALI: Pleasure of the Commissioners?

MR. HAAS: Motion to approve.

MR. SCALI: Motion to approve, moved.

MR. TURNER: Second it.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Good luck.

MS. LINT: Application: BHX, LLC as trustee of Acorn Park Holdings Realty Trust, Robert A. Schlager, Member, has applied for a garage license at 90 Acorn Park Drive for 657 autos and 6570 gallons of gasoline in tanks of autos only.

MR. SCALI: Good evening.

MR. FITZGERALD: Good evening.

MR. SCALI: Tell us who you are please.

MR. FITZGERALD: My name is Robert Fitzgerald from the law firm of at 53 State Street in Boston.

MR. SCALI: Is this your first time with us?

MR. FITZGERALD: Yes, it is.
Mr. Loray generally represents BHX before the Commission but he is away this week.

MR. SCALI: Is this a new garage?

MR. FITZGERALD: Yes. It's under construction now and a brand-new garage.

MR. SCALI: Is this residential or commercial?

MR. FITZGERALD: It is actually a mixed office and lab space in the Cambridge Discovery Park Redevelopment, and the parking will be used by tenants of the newly constructed buildings such as Forester Research and others.

MR. SCALI: There are no generators and no storage of underground tanks; it's just for the garage itself, the cars themselves?

MR. FITZGERALD: That's correct.

MR. SCALI: No emergency generators at all in this building?

MR. FITZGERALD: Not that I'm aware of. Not in the garage itself.

MR. TURNER: It's motor vehicles only. It's an open air -- not open air but --

MR. SCALI: A closed garage.

MR. TURNER: Open garage, open to the air, not an enclosed garage. Not to confuse it with the open-air garage license. Sorry, I didn't mean to do that. It's a standalone parking garage for parking of motor vehicles.

MR. SCALI: So it's not attached to

any other buildings?

MR. TURNER: Correct.

MR. SCALI: Abutter notifications?

MR. TURNER: For the record, permits have been issued by the fire department.

MR. FITZGERALD: We have the affidavit from Mr. Loray and we have two of the three green cards back. The MBTA has not returned.

MR. SCALI: Any concerns from the fire department at all?

MR. TURNER: No concerns. Everything is in order.

MR. HAAS: No questions.

MR. SCALI: Does anybody want to be heard from the public? Pleasure of the Commissioners?

MR. HAAS: Motion to approve.

MR. SCALI: Motion to approve, moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MS. LINT: Disciplinary: Tage V Corporation d/b/a Burger King, Elizabeth McMahon, Manager, holder of a Common Victualer license at 679 Concord Avenue for failure to apply for a change of corporation and for operating outside of hours approved by the License Commission.

Do you want to take them one at a time?

MR. SCALI: Let's take the disciplinary first. Have a seat if you would and tell us who you are, please.

MS. TRUEX: I'm Donna Truex with the law firm of Bowditch and Dewey

MR. SCALI: Truex?

MS. TRUEX: Truex, T-R-U-E-X.

MR. SCALI: And you have with you?

MS. TRUEX: I have with me --

MR. MARMOUCHA: Radwan Marmoucha, company business manager for Burger King.

MS. TRUEX: And Elizabeth McMahon.

MR. SCALI: So Mrs. Lint, can you give us our issues here?

MS. LINT: It's my understanding first of all that they've already been operating at the hours that they're applying for, 6:00 a.m. to 1:00 a.m. seven days per week. But their actual hours are 10:00 a.m. until midnight seven days per week.

And in addition, they changed the corporate name and did not apply.

MR. SCALI: So somewhere along the line -- from what I understand it's been a very long time.

MS. TRUEX: It has been a very long time. Just by way of history and what we've been able to piece together, Tage V was the franchisee for Burger King and sold the franchise back to Burger King in 2000.

