

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
Tuesday, April 14, 2009
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 evening, April 14, 2009 at 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.

MR. SCALI: Motion for us to accept the minutes from our last meeting.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Aye.

MS. LINT: Do you want to take the police officers first, or John Clifford who is here?

MR. SCALI: Let's take Mr. Clifford first. Mr. Clifford, did you want to make a

comment on something that's coming up on our agenda for Councilor Reeves?

MR. CLIFFORD: Yes.

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

MR. CLIFFORD: My name is John Clifford. I reside at 55 Aberdeen Ave. in Cambridge, and I work for City Councilor Kenneth E. Reeves as his research assistant.

MR. SCALI: What did you want to speak on?

MR. CLIFFORD: I came to speak on behalf of Matthew Curtis and his new endeavor in Harvard Square that was formerly the Greenhouse.

Matthew -- I know he owns some other establishments, some very very good establishments. They're community oriented. I know that Matthew served two years as the head of CLAB. It's very important that that place is open and stays open in Harvard Square because it's sort of right in the middle of the Square and has been closed for a long time. I know that the businesses in the Harvard

Square Business Association are behind him and want that place open, because it's a blight on the Square if it's not open.

I know it wasn't open for a while, but now that it is we want to make sure he stays in good faith with the Commission. Thank you.

MR. SCALI: So Councilor Reeves really wants to see this open soon, and we do too.

MR. CLIFFORD: Absolutely, definitely. I'm here on behalf of Councilor Reeves also.

MR. SCALI: Thank you very very much for coming in.

MR. HAAS: Is it Tigers and Bears?

MR. SCALI: Tory Row.

In keeping with our regular policy, since we have a number of police officers here, we'll take the police officers first.

MS. LINT: That would be the top of Page 1 of the original agenda.

MR. SCALI: Item No. 2.

MS. LINT: I have it as Item No. 1.

MR. SCALI: We have Mystic Rosa first.

MS. LINT: I do.

MR. SCALI: Yes, but Item No. 2 is
Faialense. Take Item No. 2.

MS. LINT: I was thinking that that's
what the officers were here for.

Disciplinary matter: Clube Desportivo Faialense, Joe Santos, Pending Manager, for failure to call the police when a fight broke out at the club.

MR. SCALI: Clube Faialense?

Officers, if you would come forward as well. Pull up a chair. There's one right here if you could pull that up and have a seat right here. Good evening. Anybody else here for Clube Faialense?

Just tell us who you are for the record first.

MR. SANTOS: Joe Santos.

OFFICER MICHELI: Officer Michael Micheli, Cambridge Police Department.

OFFICER PADULA: Officer Michael Padula, Cambridge Police Department.

MR. SCALI: And you are, sir?

MR. FULA: Gabriel Fula, F-U-L-A.

MR. SCALI: We're going to begin with the police officer first. Which one of you would like to go first.

OFFICER PADULA: I'll go first.

MR. SCALI: Officer Padula, why don't you go first with regards to the incident from March 7.

OFFICER PADULA: We responded to the Midwest Grill first -- and I'll paint a picture of what happened that night -- for a disturbance unrelated to the sports club. We were at the rear of the Midwest Grill dealing with the situation. We really couldn't see what was going on outside. It was kind of loud inside the Midwest Grill.

We kind of turned over and for whatever commotion I kind of heard police cars screeching to a halt. I looked over and I saw that there were numerous patrons out in the street. It seemed like there was a big fight. We were able to get some radio dispatch that stated that there was a fight that had broken out.

We ran out, and when we ran out -- I don't know if you're familiar with Cambridge Street -- we had to block off pretty much Prospect Street, or Springfield Street to Columbia Street because there were over a hundred patrons out in the middle

of the street fighting, and there were several groups fighting.

At that time, we had maybe 15 police officers including several of our supervisors that arrived on the scene. At that time, we tried to control the situation and we tried to control the fights that were out of control.

At one point, I looked over and I saw Sergeant Gardner and Officer Micheli struggling with an individual who -- I guess at one point they had broken up a fight with him and another individual, and had placed the other individual under arrest. When they tried to place the other individual under arrest, he fought back.

Officer Micheli and Sergeant Gardner were having a tough time trying to control this individual. They were also being surrounded by a boisterous crowd, and at this point here, I ran over. I was able to grab that person, give him orders to go down to the ground so I could handcuff him. He disputed. He didn't want to go down. I was able to have a hands-on approach, and I was

able to put him in a prone handcuffed position. Officer Micheli assisted me in handcuffing this individual.

As we were handcuffing this individual we were approached by several partygoers that were angry that we were placing this individual under arrest. At that time, we had to set up a perimeter around the person that was being placed under arrest not only to protect him, but to protect ourselves. We gave orders for the crowd to stand back and thankfully, they did. We were able to take that individual into custody.

Again, there were several pockets of individuals fighting. There were women and children also involved in the melee, and just because they were caught in the middle of what was occurring. So at one point, we just had several pockets of people fighting, going to side streets, and we were trying to control the situation as best we can.

A lot of the patrons were drunk or had been drinking that night, so it was very difficult

to control them. But thankfully with the time that we had, and we cordoned off the area, we were able to contain the problem and control it, but it took about at least one hour before we could control the situation.

We also had cars coming through, patrons were almost getting hit. So just to paint a picture, we had traffic trying to get through, we had to block off the area, we had patrons that were drinking, intoxicated. They were yelling at us. They wanted to confront us, wanted to fight us. It was a situation that could have gotten really out of control, but thankfully, we were able to control it.

MR. SCALI: What time of night was this?

OFFICER PADULA: It was about 11:30, maybe 11:45, around that time we got the call for service.

MR. SCALI: Did you observe people coming out of the club, or were they already in the street?

OFFICER PADULA: I observed people still coming out of the club. They were still spilling out of the club.

MR. SCALI: Do you know if they were leaving the party or just partying on the street?

OFFICER PADULA: No, no. I guess the party was coming to an end, but at some point there was a disturbance that occurred inside, and spilled out into the street.

MR. SCALI: Do you know what that disturbance was?

OFFICER PADULA: I really don't know. I couldn't say.

MR. SCALI: You mentioned that several people were intoxicated. How did you come to determine that they were intoxicated?

OFFICER PADULA: Just through giving orders for them to leave the area; they were yelling back at me. I was close enough to smell the alcoholic beverage emitting from their mouth and their breath, and just the behavior, the way they were acting.

MR. SCALI: Erratic, staggering?

OFFICER PADULA: Erratic, very violent. There were some people that were staggering, but not all.

MR. SCALI: Did you have occasion to speak to anybody from the club?

OFFICER PADULA: No, I did not.

MR. SCALI: No club member came to you?

OFFICER PADULA: I did not. We were so busy trying to contain the problem, I think we left that to the supervisors who were out in the street.

MR. SCALI: Do you have any knowledge as to what type of party it was?

OFFICER PADULA: I think it was like a baby shower/birthday party, or something like that.

MR. SCALI: Was anybody arrested?

OFFICER PADULA: We had two individuals arrested, yes.

MR. SCALI: What was the reason for their arrest?

OFFICER PADULA: Participating in an affray.

MR. SCALI: So at no time you had no contact with any club member or anybody that was part of the membership of the club. Did you speak to anybody who was in charge of the party?

OFFICER PADULA: I was trying to speak with the patrons to get them under control, push them along to be make sure that they got in their cars safely and were able to leave the area safely.

Again, we were paying attention closely to individuals that were intoxicated to make sure they didn't get in their cars and drive off. So we were trying to get the right people in the motor vehicles to drive off.

Again, we were afraid that more violence was going to erupt on the side streets. There were certain areas that we couldn't control. We were afraid that maybe a firearm would be shown, or somebody was going to get stabbed, or something to that extent. But again, we were able to control it with the manpower that we had, but it was a very

hectic situation for at least 45 minutes.

MR. SCALI: Commissioner, questions?

MR. HAAS: Officer Padula, did you form the opinion that everybody involved in this affray was coming from the same location?

OFFICER PADULA: Yes.

MR. HAAS: This wasn't one group encountering another group out in the street?

OFFICER PADULA: No.

MR. HAAS: No more questions.

MR. SCALI: All right. Officer Micheli, do you want to add anything to that? Is there anything else that happened differently while you were there?

OFFICER MICHELI: My story is the exact same as Mike's. Both of us were at the Midwest Grill fielding a call when we saw the fight outside. Him and I were side-by-side pretty much the entire time.

MR. SCALI: So you observed the exact same thing as he did? Different groups of people intoxicated?

OFFICER MICHELI: Absolutely.

OFFICER PADULA: What scared us the most was the fact that there were children and women involved in this, and they were right in the middle of it. So it was a very hectic time.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Mr. Santos.

MR. SANTOS: Yes, sir.

MR. SCALI: You have a right to ask any questions of the officers and their reports through us.

MR. HAAS: Sergeant Gardner was there also.

MR. SCALI: Okay.

MR. HAAS: Sergeant Gardner was the supervisor at the scene.

MR. SCALI: Sergeant Gardner, would you come forward? Why don't you come right around here, if you would.

We just heard the testimony from

Officer Padula and Officer Micheli on the incident from March 7. Did you want to add anything to it from your report for that evening?

SGT. GARDNER: Do you have any questions for me from my report?

MR. SCALI: Both officers testified that they observed people coming out of the club, they were intoxicated. There were a number of fights going on, a number of people trying to get away and fighting with the police.

SGT. GARDNER: I was the first officer on the scene. I was actually sitting in front of there before the fight started. The club started to empty out. There were a number of patrons of all ages from infant children to young adults, and as they congregated in front of the club, a small group ended up in the middle of the street and that's when the first fight started.

MR. SCALI: You were there before the club emptied out?

SGT. GARDNER: Yes. There was a call across the street from the club, and I just happen

to go by the call, and I was just sitting in front of there, and I was observing the people as they left.

MR. SCALI: You got called there for a service -- it was the Midwest Grill; right?

SGT. GARDNER: The Midwest Grill.

MR. SCALI: So you saw it from the very beginning when there were people coming out of the club?

SGT. GARDNER: Yes.

MR. SCALI: And how the fight began in the street?

SGT. GARDNER: Yes.

MR. SCALI: How did you determine that people were intoxicated?

SGT. GARDNER: Some people were intoxicated -- I found that out later -- but it wasn't as obvious that people were staggering out on the street or anything like that.

Actually, it looked more like a family gathering at first. It started out that way. Like I said, there were young infants leaving with their

mothers, and so on and so forth. Then a small group started a fistfight out in the street. Then as I tried to break it up, they more or less ignored me. Several other fights broke out going in both directions of the club, left and right.

OFFICER PADULA: Maybe I could add one more thing to this.

MR. SCALI: Sure, if you would.

OFFICER PADULA: We were able to get some intel from the platoon that worked prior to the shift to let us know that there was a problem that erupted inside prior to this situation, and gave us the heads-up that there may be a situation that might erupt that night. So we were aware of the party being held at the sports club, and that there was a problem prior to our shift start. We were able to get that intel from the other officers and supervisors.

MR. SCALI: Did someone call it in or something?

OFFICER MICHELI: There was a kid that had a dispute with a meter maid, I believe. He

broke the meter maid's parking ticket thing. I think he smashed it on the ground. He was one of the people that were at the club so that's how we got the heads-up on the party.

MR. SCALI: So that's how it began and then further escalated inside.

MR. HAAS: Sergeant, did you have any conversations with the management of the club at all?

SGT. GARDNER: I did. I talked to these gentlemen and they said they were closing it up early. I don't remember them saying anything happened inside the club. Other than that, not too much conversation.

MR. HAAS: Did they give you any indication why they wanted to close it early?

SGT. GARDNER: They said it was starting to get out of hand. What they meant by that I don't know.

MR. SCALI: Questions?

MR. HAAS: No more questions.

MR. TURNER: No questions.

MR. SCALI: Mr. Santos, you have an opportunity now to ask questions through us to the police officers.

MR. SANTOS: The first incident did not happen inside the club. The meter maid had a scuffle with one of the patrons that was coming in while he was parking the car. Then a couple of police officers came inside the club looking for the gentleman. They pulled him outside and they talked to him outside and then they arrested him outside.

MR. SCALI: So he was arrested outside?

MR. SANTOS: Outside. Nothing ever happened inside. The meter maid came inside just to point out who the patron was to the police officer that was at the club at that time.

MR. SCALI: So that was the first part of the evening?

MR. SANTOS: Right.

MR. SCALI: And then what happened?

MR. SANTOS: The party was fine,

nothing happened. We rented the club from 7:00 to midnight but they had to be out by midnight for clean up. They have to clean up before so we can go home too. So they started departing around 11:30, and then we heard something happen outside. We went outside, me and Gabe, and we saw three police cruisers outside, and we thought that was already for what was happening outside.

MR. SCALI: You didn't observe anything happening inside at all?

MR. SANTOS: There was no problems inside whatsoever.

MR. SCALI: At some point, did you see people fighting in the street that were people that were in the club?

MR. SANTOS: We heard a commotion so I came outside the door, but people was leaving. Then I saw three police cruisers outside and I saw them in the middle of the street. The police cruisers were already there when the fight broke out. I wasn't there when the fight broke up.

MR. SCALI: You're saying when people

were inside they weren't unruly at all or erratic inside?

MR. SANTOS: No, they were not.

MR. SCALI: Were people intoxicated inside?

MR. SANTOS: If some people had a couple of extra drinks, I'm not aware of. I didn't see anybody staggering or drunk. Nobody ever said nothing to us.

MR. SCALI: This was a baby shower?

MR. SANTOS: The lady was eight months pregnant. It should be on the report that she was eight months pregnant.

MR. SCALI: According to the report that I see here, there was someone who got pepper sprayed as well.

MR. SANTOS: That was outside.

MR. SCALI: It was a woman who was -- I think it was the person who was pregnant.

MR. SANTOS: That was the lady who was putting the party.

MR. SCALI: She got pepper sprayed?

MR. SANTOS: She said she was pepper sprayed but one of the officers that was there said nobody sprayed anything. So I don't know if they sprayed or not. I wasn't involved in the situation. That's what she claimed but she had no teary eyes or anything. We gave her some water. We gave her a chair until the ambulance -- and she asked for an ambulance.

MR. SCALI: So you have no idea how this party got out of control? Do you know why the fight began?

MR. SANTOS: No, I don't.

MR. SCALI: Were you both there that evening?

MR. SANTOS: Yes.

MR. FULA: Yes.

MR. SCALI: Who was in charge of the bar?

MR. SANTOS: I was helping because I was a member at the time. Like you know, I'm applying to be the bar manager.

MR. SCALI: Not a good beginning

before you become the manager.

MR. SANTOS: I was just helping him out.

MR. SCALI: Questions?

MR. TURNER: Mr. Chair, question for Mr. Santos. Just two questions, actually. I'm looking at a police report and in the report it just states that they informed you, which I assume is the management, that they rented the club from 8:00 to midnight for a baby shower, and then further stated, "Around 11:30 p.m., they started to shut the party down as they believed it was beginning to get out of hand." I'm really not clear on what that means.

MR. SANTOS: We never said anything to them. We didn't see any problems. I walked around the hall a few times and I never saw any problems inside the hall. They were dancing.

MR. TURNER: As far as you're concerned, nothing was getting out of hand inside the club?

MR. SANTOS: Inside the club, no.

MR. TURNER: The second question is, when you rented, was this rented to a member, or a guest of a member?

MR. SANTOS: A one-day pass member.

MR. TURNER: A one-day pass member. Do we have such a thing?

MR. SCALI: What's a one-day pass member?

MR. SANTOS: If somebody comes from the outside and they want to rent the hall, we give them a one-day membership.

MR. SCALI: That's not a member. I think we've had this conversation before, not with you but with your previous board, about being a member or a guest of a member is the only person that can sponsor events at this club. I don't know how you came up with one-day memberships. How did that happen? Made up your own rules?

MR. FULA: That's what I was told.

MR. SANTOS: That's what he was told. He's the president of the club now, as of January 9.

MR. FULA: We've been told there's a one-day pass.

MR. SANTOS: That's what he told him; that they could give them a one-day pass.

MR. SCALI: Who told you that?

MR. FULA: The guys who run the place before.

MR. SCALI: That's why they're no longer there probably.

MR. TURNER: Mr. Chair, through you to Mr. Santos.

MR. SCALI: Deputy Chief.

MR. TURNER: Just to make it clear, the one-day member or person who rented the club is not a permanent member or a guest of a permanent member of the club?

MR. SANTOS: Right.

MR. SCALI: Questions?

MR. HAAS: I'm a little bit confused about how you had an orderly party inside, and you've got a Sergeant who's outside on the street watching people come out, and then witnessing

fights erupt. I don't understand what transpired between the time they left the club, and you're talking a matter of minutes and you have a melee out in the street.

MR. SANTOS: I don't understand how it happened either because nothing happened inside. There was no fights, there was no arguments, there was nothing for the time they were there.

MR. HAAS: How many people were in the club?

MR. SANTOS: Probably 130.

MR. HAAS: What's the capacity of the club?

MR. SANTOS: It's 150.

MR. HAAS: How many people would you estimate, Officer Padula?

OFFICER PADULA: At least 100, sir.

MR. SCALI: So when Sergeant Gardner saw people coming out, he said they were intoxicated, all three officers said they were intoxicated. You didn't observe anybody intoxicated at all?

MR. SANTOS: I said they were intoxicated but not falling.

MR. SCALI: Comments?

MR. TURNER: No further comments.

MR. SCALI: Anybody from the public want to be heard? Anything else you want us to know? This is your third offense, 2003, 2008 are previous offenses. You have a fight in 2003 where the president was asked to step down for six months. You have excessive noise and a fight in April 2008, where you served a three-day suspension. So we're talking the third offense here if you're found to be in violation. Anything else you want to say?

MR. SANTOS: All I can say is we didn't have any problems inside the club, and things escalated outside, and it was out of our control.

MR. TURNER: Mr. Chair.

MR. SCALI: Deputy Chief.

MR. TURNER: Mr. Chair, through you to Mr. Santos, at what point were you made aware that

something was happening outdoors?

MR. SANTOS: When we heard the commotion.

MR. TURNER: At any point, did anyone from the management call 911, or call the police?

MR. SANTOS: No. When we came outside there was three cruisers outside, so we didn't know if they were there for us or for something else. We didn't know.

MR. TURNER: Thank you. No more questions.

MR. SANTOS: That's why we didn't place the call.

MS. LINT: Mr. Chair, Councilor Toomey called and asked that you -- he wanted the Commissioners to know that there's a new board now taking control of the club, and he would appreciate some leniency.

MR. SCALI: Any further questions, Commissioners?

MR. HAAS: I'm troubled by the fact that basically what you're using the hall for is a

rental, and the one-day membership is really stretching the regulations of the club.

MR. SANTOS: We already had a meeting that we will not rent to nonmembers anymore.

MR. HAAS: For you to run a safe event, and this clearly was unsafe, it really created some grave danger to a number of people, and in fact it was in a public street, because you're just renting the club to people you don't even know. You can see what the outcome could be in this situation. So I'm really troubled by the fact that you were using the hall as a rental hall, and you don't really know who these people are that you're renting to.

MR. SANTOS: We learned a big lesson for being a new committee, and we will never rent again to nonmembers. And if we do have a function again, we're going to have police detail. We're going to charge people for a police detail, one or two details.

We didn't have experience -- they came in January 9, I came in February something, and

this is what the other committee told him; that they could issue a one-day pass, and that's what we went by.

MR. SCALI: We've had, I can count two to three meetings with all club -- this is before your being on the board -- with your other membership, advising them as to what they could and could not do.

MR. SANTOS: And that's not what they informed us at the time.

MR. SCALI: They obviously weren't listening at the meetings that we had then, because we were very clear as to what we allowed.

MR. SANTOS: Probably not.

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

MR. HAAS: Motion.

MR. TURNER: Seconded.

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

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Aye.

The other matter before us then Commissioners is with regards to Mr. Santos' application for a change of manager from March 24. I would just as well make a motion to take that matter under advisement as well.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Aye.

We're scheduled to vote on this on May 7 at 10:00 a.m. That's our Decisionmaking meeting.

MR. HAAS: Do you have any more events planned between now and May 7?

MR. SANTOS: No, we don't.

MR. FULA: We have --

MR. SANTOS: Members, they're having a Saturday -- what is it? A Christening on Sunday.

MR. FULA: Saturday.

MR. HAAS: And this is a full member?

MR. SANTOS: It's a full member for years.

MR. SCALI: I guess I would advise you not to schedule any more events that do not include a member.

MR. SANTOS: We're not. We already had a meeting since that happened. We had a board meeting that we will not rent to nonmembers anymore.

MR. SCALI: Thank you very much. Thank you Officers very much for your testimony.

MR. SANTOS: Do we need to come back?

MR. SCALI: You are welcome to be here on May 7; you don't have to be here.

MS. LINT: That's at 10:00 in the morning.

MS. LINT: Disciplinary matter:
Continued from March 24, 2009, Rosita Stevens d/b/a
Mystic Rosa, due to a complaint made on December
18, 2008 pertaining to alleged extortion of money
and fraud which involved Cambridge Police Sergeant
John Fulkerson having to collect the lost monies.

MR. SCALI: Just tell us your names
for the record, please.

MR. RAFFERTY: Good evening, Mr.
Chairman, members of the Commission. For the
record, James Rafferty on behalf of the licensee,
Rosita Stevens, seated to my left.

MR. SCALI: Ms. Boyer.

MS. BOYER: Andrea Boyer, Chief
Investigator for the City of Cambridge License
Commission.

MR. SCALI: We shall begin with Ms.
Boyer.

MS. BOYER: Thank you.

Please be advised that on December 18,
2008, our office received an e-mail from a
complainant stating that Rosita Stevens, who owns

Mystic Rosa at 99 Mount Auburn Street extorted \$9,000 from him.

The complainant explained the following: Approximately July 2008, the complainant and his wife went to Mystic Rosa, Rosita Stevens, for a reading. Rosita Stevens told them to get rid of the curses, they should give her \$400. They both agreed to pay her \$400.

Rosita Stevens then told them to put \$9,000 in a box along with the complainant's watch, a plant, and some hair, and give the box to her. Rosita Stevens said she would return the contents to them in three months. The complainant explained that the funds were to protect his wife who was pregnant.

Three months had passed and his wife had a miscarriage, and the complainant asked for their money to be returned. By December 18, 2008, \$6,100 had been returned leaving a balance of \$2,900. The complainant explained that Rosita Stevens had been paying them \$300 a week up until November of 2008. The complainant called her every

week through November and no one had returned the call. The complainant also paid \$400 for candles which were to be burned for the betterment of his wife.

A previous case against Rosita Stevens in May 2005, included \$7,875 having to be recovered by Cambridge Police Lieutenant Hogan. At that time, Rosita Stevens received a 30-day consecutive day suspension, and was reminded that a fortune teller's license is strictly for entertainment purposes, i.e. palm reading and fortune telling.

Based on the previous case in 2005, this 2008 case was referred to the Cambridge Police to be investigated for extortion of money or fraud. The balance of the monies was recovered by Sergeant John Fulkerson immediately, and that report was attached with the packet that I gave you.

Though the complainant did not want to press charges against Rosita Stevens, he did stress that something should be done to expose the situation. He believes that "it was pathetic that they could legally do what they want to innocent,

desperate people."

And then we had our License Commission Hearing in front of the Board.

MR. SCALI: Ms. Boyer, do you have a police report as well?

MS. BOYER: Yes, I do. I have the redacted one if you want it.

MR. SCALI: So the information you have is information that's from the police report as well as your own additional information as well.

MS. BOYER: No. Actually, my information is based on the complainant and the e-mail that was sent to me. This was forwarded to the police department for investigation.

MR. SCALI: Basically the information you received from the complainant is that there was the belief that this gentleman and his wife paid a certain amount of money, which you stated -- I forget now the amounts that are in here -- for some kind of protection mechanism from curses; right? Is that what you're saying?

MS. BOYER: That's what seems that

part of it is, yes.

MR. SCALI: And at some point then what she said she was going to do didn't happen, so they wanted their money back. Half of the money was returned, or some portion of the money was returned, and at that point then the complainant filed the complaint looking for the rest of the money.

MS. BOYER: Yes, for the balance of \$2,900.

MR. SCALI: Then from what I see in this report here, the detective then did get the rest of the money back from the licensee.

MS. BOYER: Yes. Elizabeth Lint has the copy if you want her to read it.

MR. SCALI: At some point, did you have a conversation with the complainant?

MS. BOYER: Yes. I did when I first received the complaint and then I did the follow up. I looked at the old case because I knew that there had been a previous case; it kind of sounded familiar. I told him that I wanted to look that up

first and then I e-mailed back. He sent me all the information and that's when I forwarded it to the police.

MR. SCALI: So you forwarded it to the police?

MS. BOYER: Yes.

MR. SCALI: Then that detective took it from there at that point?

MS. BOYER: Correct.

MR. SCALI: I thought the police were involved before you were involved.

MS. BOYER: No.

MR. SCALI: So the detective then took it from there and he completed the money being given back from the licensee?

MS. BOYER: Yes.