At the time that happened, we're not sure whether they were told to wait until the renewal to make the name change or do it, but for some reason when the renewal application came into the office it goes to Florida. The only place "Tage" seemed to appear was on the cover letter; everything else seemed to be in order because it's

doing business as Burger King.

So they paid their fees, sent it back. But this year when it came in one of our astute employees saw Tase V and called up and said, hey, this isn't right. So they were told to cross it out, send it back in, and that precipitated, oh, well we've got to look at this. Something was not changed. So we got the disciplinary action and we're like wait a second.

MR. SCALI: I think the facts may be a little bit different than that but I could be wrong.

MS. LINT: I know it just caught up to us this year. I do know that. And I believe when it came back in to Cara that there was a letter that went out.

MS. TRUEX: I have a copy of it. It was February 23 I believe.

MR. SCALI: From what I remember, there was some back and forth and nobody applied, and we waited and waited.

MS. LINT: We were trying to figure

out who the contacts were.

MS. TRUEX: Right, because what happens is these are the managers here in Massachusetts, and they send everything to Florida because they do have people who take care of making sure the bills are paid and things are done. Somehow this one slipped through the cracks.

MS. LINT: And there's no question they were paying annually for the license.

MS. TRUEX: Paying annually, getting their inspections.

MR. SCALI: Just under the wrong name?

MS. LINT: Right.

MR. SCALI: Questions? Inspection issues?

MR. TURNER: No questions, no issues.

MR. HAAS: I understand it's a problem in terms of the change of corporations but I'm hard-pressed to understand why you're operating beyond your allowed hours.

MS. TRUEX: The best that we can determine is the franchisee had modified their

hours when Burger King brought in the breakfast menu, which was over 15 years ago. And when it changed over, nobody ever even considered changing the hours. Looking at the license, which would have been the appropriate thing to do --

MR. SCALI: It says so on the license.

MS. TRUEX: Yes, it does say so. You have to look a little hard for it but I found it. But it was just more or less status quo as far as I can figure out from the management and what's been going on over there.

MR. HAAS: So how long have they been operating at these hours?

MS. TRUEX: For ten years or more. Elizabeth would know; she was there before.

MS. MCMAHON: Yes. I started at Burger King since '92, and I was store manager at that location. That was always our hours from 6:00 a.m. to 2:00 a.m.

MR. TURNER: So they've just been flying under the radar.

MS. TRUEX: Before we go any further,

I believe the application was for Thursday, Friday, and Saturday to be to 2:00 a.m., and the notice came in at 1:00 a.m. So I'm not sure if we can make that adjustment but we would request that so that they have the later hours on those nights.

MS. LINT: We didn't get there yet.

MR. SCALI: We're just hearing the disciplinary part first. So somewhere along for 10 years you've been operating under the wrong corporation at the wrong hours. I'm not sure whose fault it is at this point, Mrs. Lint.

MS. LINT: We would have no way of knowing because the task force doesn't go out at 6:00 a.m.

MR. SCALI: Right, unless someone complained about it.

MS. LINT: Unless somebody complained.

MR. HAAS: It's a good thing there's no complaints.

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

MR. SCALI: This is the one on Concord

Avenue.

MS. TRUEX: Yes.

MR. TURNER: Mr. Chair, there's currently no restriction to our knowledge, or prohibitions for this type of venue to operate in those hours in that timeframe; correct?

MR. SCALI: As long as they're zoned for the use and have applied, yes.

Anything else you need to know?

MS. LINT: No.

MR. SCALI: Pleasure of the Commissioners on the disciplinary matter?

MR. HAAS: Place the matter on file. There's no other violations; right?

MS. LINT: None.

MR. SCALI: Motion to place the matter on file, moved.

MR. TURNER: Second it.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Now we have the application, Mrs. Lint?

MS. LINT: Application: Tage V Corporation d/b/a Burger King, Elizabeth McMahon, Manager, holder of a Common Victualer license at 679 Concord Avenue has applied for a change of corporate name from Tage V Corporation to Burger King Corporation. Applicant is also applying to extend their current hours which are 10:00 a.m. to midnight seven days per week to 6:00 a.m. to 1:00 a.m. seven days per week.