MR. SCALI: Did you have a conversation with the complainant about attending the hearing this evening?

MS. BOYER: I e-mailed the complainant to tell him the hearing was taking place.

MR. SCALI: Do you know if he's here,

the complainant?

MS. BOYER: I don't know.

MR. SCALI: Mrs. Lint, do you know if he's here?

MS. LINT: I don't know who he is.

MR. SCALI: Is anybody here to testify in regards to Mystic Rosa? No hands.

Ms. Boyer, your contention is that this is somehow against her fortune teller's license, and therefore she's in violation of the license rules?

MS. BOYER: I think that based on the complainant and the information that was given that my concern is -- especially since we had an old case that was kind of similar -- that there are two people that did step forward, and I'm not sure if this has possibly happened before and those people have not come forward. I just feel as if this may not be the only issue of it happening, and that is a concern about the license, yes.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Mr. Rafferty.

MR. RAFFERTY: Thank you, Mr.

Chairman. I wonder if I could have marked as Exhibit 1, the March 10 correspondence from the License Commission with regards to the notice of the hearing? I would draw the Commission's attention that the notice both set forth in that communication as well as the agenda says that the hearing is to determine -- it's based on an allegation of extortion and fraud. That's what is set forth in the complaint.

MS. LINT: It says "alleged."

MR. RAFFERTY: That should be marked as the notice. So that's the notice that's provided.

In addition, the licensee was provided a copy of a redacted police report that does not contain the name of the complainant. I was wondering if that could be marked as an exhibit as well?

MR. SCALI: The report?

MR. RAFFERTY: Yes, the redacted report.

MR. SCALI: It's actually part of the record already.

MR. RAFFERTY: Thirdly, there's a report by Ms. Boyer that's she's referred to. I wonder if that could be marked as Exhibit 3.

MS. LINT: It's part of the record.

MR. SCALI: It's part of the record as well.

MR. RAFFERTY: Fine. The hearing at this point is absent the complainant. We have Ms. Boyer's recounting of information provided to her in what she says is an e-mail, but at the moment the licensee was not provided the name of the complainant, and the complainant is not present at the hearing. The complainant was given notice of the hearing.

I just want to note for the record that there were two investigations conducted here. The report of the police department was authored by Detective Fulkerson. In that report, for which the

conclusion I think should be noted and recognized by the Commission is that the investigation revealed no criminal offenses. That's the conclusion in the last sentence of the report. I don't know if the Commissioners have had an opportunity to see that.

MR. SCALI: We have.

MR. RAFFERTY: That's the first known conclusion.

The report is also relevant in that it sets forth the type of offense that was being investigated. It says, "Larceny over \$250 by false pretenses," and it cites the statutory reference for that. And there's a conclusion by the police officer who conducted the investigation that no such conduct occurred.

Ms. Boyer makes reference to an e-mail of December 18 in her report. I have a copy of the December 18 e-mail that Ms. Boyer received and I would like to introduce that as a record as well.

MR. SCALI: How did you obtain this e-mail?

MR. RAFFERTY: That was provided to me by your office. That e-mail is striking, because unlike Ms. Boyer's report, which says that in the December 18 e-mail, stating Rosita Stevens extorted \$9,000 from him, contains no such accusation of extortion. And I would like to have that e-mail, which formed the basis of this investigation marked as well.

MR. SCALI: I guess I need to see what e-mail we're talking about. I'm not familiar with the e-mails.

MR. RAFFERTY: We're talking about a December 18 e-mail that's referenced by Ms. Boyer in her March 8 report, which initiated the whole preceding here. Because the Chair asked Ms. Boyer, what does she think is going on here? Well, I'm not so sure.

MR. SCALI: I guess the question is, what's the complaint from the complainant?

MR. RAFFERTY: That's correct. So the licensee is terribly disadvantaged at this moment in the proceeding. The complainant, whose name has

not been provided to her, is not present. So the only representations are those provided by the Chief Investigator, so how she characterizes third-party conversations or e-mail is very relevant.

So the e-mail that led to this makes no reference of a \$9,000 extortion. It describes a factual scenario around \$9,000, but does not contain any allegation involving extortion. I would ask the Commission to take --

MR. SCALI: Let's take a look at Ms. Boyer's report again. I'm not really sure exactly what's concluded in her report.

MR. RAFFERTY: It begins far sooner than the conclusion. I would just note that at the outset of Ms. Boyer's report, she is informing Ms. Lint in her March 8 report that she received an e-mail from an individual stating that Rosita Stevens extorted \$9,000 from him. I provided you with a copy of the e-mail that was provided to me.

MR. SCALI: I haven't seen that.

MR. RAFFERTY: It's not a semantic distinction that that e-mail contains no reference

to an allegation of extortion, which is a criminal act for which the licensee has been noted in the correspondence from the Commission. There is a scenario described involving \$9,000, but we have a series of questions around that. It goes to the issue of the absence of the complainant and the fundamental element of due process that allows one to confront and cross-examine their accuser that is missing here today.

MR. SCALI: Well, you know, our process here is quite different than a court process. It's an administrative hearing, and so we have a great leeway in accepting anonymous complaints which we have done in the past, and also to take hearsay. So it's a little different than it would be in a court of law.

MR. RAFFERTY: I'm not making that point, Mr. Chairman. I'm saying that the characterization in Ms. Boyer's report; that there is a complaint of extortion is not borne out by the information contained in the e-mail. That's my first point. I'm not saying you can't accept

hearsay. I'm well aware of the fact that you can.

MR. SCALI: That's one of many contexts --

MR. RAFFERTY: There's only two issues cited in the notice. One is extortion, the other is fraud. The fraud was investigated by the detective, and the detective concludes in his report that there was no fraud. Larceny by false pretense is the statutory definition of fraud.

Now the issue goes to whether there was extortion. That's not a term used by the complainant; that's a term contained -- I'm not criticizing Ms. Boyer, but I'm saying that's a term contained in Ms. Boyer's -- and I have spoken to the complainant directly.

MR. SCALI: I thought you didn't know his name.

MR. RAFFERTY: I said you didn't provide it to me. I didn't say I didn't know it. I said we were disadvantaged by the fact that the police report redacted that name. I know the individual's name. I know where he works. I know

he had a six-month relationship with my client over a range of issues involving his personal life and his business life. And I have a series of questions of Ms. Boyer about that.

The individual, and I spoke with him, and perhaps more recently than Ms. Boyer, he tells me he e-mailed Ms. Boyer yesterday. I requested today a copy of that e-mail. It was not provided to me and I was told that the Commission was not required to do so. I suggested it was exculpatory; that the individual wasn't coming; that I was entitled to at least see what was contained in his e-mail, because I'm informed by the complainant that he sent an e-mail indicating that there was no extortion. To date, I've been denied the opportunity to see that e-mail.

MR. SCALI: Mrs. Lint, have you inquired with regards to the legality of that?

MS. LINT: Yes, with Arthur Goldberg in the City Solicitor's Office who advised me that we were not required to turn it over; that until the hearing was basically concluded that it was an

ongoing investigation and any information provided to Ms. Boyer is not -- that we do not have to provide it and it's excluded.

MR. SCALI: So it's part of her investigation.

MR. RAFFERTY: I don't know that that analysis encompasses the full gambit of what's before us. We have a licensee who was notified of two serious allegations involving extortion and fraud. We have a complainant, who for reasons that are not clear to me, the License Commission chooses not to disclose his name to the licensee.

The licensee was able to piece together who they believe to be the individual, and I contacted him and he verified a number of things to me. I wanted to point out from the outset that the allegation that says that he contacted the License Commission in December for the purposes of making a complaint involving extortion isn't set forth in his original complaint.

So what the Commission needs to decide today, or in its May Decisionmaking Hearing is

whether there was adequate evidence submitted to warrant a finding that there was extortion or fraud. That's what the hearing is being called for. That's what the notice is.

MR. SCALI: I think we need to determine whether the information submitted to us befits the character of this particular person holding of fortune tellers license in this city.

MR. RAFFERTY: Mr. Chairman, I don't know that that's -- I think you noted, if this is a fitness character hearing, then it should be noticed on that basis. There's a specific allegation set forth in the notice. It alleges two violations: One involves extortion, the other involves fraud. Extortion has a legal definition. I suggest there's been no evidence introduced to suggest there's been any extortion, even accepting the version --

MR. SCALI: I guess I'm confused as to why the gentleman would be complaining about money that he wanted to get back if it wasn't for some fraudulent purposes.

MR. RAFFERTY: And I suspect if the gentleman were here that would be a very appropriate inquiry. And he's not here so that becomes nothing but pure --

MR. SCALI: He doesn't have to be.

MR. RAFFERTY: No, but that becomes nothing but pure speculation on the part of the Commission or fact-finder here, if the person isn't here to answer that question.

You're conducting a hearing here under rules that you acknowledge are less than the evidentiary rules required in a court of law, but there still are elemental principles of due process that apply in administrative proceedings.

So absent a complaining witness, issues of speculation as to why he sent an e-mail when he did need to be answered by people only that have knowledge of motive. And I would say that there is no one present at the hearing that has any knowledge of motive because the complainant isn't here.

MR. SCALI: Can you tell me for what

entertainment purposes your client is providing these services?

MR. RAFFERTY: I'm prepared to go through a whole list of what's involved here. I don't for a moment suggest that what's set forth here represents the full examination. So I guess not being able to talk to the witness, I guess I'll have to ask with the Commission's permission, Ms. Boyer some questions about her conversations with the complaint.

MR. SCALI: That is perfectly acceptable.

MR. RAFFERTY: Good evening, Ms. Boyer. Could you tell me, when did you last speak to the complainant in this case?

MS. BOYER: I actually haven't spoke with him on the telephone except for in December when he first called about the complaint, and I told him to e-mail me the information.

MR. RAFFERTY: You've only had a single telephone conversation with the man?

MS. BOYER: On the telephone, yes.

Everything else has been through e-mail.

MR. RAFFERTY: Did you determine in that conversation whether you felt he had any language impairment or inability to communicate with you.

MS. BOYER: Not that I was aware of.

MR. RAFFERTY: How many e-mails did you exchange with the gentleman?

MS. BOYER: I don't have that number right at this moment.

MR. RAFFERTY: Your best guess?

MS. BOYER: I'd have to look at the file.

MR. SCALI: Numerous, more than one.

MS. BOYER: More than one, probably less than 10.

MR. RAFFERTY: Did you learn in the course of your investigation through these e-mails when the complainant first made contact with the licensee?

MS. BOYER: I think that he said approximately in July 2008.

MR. RAFFERTY: Not April 26, 2008?

MS. BOYER: He said it was in July 2008, or maybe the e-mail.

MR. RAFFERTY: When you say, "he said," do you mean he put in his e-mail?

MS. BOYER: He e-mailed.

MR. RAFFERTY: Have those e-mails been provided to the licensee or are they part of this information that is not required to be released to the licensee?

MS. BOYER: The three pages is what I gave.

MR. SCALI: Ms. Boyer's information is in her report.

MS. BOYER: I just broke down the e-mail of what he sent me.

MR. SCALI: Are you asking another question?

MR. RAFFERTY: I'm asking the same question. I'm asking Ms. Boyer when she first --

MR. SCALI: Is that in your report, Ms. Boyer?

MS. BOYER: What is in my report; I'm sorry, can you repeat the information?

MR. SCALI: The date that you began -- looking at her report right here --

MS. BOYER: It says, "approximately, July of 2008, the complainant's wife went to Mystic Rosa for a reading." That's what he gave to me.

MR. RAFFERTY: That's the information you received from him?

MS. BOYER: Yes. That's what he e-mailed.

MR. RAFFERTY: Do you know how many times the complainant visited the establishment or had contact with Mystic Rosa?

MS. BOYER: No, I do not.

MR. RAFFERTY: No idea at all?

MS. BOYER: No, I do not.

MR. RAFFERTY: Is anything related to the extent of the contact contained in the e-mail exchanges you've had with the alleged complaintant?

MS. BOYER: Can you repeat the question?

MR. RAFFERTY: Is anything contained in the e-mail correspondence you've had with the complainant that identifies the number or range of visits that he had with the licensee?

MS. BOYER: No, they do not.

MR. RAFFERTY: Are you aware of what business the individual is involved in?

MS. BOYER: No, I do not.

MR. RAFFERTY: Are you aware of his name?

MS. BOYER: Yes, I am.

MR. RAFFERTY: Are you aware of his age?

MS. BOYER: No, I am not.

MR. RAFFERTY: Are you aware of when the monies provided in the case were given to the licensee?

MS. BOYER: No. I can only assume that after July 2008.