Just looking at the application, it does say 6:00 a.m. to 1:00 a.m. seven days.

MR. MARMOUCHA: There was another application. I gave it to Chris because I crossed the McMahon name. There was my name then I crossed it and made another application. I gave it to Chris when I came back in the same day.

MR. SCALI: You filled out another form?

MR. MARMOUCHA: No, the same application. I put my name, then I crossed my name

and put Elizabeth McMahon and made another application.

MS. LINT: But the time wasn't changed.

MR. SCALI: What you really want is what? Tell me the times you really want.

MR. MARMOUCHA: 6:00 a.m. to 1:00 a.m., Monday, Tuesday, Wednesday, Thursday, Friday, Saturday, 6:00 a.m. to 2:00 a.m., and Sunday --

MR. SCALI: Wait a minute. It's 6:00 a.m. to 1:00 a.m. on what days?

MR. MARMOUCHA: Monday, Tuesday, Wednesday.

MR. SCALI: Monday through Wednesday until 1:00 a.m. Then 6:00 a.m. to 2:00 a.m.?

MR. MARMOUCHA: Thursday through Saturday.

MR. SCALI: And Sunday?

MR. MARMOUCHA: 7:00 a.m. to midnight.

MR. SCALI: Now we're all on the same page; right? And the corporation is still -- is it

Tage?

MS. TRUEX: Tage is gone.

MR. SCALI: It's Burger King,
Incorporation.

MS. TRUEX: No longer doing business
as it, still Burger King.

MR. SCALI: Burger King Corporation
d/b/a Burger King.

MS. TRUEX: Right.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Anybody from the public
want to be heard on this matter? No hands. So now
we're on the same page. Mr. --

MR. MARMOUCHA: Radwan.

MR. SCALI: You are there as a
manager?

MR. MARMOUCHA: No. She is there as a
manager.

MR. SCALI: You're there most days and
the information comes to you?

MS. MCMAHON: Yes.

MR. SCALI: So you look at it, open it, and what do you do with it?

MS. MCMAHON: I send it to Miami to the main office.

MR. HAAS: You still look at it though before you send it; right? Do you look at it?

MS. MCMAHON: If it is something from the City, I always send it to Miami.

MR. HAAS: You don't look at it?

MS. MCMAHON: No. I don't pay anything.

MR. SCALI: You need to look at it. You need to review it, make sure it's correct, make sure it's what you want. Miami has no idea what you're doing up here unless they check with you, I'm assuming; right? They're not here. You're here; right? Every letter you get from us you need to open and look at it, review it, respond in some way to it. Your name is on the license.

MR. HAAS: Even if you respond that you're going to refer it to the corporate office,

you've got to let us know that you acknowledge getting it, and what you've done with it. So even if you can't make a decision about what the letter says, you've got to at least get back to the License Commission and let them know that you've at least read it and what you've done with it so we know where to expect a response from.

MR. SCALI: And that also means you following up with them to make sure they did what they're supposed to do. You can't just depend on them because they're probably taking care of hundreds of places all around the country. You're just one little speck on the map.

Some of our letters say to come to a meeting sometimes, too, and that means you coming to the meeting. We have annual meetings of Common Victualers sometimes.

MS. LINT: Every now and then.

MR. HAAS: In October; right?

MS. LINT: We don't always invite the CVs.

MR. SCALI: Sometimes we do.

So now we're all on the same page.

Motion then to --

MR. TURNER: Mr. Chair?

MR. SCALI: Yes.

MR. TURNER: This is a good time to bring it up. I almost let this one slip. Are you aware of the new regulations or hood inspections, on the cleanings?

MR. MARMOUCHA: Yes.

MR. TURNER: They need to be inspected.

MR. MARMOUCHA: We do every 250,000 or every three months, whichever comes first.