MR. RAFFERTY: No, please. Motion to strike. Assumptions, even in the most lax rules of evidence I think should be deemed --

MR. SCALI: What was your question, Mr. Rafferty?

MR. RAFFERTY: My question was with regard to the payments of money provided. Do you have any understanding of what increments those payments were provided?

MR. SCALI: Do you know, Ms. Boyer?

MS. BOYER: Just in my report where it says \$400 for a certain thing and then \$9,000 to be put into a box.

MR. RAFFERTY: What is your understanding of the \$9,000, when that was provided? Do you know?

MS. BOYER: No.

MR. RAFFERTY: Do you know if that was made in a single payment?

MS. BOYER: No, I do not.

MR. RAFFERTY: Do you know if that was made over a series of months?

MS. BOYER: No.

MR. RAFFERTY: Do you know if the complainant spent between 15 and 20 hours a week in

the company of the licensee from April 26, 2008 through December of 2008?

MS. BOYER: No, I do not.

MR. RAFFERTY: Did the complainant tell you that a collapse of the stock market in September created financial difficulties for him and he needed his money back?

MS. BOYER: No, he did not.

MR. RAFFERTY: Did he indicate to you that he advised people on making investments, and that he was facing pressure to get money back?

MS. BOYER: No, he did not.

MR. RAFFERTY: Did he tell you whether or not he called Mystic Rosa at home on the evenings and weekends?

MS. BOYER: No, he did not.

MR. RAFFERTY: Do you know whether he invited her to his home to visit with him and his wife to discuss their financial and marital situation?

MS. BOYER: No, he did not mention that.

MR. RAFFERTY: The only information you have is what's in these e-mails about this complainant?

MS. BOYER: Yes.

MR. SCALI: This kind of goes to my original question -- not to interrupt you, you're welcome to question her further. I guess maybe you can answer this later as to how Ms. Stevens is financially advising this person for entertainment purposes? I guess that's my question.

MR. RAFFERTY: Mr. Chairman, with all due respect, your characterization of "financially advising," I didn't say she was financially advising.

MR. SCALI: You're asking Ms. Boyer whether she knew certain things as to why he --

MR. RAFFERTY: That's right, I asked what she advised him of.

MR. SCALI: I'm assuming you're suggesting --

MR. RAFFERTY: I think that would be a mistake, Mr. Chairman, for you to assume that.

MR. SCALI: Then I'll ask you that question. I'll ask Ms. Stevens that question later on.

MR. RAFFERTY: My understanding of fortune telling is that they predict the future.

MR. SCALI: For entertainment purposes; that's what the law is. For entertainment purposes, not for financial gain or for fertility treatments, or anything like that. So I guess the license that we issued to Ms. Stevens is for entertainment purposes only. So if she's operating under the guise of being a financial adviser or fertility consultant that would be not under --

MR. RAFFERTY: Where is there evidence -- with all due respect, and we've got a transcript -- where is there evidence of fertility -- that there's any fertility advice?

MR. SCALI: That was in the report, I guess.

MR. RAFFERTY: No, I don't think that is. There's a reference in the report to his wife

being pregnant.

MR. SCALI: There was information that we received here.

MR. RAFFERTY: I'd like to see this information.

The issue here, Mr. Chairman, with all due respect, is what is the nature of the complaint and is there evidence to support it? To turn this into an issue about what is the function of a fortune teller and when does prediction extend beyond entertainment; that's not the purpose of the hearing.

MR. SCALI: The only authority we have here is under the license. The license we grant to her has to do with it for entertainment purposes only. So if she's going to his home for entertainment purposes, and she's reading his fortune, and reading all of that for entertainment purposes, under that guise, then that that would be within the law. That's the only authority we have over her.

MR. RAFFERTY: With all due respect,

I'm not sure how you define entertainment purposes, but someone who comes in and seeks the services of someone who bills themselves as a fortune teller, it's up to the person seeking the information to determine what they do with it. The notion of this entertainment standard that you've established with regard to licenses --

The issue comes down to is there any conduct here that's unlawful. You've cited in your notice two particular allegations, both of which have legal elements associated with them, and neither of which are present in the evidence that's been provided here.

I think it's relevant as to the Commission's ability to make a finding in this case as to the extent and nature of the relationship; how often and how regularly this individual engaged with this person. Certainly one could read the information in this report and this e-mail and suggest there was a single encounter that contained a large amount of money, but we don't know that to be the case.

MR. SCALI: Are you going to submit evidence that shows that it was more than one occasion?

MR. RAFFERTY: I have the licensee who is prepared to discuss the full extent and nature of her contact with the individual named as James Abraham. Mr. Abraham contacted her and sought her advice, and she provided it to him over a period of several months. He has made it clear to me that there was no extortion involved. He wanted his money back; he received all of his money back.

I explained to him that there was a hearing being held on extortion and fraud, and he said there was no extortion or fraud. I advised him to inform the Commission of that. He told me as recently as yesterday that he had done that in an e-mail. I've asked to see the e-mail, and I've been told it's the subject of an investigation, and we are not entitled to it.

I would certainly suggest that if that e-mail exists, it meets the definition of exculpatory evidence and it should be provided to

the licensee regardless of whether you are required to do it under a public information --

MR. SCALI: Do you have any other questions for Ms. Boyer?

MR. RAFFERTY: No, I do not.

MR. SCALI: Questions of Ms. Boyer?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Mr. Rafferty, what other information do you want to submit to us?

MR. RAFFERTY: Is Detective Fulkerson at the hearing?

MR. SCALI: Detective Fulkerson is not here.

MR. RAFFERTY: I don't have any other information.

MR. SCALI: You suggested you were going to submit evidence as to the dates and times of when Ms. Stevens --

MR. RAFFERTY: Well, I have the licensee present, but the burden at this point in a Disciplinary hearing is to what evidence exists. I

don't have the ability. I have a copy of a subpoena that I will introduce that I had served on the complainant because I wanted him to be here. I have the return of service and the subpoena.

MR. SCALI: When was that served?

MR. RAFFERTY: It was served by a constable yesterday. So he had adequate notice of the hearing. He informed me he was not coming to the hearing. He told me there had been no extortion; that he didn't wish to have this matter pursued. I told him that at this moment, I was representing a licensee that was being charged with extortion and fraud, and he said neither of those things took place in my case.

MS. BOYER: Do you have an e-mail saying that?

MR. RAFFERTY: No. I did this strictly on the phone. I don't have his e-mail address.

MR. SCALI: Can we ask some questions of your client?

MR. RAFFERTY: Sure.

MR. SCALI: The suggestion is that somehow that this gentleman, the complainant somehow is mischaracterizing the extent of your services.

MR. RAFFERTY: Can we stop right there. Perhaps I should do some direct because no one used the word "mischaracterizing." I'm saying that the report itself is silent on a number of very critical issues. So I think it's a little unfair to editorialize in the questioning here. I'd like to ask Ms. Stevens.

MR. SCALI: Now you're going to take over the questioning, Mr. Rafferty?

MR. RAFFERTY: I guess it's direct examination, if you're going to be the prosecutor and the judge here, Mr. Scali.

MR. SCALI: I'm asking questions.

MR. RAFFERTY: In what capacity; as the fact-finder? Your question contains a conclusion that there was a charge of mischaracterization. I didn't say that.

MR. SCALI: I would like to know how

many times you visited with the gentleman?

MR. RAFFERTY: Could I just modify the question to --

MR. SCALI: No, you cannot. I'm asking the question.

How many times did you visit with this gentleman and what were your hourly charges for those services?

MS. STEVENS: I seen him several times a week at my office. I spoke to him several times a day over the phone with him and his wife. He would pay me \$375.

MR. SCALI: Per phone conversation?

MS. STEVENS: Per visit, yes.

MR. SCALI: Per visit?

MS. STEVENS: Yes.

MR. SCALI: So that is your fee, \$375 an hour?

MS. STEVENS: I'm charging for my time.

MR. SCALI: And the purpose of your visits were?

MS. STEVENS: He would talk to me, he would ask my advice about things, about his love life, about different things in his life, and I would advise them. I would talk to them when they would argue, when they would fight. When they would not communicate with one another, I was the middleman.

MR. RAFFERTY: Can we get some time out at the --

MR. SCALI: Let me finish my questions and then you're certainly welcome to ask any follow-up questions.

So the extent of your visits and phone conversations with this gentleman were for what purposes besides -- was it for entertainment purposes? Was it therapy sessions? What was it for?

MS. STEVENS: I'm not a therapist. I would just advise them.

MR. SCALI: What is your expertise in the field?

MS. STEVENS: I coached them, I

advised them. I talked to them about staying together, going out to dinner, not being so serious about things. Different things, different events.

MR. SCALI: So that was for entertainment purposes? Or was that for other reasons than that? I guess I'm trying to figure out under the license --

MS. STEVENS: Do you want to call it personal or entertainment? I don't know what you want to call it. Sometimes they would call me back and tell me they feel much better, they're having a glass of wine, they would want me to come and meet with them. Sometimes they would call me and tell me they were arguing, they're fighting.

MR. SCALI: So you were like a marriage counselor almost?

MS. STEVENS: I wouldn't call myself a marriage counselor.

MR. SCALI: I'm trying to figure out what your role was under the visits you had with this gentleman.

MS. STEVENS: The best way I can tell

you is like I was coaching them. I was consulting them.

MR. SCALI: Do you remember how many times you met with them and how did it add up to \$9,000?

MS. STEVENS: Many times, sir. Many times I met with them. They would call me; they had access to my cell phone, my personal cell phone, when other people didn't. They would call me at all hours of the night. I would get calls from them two times a day, sometimes once a day.

MR. SCALI: Can you tell me what the purpose of putting \$6,000 in a box was for?

MS. STEVENS: That never happened. There's no such thing as that. I never told them to do that.

MR. SCALI: Can you tell me why you returned the money?

MS. STEVENS: He was having financial problems. He told me because nothing was working out right for him, his marriage, he lost a lot of money in the stock market, and he wanted his money

back. I told him that I didn't think it was fair because I had a lot of time with him; that he took up a lot of my time; and that I deserve some money for the time that I spent with him. So we were debating that back and forth.

MR. SCALI: So you received no payment for any of your services?

MS. STEVENS: Excuse me?

MR. SCALI: You gave back all the money?

MS. STEVENS: As far as I could tell.

MR. SCALI: For all those months and hours of time?

MS. STEVENS: Yes, I did.

MR. SCALI: You did that for what purposes?

MS. STEVENS: For what purpose?

MR. SCALI: Yes. Just because he said he was in dire straits?

MS. STEVENS: I didn't want to be here to tell you the truth. He became a nuisance. He just kept on calling me, calling me, calling me,

and her calling me. I just wanted to be rid of them.

MR. SCALI: Comments, questions?

MR. HAAS: No comments, no questions.

MR. TURNER: Mr. Chair, I have some questions. I guess my questions would be to Ms. Lint. The questions are going to be the definition of a fortune teller's license and the parameters of how that license is exercised?

In this particular case, was the licensee exercising the license beyond the parameters that would normally be exercised in this license?

MS. LINT: It would be my opinion that counseling and consulting are outside the parameters of a fortune teller's license.

MR. TURNER: Does a fortune teller's license allow the licensee to charge a fee for that service?

MS. LINT: It's not specified. It's actually governed by State law and the State law is silent.

MR. SCALI: All right.

MR. TURNER: No further questions.

Oh, one last question. Unfortunately it would be for the Detective who's not here.

Mr. Chair, through you to Ms. Boyer, the police report indicated that no charges or crime was -- let's see if I can find it exactly -- "Investigation revealed no criminal offenses." Do we know or is there any information available to indicate that the reason no criminal offenses were pursued was because the money was refunded? In other words, if the money had not been refunded, was there a potential of criminal offenses?

MS. BOYER: I'll have to ask the Detective if that is why he didn't write that there were any criminal offenses.

MR. TURNER: Thank you. No further questions.

MR. SCALI: Anything else, Ms. Boyer?

MS. BOYER: No, thank you.

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

All right, Mr. Rafferty, you get the last word.

MR. RAFFERTY: I wasn't permitted to inquire of my own client during the course of the hearing --

MR. SCALI: I do apologize.

MR. RAFFERTY: But I do want to note that what the evidence shows for the testimony of Ms. Stevens, for which there is no contrary testimony or evidence, was that this was a relationship that commenced in April of 2008, and continued through December. That on its face suggests a long-term relationship.

The issue before the Commission and the line of questioning by the Chair would suggest that there are certain prohibitions on the conduct that a fortune teller can engage in. I'm not aware of what those prohibitions are. I'm not certain where I could find where those prohibitions are enumerated.

Whether someone goes to a fortune teller and makes decisions based upon the fortune

they receive is not an issue for the fortune teller to ascertain.