MR. TURNER: There's new regulations that took effect this year. Do you do your own cleaning?

MR. MARMOUCHA: No. We have Tri-State Company.

MR. TURNER: So they're aware of all the regulations.

MR. MARMOUCHA: There's stickers there and everything.

MR. SCALI: Every 250,000 what?

MR. MARMOUCHA: Or three months, whichever comes first.

MR. HAAS: But what's the 250,000?

MR. MARMOUCHA: Dollars a month, or three months, whichever comes first. When they come they usually schedule within three months.

MR. TURNER: So you're getting inspected four times a year and cleaned twice?

MR. MARMOUCHA: No, cleaned four times a year.

MR. TURNER: Thank you.

MR. SCALI: Is that satisfactory to you?

MR. TURNER: Yes.

MR. HAAS: So if you went over the 250,000, you'd do it more frequently if it was within a three month period?

MR. MARMOUCHA: That is correct.

MR. SCALI: Have you had any fires there?

MR. MARMOUCHA: Not to my knowledge.

MR. SCALI: We had another case unrelated to you where we didn't know that there was fires and they had hood problems and issues, and it was because of their cleaning schedule. So I was just curious as to whether there was a problem. We haven't heard anything at that location; right?

MR. TURNER: No.

MR. SCALI: Pleasure of the Commissioners?

MR. HAAS: Motion to approve.

MR. SCALI: Motion to approve as amended with the amended hours?

MR. HAAS: As amended.

MR. SCALI: You'll take care of that, Mrs. Lint; right?

MS. LINT: I already did.

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

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Thank you very much.

MS. LINT: Application: Allied Waste Systems of Massachusetts, LLC d/b/a Allied Waste Systems, formerly BFI, has applied for a Disposable license to operate in Cambridge. This route was formerly serviced by BFI.

MR. SCALI: Anyone here on Allied Waste? No one is here. Any word from them, Mrs. Lint?

MS. LINT: None at all. I'll make a phone call tomorrow.

MR. HAAS: Are they operating currently?

MS. LINT: I don't know. I think they are.

MR. SCALI: So you need to make clear to them that they should not be operating until they have the license. They need to appear.

Any ratifications?

MS. LINT: No.

MR. HAAS: Didn't you say you wanted to talk about something afterwards?

MS. LINT: Yes. That doesn't have to

be on the record.

MR. SCALI: It's an inquiry; it's not an application.

MS. LINT: There's nothing before us yet. It has nothing to do with us yet. It's just to let you know something.

MR. SCALI: Anything else, Commissioners?

MR. HAAS: No.

MR. SCALI: The taxi school is open and operating at the police station; that we can put on the record if you want. Last night was the first night and tonight is the second night.

MR. HAAS: How many students, 22?

MR. SCALI: Exactly 20 students. We signed up 25. Three didn't show and two were eliminated because of background issues. So it evened out to 20. It's a little crowded but it's good.

MS. LINT: I would report also from the officers that they're being a little bit tougher on who they're admitting into the classes.

They're really taking a look at driving records and criminal records. And sometimes even if they're outside of the seven years, if they had some things that we know would not be conducive to good drivers, we're sending them away.

MR. HAAS: It saves a lot of problems in the future.

MS. LINT: That's what we think.

MR. SCALI: I do think it's going to be a very good mix. We'll have three, maybe four officers that have been identified as teachers. Two of them actually are the older Hackney officers we had before, which will be very interesting. Mr. Ewing is very excited about adding some things in and little by little it will be even better than it is today.

MS. LINT: I think too, having it in the police station gives it just another level of formality.

MR. SCALI: Professionalism too.

Motion to adjourn.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

(Whereupon, the proceeding was
concluded at 6:57 p.m.)

CERTIFICATE

COMMONWEALTH OF MASSACHUSETTS
BRISTOL COUNTY, SS

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

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

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

In Witness Whereof, I have hereunto set my hand this 29th day of March, 2010.





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

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