If a person walks into an establishment in Harvard Square with his wife, and tells a fortune teller that they believe they have a curse on them, and they wish to have a reading to learn more about it, which is exactly what happened in this case, I imagine the presumption is he's there to be entertained. Maybe the movies were full that night; I don't know.

But the view of the world that this is entertainment, and it's up to the fortune teller to be certain that the person seeking her services is using it solely for entertainment purposes, I'm not sure how that standard would be applied.

She describes her activity in many ways like coaching. It's a burgeoning field where people are providing self-help; all types of free advice. The bookstores are lined with shelves, the TV and infomercials tell you how to change your life. There's a gentleman by the name of Tony Roberts that doesn't have a license but can change

your life if you send him \$75 tonight, and the rest over the next year.

Someone came to Ms. Stevens apparently believing she could be of assistance to them. And for a period of six months she provided him with counsel and coaching, and he willingly provided her with the money. And when his financial fortune suffered a reversal, she did something that his industry doesn't do, she gave him back his money.

I admit that's an unusual business practice, and I made it very clear to Ms. Stevens when she came to see me that lawyers do not follow that model; and that regardless of tonight's hearing, there would be no monies returned.

Because my first question was just as yours is: Why would you give back the money, you put all this time in? This man called you night and day, his wife called you. They were in separate rooms arguing and you were advising them. You're entitled to that money. Her answer was, I grew close to him. I became friends with him.

She initially gave him back not all

the money. She gave him back as the record shows, \$6,100. What did he do when he didn't get the balance of his money? He called here and the police got involved. What did the licensee do? Here's the rest of the money. I don't want any trouble.

We're here to have a hearing as to whether there was any fraud or extortion. I would respectfully suggest that there is no evidence to remotely suggest that fraud or extortion took place in this case. There is not a complaining witness to make that claim; there is nothing in the documents before the Commission that would allow that conclusion to be made.

I would respectfully suggest that the Commission could find no evidence to warrant a violation of any laws regarding fraud and extortion. If the Commission sees fit going forward as a policy matter to establish pricing schedules or something else, I suspect that would be a policy decision to be made in the future. But as far as I can tell, and I admit that I'm not an

authority in this industry, it appears to be very much a free-market as to what people charge for this entertainment purpose.

Ms. Stevens has been in Harvard Square, a member of the Harvard Square Business Association. She doesn't engage in furtive conduct on street corners. She has an office right in Harvard Square with a sign in the window, and people come and see her day in and day out.

This gentleman, a highly educated professional, advising others on what to do with their money came to see this woman for six months seeking all types of advice in the relationships in his life. He's got all his money back.

She's here tonight defending her livelihood against a charge of fraud and extortion. I think you should have little trouble concluding no fraud or extortion has occurred. Thank you.

MR. SCALI: Thank you very much, Mr. Rafferty. Anything else? Motion to take the matter under advisement.

MR. HAAS: Motion.

MR. TURNER: Seconded.

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

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Thank you very much.
Thank you, Ms. Boyer.

MR. SCALI: Let's take the rest of Ms. Boyer's cases.

MS. LINT: Disciplinary matter:
Continued from March 24, 2009, Kapsco, Inc. d/b/a
Cellar Wine and Spirits, Marilyn Carter, Manager,
holder of an All Alcoholic Beverages as a Package
Store license at 991 Massachusetts Avenue for
selling alcohol to a minor without asking for
identification.

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

MR. RAFFERTY: James Rafferty, Adams
and Rafferty, 130 Bishop Allen Drive, appearing on
behalf of the licensee. Seated to my left is
Marilyn Carter, the manager of the licensee.

MS. BOYER: Andrea Boyer, B-O-Y-E-R,
Licensing Investigator for the City of Cambridge
License Commission.

MR. SCALI: Tell about the
investigation with regard to this matter.

MS. BOYER: This is pertaining to the
underage field investigations that we've been
performing. They have been in effect for some time
now. I've been working Gisela Rots from the

Cambridge Prevention Coalition.

The investigation consists of having an underage individual go into an establishment and attempt to purchase a six pack of beer. Previous to the date of the investigation, the individual was instructed to represent their actual age, and not try to appear older. The underage individual has no identification on them, no wallet or money, except for what is given to them by myself as the investigator that evening.

The individual is given either a marked \$10 or \$20 bill for the transaction. The individual is instructed to attempt to purchase a six pack of beer. I would position myself to be able to see the underage individual by either viewing through a window or entering the premise if necessary.

When or if asked for identification, the underage individual is instructed to say to the employee, or the manager, or owner, either "I don't have any," or "I don't have any on me." If the underage individual is allowed to purchase the six

pack of beer, they are to meet me outside the establishment and hand me the six pack of beer. Once the minor is at a safe distance, I would return to the store to inform the employee that they had allowed a minor to purchase a six pack of beer.

On the evening of February 18, 2009, a Cellar Wine and Spirits employee did sell a six pack of beer to the underage individual that we utilized that night. The investigation took place at approximately 6:23 p.m. The youth is 17 years old. The date of birth is 10/15/1991. The underage individual was able to purchase a six pack of Bud Light. Twenty dollars was paid to the Cellar. He was not questioned to their age and was not questioned for an ID. He was a male, he had blond hair, and his name was Isaac.

Usually I would go back on premise and speak to the manager and tell them that the employee had sold a six pack of beer, but the weather conditions that night were snowy and sleeting, and I didn't want to leave the minor

outside for longer than was necessary, so I actually rejoined the group and carried on with the investigation that evening.

MR. SCALI: This was a series of investigations that you had been conducting bimonthly or monthly?

MS. BOYER: Monthly, but there was a month that we took off for the holidays.

MR. SCALI: This was one of the establishments that evening out of how many?

MS. BOYER: Ten.

MR. SCALI: So one of 10 that particular evening. And the underage individual is a person provided to us by Ms. Rots through her organization at CPC?

MS. BOYER: Correct.

MR. SCALI: And the individual is 17 years old, and was sold a six pack of Bud Light?

MS. BOYER: Yes. Also, I thought I could add, when I did go back in and speak to the employee, he did state that it's out of sorts for him to do that. He actually had the flu and he was

not working to his full ability that he normally would. I told him that I would present that to the Commission.

MR. SCALI: Questions.

MR. TURNER: No questions.

MR. HAAS: Ms. Boyer, did you see the purchase go down?

MS. BOYER: Yes.

MR. HAAS: So you witnessed it?

MS. BOYER: Yes, I did.

MR. SCALI: Any Comments?

MR. HAAS: No other questions.

MR. SCALI: Mr. Rafferty?

MR. RAFFERTY: No questions.

MR. SCALI: Not contesting the fact?

MR. RAFFERTY: No, no factual dispute.

Just by way of mitigation or background, the establishment is a small owner operated liquor store located a few blocks from here. On the evening in question, there were two employees: Matt, an employee who's been there for about nine years was in the back room; and Isaac

Baker, who was an employee of about six or eight months at the time was working.

Regrettably, the situation as described by Chief Investigator Boyer appeared to have occurred. The employee, much chagrined, contacted Ms. Cater, the manager, and Mr. Capsels, the owner, and reported what had happened.

As you might imagine, as conscientious longtime owners they were quite disturbed. Their initial reaction was perhaps more discipline oriented, but upon reflection they believed that this was a learning experience and they did not terminate the individual. They did improve his training. He's working in fact this evening; he's not here.

He has learned a valuable lesson. He had been trained to ask for that, but by his own admission was operating at less than maximum efficiency that night given a health constraint, and that was the case, but he left early or shortly after the incident.

Nonetheless, Mr. Capsels and Ms.

Carter own the business. They live above the business. They are very attentive to the conduct of that business. Their residence is in the same building, and they pay very close attention and are very mindful of the Commission's concern about these issues. But it happened, and unfortunately it does, even in the best of circumstance. This was not the best of circumstances and the licensee is prepared to work with the Commission on any disposition you deem appropriate.

MR. SCALI: Have you been to the 21-Proof training?

MS. CARTER: No. Some of our employees have.

MR. SCALI: This particular individual, had he gone through it?

MS. CARTER: No. He had started with us after --

MR. SCALI: He was new. I'd say I was kind of surprised that it actually happened.

MS. CARTER: It was the only sale he made that day.

MR. SCALI: Not a very busy evening, I gather.

MS. CARTER: I guess it was the weather. We would like to add that we are a neighborhood establishment and we know a lot of our customers. So a total stranger would have to walk in that obviously was young.

MR. RAFFERTY: I'm not aware of any disciplinary history on the license.

MR. SCALI: Any previous record on this?

MS. BOYER: No. I don't think so.

MS. LINT: I don't think so.

MR. TURNER: No questions.

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

This is one of many that we've already heard because it was continued. I know that on a first offense we normally do give a warning and perhaps training suggestion. I don't have any other feeling about this particular case and I don't think the Commissioner does either.

MR. HAAS: No.

MR. SCALI: I would suggest that this gentleman go through 21-Proof training. Frank Connolly will come down to you, as you know, and do the training. Some people have fired people, others have not.

MS. CARTER: We have three employees and I'm the other person.

MR. SCALI: We don't suggest you fire people of course, but you should try to educate.

MS. CARTER: He's really scared.

MR. SCALI: I'm going to make a motion for a warning, and that you get 21-Proof training for all staff that have not been trained. Moved.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you very much. Good luck in the future and stay on top of that.

MS. CARTER: I will tomorrow. Oh, I

mean Thursday; tomorrow is taxes.

MS. LINT: Disciplinary matter: The Boston Food Cooperative, Inc. d/b/a Harvest Co-op Supermarket, Marc Cutler, Manager, holder of an All Alcoholic Beverages as a Package Store license (using only Wine and Malt) at 581 Massachusetts Avenue for selling alcohol to a minor using a fake ID.

MR. SCALI: Good evening. Tell us who you are.

MR. CUTLER: I'm Marc Cutler.

MR. SCALI: Ms. Boyer?

MS. BOYER: Once again, this was an investigation that's working with Gisela Rots from the Director of the Cambridge Prevention Coalition. This investigation actually consisted of having an underage individual go on premise with a fake ID, and with also a marked \$20 bill in an attempt to purchase a six pack of beer.

In the investigation performed on March 19, 2009, at Harvest Food Co-op, actually an ID was requested and a false ID was used, and the individual was able to purchase a six pack of UFO

Beer.

The youth's age is 17. The date of birth is 6/14/1991. The individual was asked for an ID. It was a female. And there was an attached receipt that was given to you as part of your packet, and also a picture of the Ohio driver's license that was utilized. The minor used a false Ohio driver's license. The license does not show the correct picture or height of the minor who used the driver's license. The Ohio driver's license also expired in June 2007. That's the information.

I did speak to the manager afterwards and told them what had transpired and so I could get my money back for the next investigation.

MR. SCALI: So again, this is part of your sting operation that you've been doing, conducting one for that particular evening?

MS. BOYER: Yes, sir.

MR. SCALI: Which was on March 19; right?

MS. BOYER: Yes.

MR. SCALI: Mr. Cutler, were you there

that evening?

MR. CUTLER: I wasn't. They called me in and I spoke Ms. Boyer the next day just to find out what actually happened.

I'm not going to deny or rebut. I'm just shocked because we have such a stringent policy. I should have brought the policy that we have, a company policy that elderly people complain because we card everybody. We have managers ask us every day, can we stop carding people that are a certain age. And we just -- I don't know if this is Murphy's Law or what on how this one slipped by -- we card everybody, which they did.

I interviewed the young lady that sold to the minor, and she said that it was a Mass. ID, and I know it wasn't because I heard from Ms. Boyer that it wasn't. And it was expired.

MR. SCALI: Is it your policy to take out-of-state IDs?

MR. CUTLER: No. If an out-of-state ID comes through, they're to call the manager, and there were two managers on that night they could

have spoken to. And bring the manager over and they would have hopefully viewed it and saw that it was expired or was the wrong picture or something.

The young lady that sold it was very new, but that's not an excuse because they just went through cashier training. She should have had the policy and went through that training and it should have been fresh in her memory.

MR. SCALI: Have you had 21-Proof training in your store?

MR. CUTLER: The last certificate I found was from '06, so we haven't done that since '06.

MR. SCALI: What you really should be doing is anybody new, you should be calling Mr. Connolly to come down and do the training for anybody new. That way you can do your own policy but you can have them -- I mean, once you pay once, you can completely add on other employees as you go along without it costing you any more money. So it's not a real expensive type thing to do and it's really off of you then to do that extensive

training if you know someone else is doing it for you.

MR. CUTLER: A couple things that we've planned were the 21-Proof training, and I've been in touch with Claude to go to the next meeting to take part in that just to be more involved.

We've retrained everybody in the front end, both stores. We have a store in Jamaica Plain. We have a liquor license there, and none of these issues, but we just retrained everybody in the front end on the policy.

MR. SCALI: Previous history?

MS. LINT: Yes. A warning in 2005 for failing to attend the mandatory renewal meeting; a letter of reprimand in 2006 for selling alcohol to a minor without questioning their age; and a \$50 administrative fee for failing to attend the mandatory meeting in 2008.

MR. SCALI: If you came to those meetings you might have gotten some information. So this is really a second offense.

MR. CUTLER: We had one in '06; right?

MR. SCALI: Yes. Were you the manager back then in 2006?

MR. CUTLER: I wasn't the manager that attended the meeting. I was in Jamaica Plain at the time. I've been there 10 years, and I moved over to the other store for a couple of years, but have been involved with both for -- I run both store operations.

MR. SCALI: Pleasure of the Commissioners?

MR. HAAS: What would a second violation amount to normally?

MR. SCALI: A one to three-day suspension.

MR. SCALI: Deputy Chief, do you want to think about it?

MR. TURNER: Advisement.

MR. SCALI: A second offense normally is a one to three-day suspension. If you go to the ABCC, it's three to seven days for a second offense.

MR. CUTLER: We would accept anything

that has to be set forth, but I'd like to say before that happens that you know, I said it already, but we card everybody. We check every license and I don't know how this -- it sounds like an excuse and this just happened, but it's just crazy. They called me and told me and I was shocked.

We have repeat customers, we have members, we're a member-owned co-op, and we have members saying, "I'm a member here. My hair is gray." And even if they come back a second time that week, we still card them.

MR. SCALI: I will tell you that the State is coming up with a new, what they call "Retailers Tool Kit" for training. There's going to be a whole statewide poster and sticker and policy program coming out in June, which is going to show that they recommend anybody under 30 be carded as a statewide program.

So that's going to be launched very very soon, and you probably should probably stick with your policy of carding even more than what you

would normally card. If you card everyone, and then make it clear to everyone that that's what you do. But the state is going to recommend anybody 30 and under.

Motion to take the matter under advisement.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: We vote on May 7 at 10:00 a.m. If you want us to know anything else; if you want to talk to Mrs. Lint about any suggestions you might have that might help us make our decision, you certainly can do that.

MR. CUTLER: I didn't know if I could give you things tonight, but I'll forward our policy that we train people. I'll bring it into the office.

MR. SCALI: Thank you very much.

MS. LINT: Disciplinary matter:
Parkingway Wines, Inc. d/b/a Supreme Liquors,
Sharon Walsh, manager, holder of an All Alcoholic
Beverages as a Package Store license at 598-614
Massachusetts Avenue for selling to a minor using a
fake ID.

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

MR. CIFRINO: Thomas Cifrino.

MR. WALSH: Sharon Walsh.

MS. BOYER: Andrea Boyer.

Once again, working with Gisela Rots,
the Director of the Cambridge Prevention Coalition,
we have continued our investigation, which consists
of having an underage individual go into an
establishment and attempt to purchase a six pack of
beer.

This particular investigation also
consisted of having the minor have a fake ID on
their person along with a marked \$20 bill on this
particular night, also on March 19, 2009. Supreme
Liquors is here based on the charge I think. The

disciplinary is different I think on this one because I interrupted the sale actually.

MR. SCALI: Was it an out-of-state ID?

MS. BOYER: Yes, it was. That was also part of your packet. Same youth, age 17, date of birth, June 14, 1991. The individual attempted to buy a six pack of Bud Light with a \$20 bill, was asked for their ID. It was a female cashier. On the bottom of my note it says, "Please be advised that I interrupted the sale to question the employee as to what is incorrect about the ID. I did this to educate the employee of what to look for regarding the following information."

MR. SCALI: Were you that outraged, Ms. Boyer?

MS. BOYER: No. I wasn't outraged. I just said, "Don't sell. What is wrong with this ID?" So the first time in all my investigations that had ever ever interrupted one.

On the positive note of this is that what we usually do is when we come to the hearing -- it's harder to point out to the employee right

at that time what's actually wrong. So we did find that by me losing my cool that night is that I was actually able to question and point out exactly what is wrong, not just this, this, and this, but how many things were wrong, which again was --

MR. SCALI: What's wrong with this out-of-state, expired license?

MS. BOYER: That it's an Ohio driver's license, it's not them, and that it was an expired ID, and it's not the height, it's not the picture, and all of those things. It kind of seemed to drive it home that because other employees came to look at it, examine it.

MR. SCALI: I have to say I was really shocked by this one, particularly for Supreme, because they're so involved in everything in the city, and so involved in the homeless situation and the problems that we were having in Central Square.

MS. BOYER: I was surprised also. I've always had positive situations with Supreme, not just with investigations but even if I've walked in just because of complaints, or whatever.

They've always questioned people about their ID and have turned many people away.

MR. SCALI: Questions?

MR. TURNER: No.

MR. SCALI: Mr. Cifrino, who was selling that night? It wasn't one of you two I hope.

MR. CIFRINO: No. It was an employee that we hired in 2002. He's undergone three different TIPS programs, and we terminated her because we have a zero-tolerance policy for certain matters. If you have undergone three TIPS programs and you're still not looking at an ID properly, you're never going to look at it and we don't need you there is our attitude.

We're embarrassed to be here, Richard. I've got to tell you that.

MR. SCALI: Like I said, I was just kind of shocked because you are so on top of things.

MR. CIFRINO: We like to think we run the best liquor store in Cambridge. I was shocked,

I really was. I have to tell you, we have an employee manual and one of the lines in there is, "When you look at an ID, make sure you read it," because it would be a sin if you read it and didn't read it properly, and served a minor because of that.

MR. SCALI: This person wasn't even looking at the ID.

MR. CIFRINO: Didn't even look at it, you're absolutely correct, and that's why we terminated her. She was a long-term employee that just was like hiring a bundle boy, it was like ridiculous. We're really embarrassed to be here. I know she did wrong, and I know we did wrong, and I would like to think that we will never be here again for this type of thing.

MR. SCALI: Have you done 21-Proof training at all?

MR. CIFRINO: I don't know what 21-Proof training we've had. We've had TIPS training every year. We've dealt with Frank Connolly in CLAB. We actually have CLAB come into

the store two to four times a month to try to get us to sell to one of their employees.

MR. SCALI: What do you have, Dataquest come in?

MR. CIFRINO: We have Dataquest, yeah. They come in two to four times a month in all the stores, and if we -- two things happen if we do sell to that person. That person is over 21 years old, because Frank Connolly has assured me they would be. One, Sharon loses part of her evaluation every quarter. She gets a quarterly evaluation based on her performance, and she loses part of that every quarter, so she's more aware of this. It costs her money. And number two --

MR. SCALI: You're not going to get a bonus this year?

MR. CIFRINO: If we do serve a person, even though that person is over 21, we will suspend that person the first time, and the second time we'll terminate them. We're very serious about it, because a license is a privilege. It's not our right to have it and we understand that, and I

think more people should understand that because we'd be better served.

MR. SCALI: This is not to put down TIPS at all because TIPS is a very worthy program, but they're not a Cambridge oriented program, and 21-Proof is a Cambridge oriented program that will gear the training towards your people and your store, and Cambridge issues. So I really would recommend that you do that.

MR. CIFRINO: I'd be happy to. Is that through Frank Connolly?

MR. SCALI: Yes, and CLAB members obviously get a discount on that. He'll come right to your store.

MR. CIFRINO: You can bring other employees over?

MR. SCALI: What's that?

MR. CIFRINO: Can we bring other employees over?

MR. SCALI: You can bring anybody you want.

MR. CIFRINO: I'm happy to do it.

It's a short price to pay for not serving a minor.

MR. SCALI: Previous record?

MS. LINT: None.

MR. HAAS: Warning.

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

MR. SCALI: Motion to give a warning; 21-Proof training for all employees.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: I would say really concentrate on the 21-Proof training. It's really a valuable program.

MR. CIFRINO: I'm sorry we're here.

MR. SCALI: I'm sorry you're here too.

MS. LINT: Revocation: A Wines, Inc., Andrey Levenko, Manager, holder of a Wine and Malt Beverages as a Package Store license at 1300 Cambridge Street for failure to notify the License Commission that A Wines has closed and for failing to apply for inactive status.

MR. SCALI: Anyone here for A Wines?

MS. LINT: We have sent numerous letters to A Wines. We sent notice of the hearing to both the store location and the manager of record's home, both came back. We attempted to telephone them and we can't find them.

MR. SCALI: Gone?

MS. LINT: Gone.

MR. SCALI: Landlord doesn't know where they are?

MR. SCALI: We don't know who the landlord is.

MR. SCALI: I thought Chris did that.

MS. LINT: He might have. I don't have that information.

MR. SCALI: They've been gone for

months. The store is closed.

MS. LINT: Andrea went by, it's empty.

MR. SCALI: Anybody want to be heard on this matter? No hands.

Motion to cancel. Actually, did they pay the fee for 2009?

MS. LINT: I believe so. No. We have a letter from the landlord's attorney that they're owed a substantial amount of money. I don't see a 2009 renewal. I see a 2008.

MR. SCALI: Motion to revoke.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: That means we notify the ABCC that the license is revoked and then there will be a license able to be issued to anybody who's looking for one.

MS. LINT: I'm not positive that they renewed it.

MS. LINT: Disciplinary matter: Tigers and Bears, LLC d/b/a Tory Tow, Christopher Lutes, Manager, holder of a Wine and Malt Beverages as a Restaurant license and Entertainment license at 3 Brattle Street for failure to open in a timely manner. This license was approved on January 29, 2008 by the ABCC.

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

MR. LUTES: Chris Lutes.

MR. CURTIS: Matthew Curtis.

MR. SCALI: So the story is from last we were here, Mr. Lutes, you were here and you said you were going to open the week of March 9.

MR. LUTES: Our goal was to open the week of March 9, correct. This was -- I want to say it was February 24 that we were here.

MR. SCALI: And you're open now?

MR. LUTES: We're open now.

MR. SCALI: What date did you open?

MR. LUTES: We opened the 10th.

MR. SCALI: So about a month off. I

guess the issue was that was your third free license. It was a gift as the Commissioner says from the City.

MR. LUTES: I don't understand what you mean, third.

MR. SCALI: You didn't buy this license. You were issued it.

MR. LUTES: Exactly.

MR. SCALI: It's the third one that was issued to you like that; right?

MR. LUTES: The other two were in non-Cap zones. This is the first in a Cap zone.

MR. SCALI: I guess we said to you at the last hearing, if you can't do it that week, let us know you're not going to open that week. The issue is that's it's been sitting for more than a year, waiting and waiting, and it never was issued.

I guess we wanted to give you as much time as you needed and then it took a month more. The issue had to do with the license being a free license issued from the city and sitting and waiting, and a storefront empty and waiting all

that time in Harvard Square is a big deal.

Do you want to say anything,
Commissioner, about this?

MR. HAAS: I was prepared that if you weren't open at this point in time to recommend that we withdraw the license and then you could go and find a license when you're ready to open again. But seeing that you've opened, my advice back to the Commission was you've gotten to this point. There's no sense making you go backwards again, but I was really prepared this point in time to say -- at least I was willing to vote that the license be withdrawn and then have you go find a license at that point.

MR. SCALI: There are a couple that are for sale now.

MR. LUTES: I can only imagine.

MR. SCALI: And they're reasonable prices.

MR. LUTES: A year-and-a-half ago when we first came before you to get our license it was a different economic world.

MR. SCALI: This has nothing to do with the economy, this is just that people lost their lease, or whatever it may have been, not due to their own economic issues.

Comments?

MR. TURNER: Mr. Chair, just by happenstance, the Fire Prevention Office was doing an inspection in Harvard Square and happened to walk by the Tory Row and noticed the door was open and there was some activity going on inside. We stopped in and paid a visit. We were quite pleased that they were opening that evening.

The inspection process was completed. All the City inspection agencies had been through the establishment. It was quite an extensive renovation, a complete gut rehab, all brand-new equipment. We do wish them well with their endeavor. It's unfortunate there was a little communication or lack of communication. I hope that would improve.

The only issue I have at this point is that on said Friday, it was approximately 3:00 in

the afternoon, we did request a number be posted on the property, the number three somewhere on the building.

MR. CURTIS: We put that up today.

MR. TURNER: Okay, because we went by yesterday at 4:00 p.m. and there was no number on the building.

MR. SCALI: Last-minute to the rescue Mr. Curtis. You have it nailed up on the wall; is that what it is?

MR. CURTIS: It is. It's on the glass.

MR. TURNER: Clearly visible from the street?

MR. CURTIS: Yes.

MR. TURNER: It's a state law, not my rule, not a License Commission rule, but it is a State law. Other than that no other issues that I have.

MR. SCALI: Anybody from the public want to be heard in this matter? Ms. Jillson, sitting in the back. Chair of our Taste of

Cambridge this year, nice to see you.

MS. JILLSON: For the record, my name is Denise Jillson. I'm the Executive Director for the Harvard Square Business Association. We're here to advocate on behalf of Tory Row, the latest a member of the Business Association. We're delighted with a capital *D* that they're open and there's activity going on over there.

And in deference to the Commission, we understanding your requirements and respect those requirements, because we're really appreciative of all the work you've done particularly around these no-value nontransferable licenses, but ask for leniency this evening for Tory Row because they really have done, as Captain Turner said, an amazing job.

We understand there was some confusion at the January hearing, which I happened to be at, and Chris thought that Matt was going to be here and Matt thought that Chris was going to be here and neither one of them showed up. So we understand that and we're just moving forward and

we hope that you'll take that into consideration, and thank you.

And they're going to be participating in the Mayfair and I'm certain that they're going to be participating in the Taste of Cambridge.

MR. SCALI: They could pick any number of cuisines to be at that event. Thank you Ms. Jillson.

Anybody else want to be heard?

MR. SCALI: Pleasure of the Commissioners?

MR. HAAS: One more.

MR. SCALI: I'm sorry, one more person. I didn't see your hand.

MR. KELLEY: I'm Brian Kelly. I'm Vice President of the Cambridge Trust Company. I'm these guy's banker. A couple of things: One is, they have banked with us since their first location opened up way back in 1991. I think we're all disappointed that it took a long time, myself included, but I think we're very excited that they're open. We want to support them. There's a

big hole in Harvard Square that got filled, and I'm glad to see it up and vibrant. And I think they'll do a terrific job overall.

MR. SCALI: Wow, you got your banker to come in. That's a big deal.

MR. LUTES: It is a big deal.

MR. TURNER: It's a first.

MR. KELLEY: I'm glad I could be the first for you guys. Let's hope I don't have to do it again.

MR. SCALI: Thank you, Mr. Kelley. Anybody else want to be heard? No. Comments?

MR. HAAS: No comments.

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

MR. HAAS: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: We won't see you again I don't think. I hope not.

MS. LINT: Application: F and D Restaurant Corp. d/b/a Campus/Manray, Donald Holland, Manager, holder of an All Alcoholic Beverages as a Restaurant license at 21 Brookline Street has applied to further extend the inactive status of said license.

MR. SCALI: Manray. Oh, Mr. Rafferty. Mr. Holland's not here?

MR. RAFFERTY: That's correct, Mr. Chairman. James Rafferty on behalf of the licensee.

I did notify Ms. Lint that I spoke to Mr. Holland. He is in Florida and due to return in about two weeks. I know it's an issue of some concern given the nature of the inactive, so we request a one-month extension to allow him an opportunity to make a complete presentation about where things stand, including the fact that he informed me today that his counsel is in discussions with an establishment on Green Street about the possibility of exploring that. He reported that to me today but he has been calling

me for a week to let me know he's in Florida and he received this. So if the Commission would be willing to entertain a continuance?

MR. SCALI: You want one month for him to come in and tell us what?

MR. RAFFERTY: What we've filed is a request to extend the inactive and I didn't imagine that that extension would be acted upon if he wasn't here to give the Commission an update as to where he stands with where things are at.

If the Commission felt otherwise, I guess it wouldn't need the extension but I was just presuming based on past experience with inactive licenses, particularly ones that have been before the Commission more than once or twice that I advised Mr. Holland that I think --

MR. SCALI: I think we're at the end. We're almost four years.

MR. RAFFERTY: That's my point. I was sensing that --

MR. SCALI: It's done pretty much.

MR. RAFFERTY: We all know there's all

type of perils associated with trying to predict the future, so we didn't want to do that in this case for entertainment purposes or otherwise. But I would say that Mr. Holland knows that he is approaching that point as well; that the Commission has been very tolerant in allowing him an opportunity. It's challenging times but I didn't think we could make the case without him being present, but he is unfortunately out of the state at the moment.

MR. SCALI: May 12?

MS. LINT: It's May 12.

MR. SCALI: May 12, will he be back by then?

MR. RAFFERTY: That, or the second meeting, if you're busy on that night.

MS. LINT: May 12 is pretty packed.

MR. SCALI: Let's do May 26.

MR. RAFFERTY: He'll be back May 1, so any date in May is fine.

MR. SCALI: May 26. Motion to continue to May 26.

MR. HAAS: Motion.

MR. TURNER: Seconded.

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

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Aye.

MS. LINT: Application: Continued from March 10, 2009. Golden Toad Inc. d/b/a Christopher's Toad, Charles Christopher, Manager, holder of an All Alcoholic Beverages as a Restaurant license at 1912-20 Massachusetts Avenue has applied for a change of premises description to include outdoor seating on a public patio with service of food and alcohol.

MR. SCALI: Good evening. Just tell us who you are for the record, please.

MR. HESLOP: Holly Heslop, H-E-S-L-O-P, co-owner of Christopher's.

MR. CHRISTOPHER: Charlie Christopher, the other co-owner.

MR. SCALI: Didn't you apply for a patio before? Oh, no, that's for the Common. I'm thinking of the Common.

MR. HESLOP: The Common has already had a full patio for three days this week.

MR. SCALI: Is it warm enough for that?

MR. CHRISTOPHER: It seems to be.

MS. HESLOP: We opened on Friday and

it's been full for quite a few days.

MR. SCALI: This is for the Christopher's Toad on public sidewalk.

MR. CHRISTOPHER: Yes.

MR. SCALI: How many seats?

MR. CHRISTOPHER: The application is for 30. We think we will probably end up with fewer. There's room for 30 but I think we'll probably be more in the 24 range.

MR. SCALI: Has Public Works been out there yet?

MR. CHRISTOPHER: Yes.

MR. SCALI: Have the measured for you the space?

MR. CHRISTOPHER: Yes. Well, they looked at it. We've had the tree folks out. We've had the DPW. We've had everybody out and I think everybody was okay with it.

MR. SCALI: So Public Works was okay with the measurements?

MR. CHRISTOPHER: Yes.

MS. LINT: I don't have a plan and I

also noticed the City Manager's approval. What I have is a photocopy and I need an original signature.

MR. CHRISTOPHER: I have these things.

MS. LINT: I need these two.

MR. SCALI: What you actually need, if you don't have it with you, is an actual engineer's drawing showing the actual dimensions. You have it right there.

MS. LINT: No, I do. I'm sorry, I do.

MR. SCALI: There's 28 on there; is that right?

MR. HESLOP: There is some question about the tree wells there, and I think that we've missed a table because they weren't sure if they were going to put a tree back in there, but they're not, so.

MR. CHRISTOPHER: When you look at the chairs there, I think there's a measurement that goes right through where two chairs would be. So this one actually shows 30, but our plan is to not go all the way down in front of Toad's because we

would like to have an area where people can stand so they don't block this thoroughfare.

The reason the tables are not tight to the building is that there are obstacles in the way. This is a much clearer -- do you have the big picture there? We've got some photographs of the street that show that it's an easier walk if you walk alongside the building than where the trees, or the posts, or the bike rack is, or that kind of stuff.

MR. SCALI: You're saying you think the number will be less than 30 then?

MR. CHRISTOPHER: Yes.

MR. SCALI: You need to have an exact number for us to hear it. That's the reason why. There has to be an exact plan.

Do you need more time to develop this I guess is what we're trying to out?

MR. CHRISTOPHER: We would love it to be approved for this and just to know that if --

MR. SCALI: We can't do it that way, because it has to go to the City Manager's office

for the exact measurement with the exact plan. The Law Department will not sign that document without an exact plan showing the exact measurements. It's a liability issue.

MS. LINT: And the exact number of seats.

MR. CHRISTOPHER: Okay.

MR. TURNER: Mr. Chair.

MR. SCALI: Deputy Chief.

MR. TURNER: As I read your plan, your potential plan that will be submitted, your concept is to begin the patio at the curb and move inward, and the public would walk between your establishment and the serving area. Just refresh my memory, Mr. Chair, on the policy about carrying beverages.

MR. SCALI: We've allowed that. What happens is that their insurance policy will have to cover the walk space that goes from the establishment to the door.

MR. HESLOP: The reason we chose that -- I think Charlie just said this -- is that this

has all kinds of problems for walking, obstacles, so this is a fairly smooth spot there.

MR. SCALI: It's very similar to the Tavern outside. There's no space against the building so you definitely have to have it against the curb.

MR. CHRISTOPHER: So if we applied for this just the way it is and then decide later to not have as many seats, could we --

MR. HESLOP: We would reapply?

MR. SCALI: I would prefer that you decide on your own right now at some point before we make any decisions, because once we decide it, it has to go to the City Manager's office for signature, and then has to go to the ABCC after that. If you want to take some time and do that and come back to us that would probably be the better way to handle it.

MS. LINT: What about the Decisions?

MR. SCALI: We can put it on for the May 7 Decisionmaking meeting. What's our hearing on, the 28th? We can do it the evening of the 28th

which is in two weeks.

MR. TURNER: The evening of the 28th?

MR. SCALI: I'm sorry, the 26th.

MR. TURNER: Mr. Chair.

MR. SCALI: Deputy Chief.

MR. TURNER: To the applicants: Do you plan on using any kind of umbrellas for your tables? I notice the tables are going to be right against where the public is walking. I happen to be in Harvard Square and I noticed a patio and the umbrellas were overhanging the edge of the patio. Is there anything in the patio policy to cover that one? In other words, the public had to duck down, walk around or they'd bang their head into the umbrellas.

MR. SCALI: It has to stay within the confines of the patio.

MR. HESLOP: We've measured. We've done that at Cambridge Common, we measured to make sure they're not hanging over.

So that we think is how that would look.

MR. SCALI: Why don't you go back and get your exact measurements and your exact plan. If you're going to have less, you're going to have to redo that whole plan. It has to be exact measurements stamped by your engineer and the whole thing. It's just a legal requirement from the Law Department; it has nothing to do with us.

MS. LINT: And the original signature on the agreement. We've already had some kicked back that even just looked like they might be a copy.

MR. SCALI: Why don't we continue it to April 28?

MR. CHRISTOPHER: Okay.

MR. SCALI: And resubmit everything to Mrs. Lint.

Motion to continue to April 28.

MR. HAAS: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MS. LINT: Application: Ronald Palermo d/b/a All and Everything has applied for an Antique license at 2510 Massachusetts Avenue.

MR. SCALI: Good evening.

MR. PANICO: Good evening. My name is Vincent Panico. I represent the petitioner, Ronald Palermo. Would you introduce yourself?

MR. PALERMO: I'm Ron Palermo. I reside at 2277 Massachusetts Avenue in Cambridge. That's where I reside.

MR. SCALI: Mr. Panico is telling you, "Don't talk." If Mr. Panico says don't talk, you listen.

MR. PALERMO: He's always correct.

MR. SCALI: He's not going to say anything bad, is he, Mr. Panico?

MR. PANICO: Who knows?

MR. SCALI: Is this just moving from one spot to another?

MR. PANICO: Mr. Palermo has been in business for 37 years, and he has an existing license which is paid up through May. He's had a

perfect record, except he moved once before, next door, adjacent buildings, and the Board called it to our attention that you have to, even though it's close proximity, it's a new location.

MR. SCALI: I had forgotten about that, but that's okay.

MR. PANICO: I don't think Elizabeth forgot about it.

MR. SCALI: We corrected that; right? You came in and applied for that?

MR. PALERMO: Yes, absolutely.

MR. SCALI: What happened with the old location?

MR. PALERMO: First of all, I didn't have a bathroom in there and that was a problem just not having your own facility, particularly if you have someone working for you that's a woman. You had to exit the building, go all the way down, and come in from the back. Sometimes it was occupied. It just wasn't working out there.

I contemplated going out of business a hundred percent but then I just feel it's part of

me, and I just want to maintain that edge and be in the business. That's why this situation presented itself and I knew what the situation -- I contacted Vin and said let's go through the process because I know we can't --

MR. SCALI: You don't want to just move without coming to us.

MR. PANICO: He did but I told him you can't do it.

MR. SCALI: So selling the same items as you were before, nothing different?

MR. PALERMO: Same items, absolutely.

MR. SCALI: A larger space?

MR. PALERMO: It's a larger space and of course, I have the facility there. With the economy the way it is, maybe there's an opportunity and that's where I'm at, so I want to continue the business.

MR. SCALI: Abutter notifications, Mr. Panico?

MS. LINT: I have them.

MR. PANICO: I passed them all in to

Elizabeth.

MR. SCALI: Anybody from the public want to be heard? Questions?

MR. HAAS: No questions.

MR. PANICO: Would the Board consider granting it this evening?

MR. SCALI: I was just about to make a motion, Mr. Panico. Commissioner seems -- Deputy Chief, things okay?

MR. TURNER: Just one question. Number 2510, I went up to North Cambridge the last two days and we've got another one coming in at 1100 Massachusetts Avenue and that threw me off, and the other one right outside of Harvard Square, and I thought that was this one. But anyway, where is 2510, which corner?

MR. PALERMO: 2510 is actually situated across the street from Midas Muffler.

MR. PANICO: What street is it on the corner of?

MR. PALERMO: Cottage Park Avenue.

MR. TURNER: So it's that little --

MR. PALERMO: Right. Apparently the space was the Dollhouse, which was there for umpteen years. I knew that.

MR. TURNER: I couldn't figure out which one was going out. No further questions, Mr. Chair. No issues.

MR. SCALI: Motion to approve.

MR. HAAS: Motion.

MR. TURNER: Second.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. PALERMO: Thank you very much.

MS. LINT: Application: Just-A-Start Corporation, Sharon Cowan, Project Manager, has applied for a Garage license at 823 Main Street for 9 spaces and 90 gallons of gasoline in the tanks of vehicles only.

MS. COWAN: Good evening.

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

MS. COWAN: Sharon Cowan, Just-A-Start Corporation.

MR. SCALI: So this is for a new project.

MS. COWAN: Yes. We're currently under construction and we should be finished probably by the end of July, beginning of August.

MR. SCALI: Is it a residence?

MS. COWAN: It's 10 units of affordable housing, condominiums.

MR. SCALI: There's nine spaces in the garage?

MS. COWAN: Nine spaces, yeah.

MR. SCALI: Are the spaces used for

the people who live in the housing?

MS. COWAN: Yes. When we finish them we'll sell them to people who meet the requirements of the affordable housing regulations.

MR. SCALI: So they'll go with the unit?

MS. COWAN: Yes. One of them is handicap accessible.

We've notified the abutters and I have the cards here for the record. I did take a couple of photographs to show the rear of the property to show you how it looks.

MR. TURNER: Is that the old Nightstage?

MS. COWAN: It used to be the old Nightstage, and then for a long time it was a hole in the ground until we got zoning and the building permit. So we started construction last June or July so it should be finished.

MR. SCALI: The parking lot that's right next to it, that's not part of your property?

MS. COWAN: No. If you're on Main

Street looking at the site and the building, to your left is Cambridge Buns and they own a lot. That's a little structure that belongs to Cambridge Buns and then there's a parking lot in the back of Cambridge Buns as well. So the parking for the units is on the site itself.

MR. SCALI: Is it underneath?

MS. COWAN: No. It's at grade, but the second, third, and fourth floor of the -- it's a four-story building, so the second, third, and fourth stories is above the grade parking with two units at grade. I did take some pictures here if you are interested.

MR. SCALI: That would be great.

Comments, Deputy Chief?

MR. TURNER: The only question I have to the applicant is who is the property owner? Who owns the land?

MS. COWAN: We do at the moment as developer. So each unit will eventually be sold; they'll have a unit deed and have the condo association.

MR. TURNER: So it will become a condo association. Once they're all sold, then you just back out?

MS. COWAN: We kind of handhold and baby sit until the condo association is established. And usually in the first year of operation, Just-A-Start's practice is to have a management company to guide them because these are first-time home buyers. Then usually after a year or two, it's up to them if they want to continue with the management company or self-manage, but there will be a management company.

MR. TURNER: Management companies don't own the land, so I'm just trying to think of where this license is going to transfer down the road.

MS. COWAN: I know we applied for one recently with Gateview Apartments, and I'm not sure if helping out was the same thing, condo owners.

MR. SCALI: So it will be the condo association that will apply once Just-A-Start is gone.

MS. COWAN: Once we fade out, then the condo association president or treasurer will apply on behalf.

MR. SCALI: Just remind them to do that.

MS. COWAN: We handhold in that first year because it's a big change for some of these people. These are some pictures I took just recently. The construction company is using the whole area because parking is tight around there. So that's their trucks.

MR. TURNER: Mr. Chair, also just to note, the Fire Department has reviewed the application, the drawings. The permit will issue upon satisfactory final inspection but we have no questions.

MS. COWAN: Lieutenant Towsky is going to come and visit the site before we close in the walls, after the rough electrical and fire protection work is done.

MR. SCALI: Anybody from the public want to be heard? No hand. Questions?

MR. HAAS: No questions.

MR. SCALI: Motion to approve.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MS. COWAN: So does this mean I don't need to come back for the May 7?

MR. SCALI: See, when you get to the end of the evening, when you wait this long, you seem to get a more favorable response, not for everybody, but you never know.

MS. LINT: Application: Super Duck Tours, LLC and Boston Top Deck Trolley Tours, Jack Harte, Operations Manager, has applied for a Jitney license to operate a sightseeing route in Cambridge. The proposed service will operate two to three trolley buses per hour, seven days per week, 9:30 a.m. to 6:00 p.m. on a route between Cambridgeside Place and Harvard Square on an approximately one-hour loop. Route is on file.

MR. SCALI: Good evening. Just tell us who you are for the record, please.

MR. HARTE: I'm Jack Harte, H-A-R-T-E. I'm the Operations Manager.

MR. KRAEZ: I'm Dennis Kraez and I'm the General Manager.

MR. FOSS: I'm David Foss, F-O-S-S, also Manager.

MR. SCALI: So this is an existing jitney; correct? Are you buying out?

MR. HARTE: Yes. Russell Cushman, who runs the Charles River Boat Company has owned the route or a version of the route. It's being

altered because Winthrop Street is going to be affected. It's becoming a little bit of a pedestrian walkway. Essentially, Mr. Cushman had been operating it and he's decided that perhaps it would be well if he stepped away from that. He had worked with us last year running that route, taking our passengers along that route as we would drop them off at the Cambridgeside Galleria, and then they would continue on with his double-decker buses down into Harvard Square and then up and around the Cambridge Common, and so forth.

MR. SCALI: You were originally Super Duck Tours and he was Double-decker?

MR. HARTE: He was Cambridge Double-decker.

MR. SCALI: So you're buying the double-decker portion of it.

MR. HARTE: The route at any rate.

MR. SCALI: You're not running double-decker buses through.

MR. HARTE: We would not be running double-decker buses.

MR. SCALI: The buses are going to be gone then?

MR. FOSS: Correct.

MR. SCALI: What vehicles are you going to be using?

MR. KRAEZ: We'll be using regular trolleys.

MR. SCALI: Regular trolleys that you're using now on the same tour as the other one?

MR. HARTE: Correct.

MR. SCALI: Which are the white --

MR. KRAEZ: They are the white, that's correct.

MR. SCALI: Is this going to be in addition to what you already have or are you just going to run a separate route?

MR. KRAEZ: It would be a separate route.

MR. SCALI: Do you have the route on file?

MS. LINT: I do. I have it. I need the green cards. Notice is on file.

MR. SCALI: There wouldn't be any abutters.

MS. LINT: I know that.

MR. SCALI: So Traffic and Parking has looked at your route. Seven days a week, 7:00 a.m. to 6:00 p.m., to Cambridgeside Place and Harvard Square every hour. How many trolleys an hour?

MR. HARTE: Two to three.

MR. SCALI: Starting at Cambridgeside Place to Land Boulevard. DCR approval on Land Boulevard, is that still pending?

MR. HARTE: We have that.

MR. SCALI: Additional drivers, are you going to be hiring additional drivers to do this, or using the ones you already have?

MR. KRAEZ: That was one of the problems that Russell really had to maintain his route. But since we run a larger group of drivers, it's easier for us to maintain the route.

MR. SCALI: So you're going to use drivers you already have?

MR. KRAEZ: We will also be adding

drivers.

MR. SCALI: Deputy Chief.

MR. TURNER: Mr. Chair, a few questions. Ticket sales, how are you going to sell the tickets to the public? The other concern I would have is how do you resolve complaints or refunds should a customer not be satisfied or be able to use his ticket? And are we ID'ing these operators now?

MR. SCALI: We've passed a number of regulations a couple of years back, which every driver has to have an ID.

MR. HARTE: All our drivers have a Jitney badge issued by you. In as much as ticket sales, our passengers can buy tickets on trolleys. We do have in Cambridge, currently we have a ticket location at Kendall Square in front of Kendall Square station on MBTA property.

We have been working with the Cambridgeside Galleria for ticket sales and have been working with the Harvard Square Business Association, and we have some support from some

merchants and some of the museums in the area to work with us on those sales. We also have a number of ticket agents working in Boston, and so passengers can either use that as an extension of our Boston tour, switch buses when they get to the Cambridge side Galleria, or can buy it a la carte, and just take the Harvard tour.

And as much as complaints, typically those calls would come ultimately to me and we typically resolve them. If someone is not satisfied, simply enough we return them their money.

MR. TURNER: But a dissatisfied person wouldn't have to go out of their way in town to a meeting, or what have you? Is it something that can be resolved on the spot?

MR. HARTE: It can typically be resolved by going to one of our ticket locations.

MR. KRAEZ: It would also depend on whether they paid cash versus credit card. Credit card, you could -- you know, once he tells you what his credit card is, you could credit that out, whereas if it's cash, he's got to go to a

particular place to get the cash, obviously.

MR. TURNER: Any provisions on your vehicles for emergency services?

MR. HARTE: All of our vehicles meet all the various standards, state and federal regulations. We carry various safety equipment, fire extinguishers, first aid kits. We're required to maintain a means of escape through doorways.

MR. KRAEZ: Handicap.

MR. HARTE: We've got at least one handicap trolley will be running on the route.

MR. TURNER: Are your drivers required to know CPR or anything of that nature?

MR. HARTE: It's not typically required of trolley drivers. We also runs Super Ducks and through the Coast Guard, members of the Super Duck side of the business are required to know first aid. So our drivers will be offered that course when it comes up.

MR. TURNER: The last question would be communication. Do your vehicles have any type of two-way radio communication?

MR. HARTE: Nex-Tel. We're in constant communication through Nex-Tel.

MR. KRAEZ: And they're GPS.

MR. HARTE: So I can track them on a computer screen.

MR. TURNER: I'm just thinking, if a driver had to call 911, for example.

MR. KRAEZ: He could do that on his phone.

MR. TURNER: Thank you. No further questions.

MR. SCALI: You have no intention of using the Duck Boats at all?

MR. HARTE: No.

MR. SCALI: This is just strictly trolleys and it's going to stay that way?

MR. HARTE: Right.

MR. SCALI: Where do you stop to pick up passengers?

MR. HARTE: Currently we stop at the Cambridgeside Galleria on Cambridgeside Drive, across from the front entrance. We stop currently

on Massachusetts Avenue across from Linden Street, and on Mount Auburn Street, across from Linden Street in front of the Lowell House there.

MR. KRAEZ: And Kendall Square.

MR. SCALI: On Main Street?

MR. HARTE: Yes.

MR. SCALI: Where the other trolleys stop?

MR. HARTE: Yes.

MR. SCALI: Of course, you use your discretion to your drivers to make sure they don't interact with other trolleys that are stopping in that area as well. We had problems there before, you know.

MR. KRAEZ: We have not had any instance where -- peace, not war.

MR. SCALI: Your customers stay with your trolley, their customers stay with their trolley, and there's no interaction between the two?

MR. HARTE: Correct.

MR. SCALI: Stealing customers from

one or the other?

MR. FOSS: We don't do that.

MR. SCALI: That was our problem before, not with you.

MR. KRAEZ: We've been operating now, we operated all of last year, and we've operated a good part of this year, and I don't believe there have been any incidents at all.

MR. SCALI: Not that I know of.

MR. HARTE: I've been involved in the trolley industry for about 10 years in Boston, and I know of most of the incidents of which you reference, and that's something that we make a point of avoiding and staying away.

MR. SCALI: It's a regulation. Your people cannot interact with anybody else's people on other trolley services.

MR. KRAEZ: That depends who you hire, also.

MR. SCALI: That's up to you to hire the right person so that they don't cause trouble.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. SCALI: Anyone want to comment?

Ms. Jillson is patiently awaiting.

MS. JILLSON: For the record, Denise Jillson, Executive Director for the Harvard Square Business Association. We are clearly in favor of this applicant.

They have been members of the Association for several months now, and Bob has attended our board meetings and annual meeting, and looking forward to actually participating in many of our events, including the concierge event, and has even offered to supply the trolleys to take the board to visit the new police station over in East Cambridge for a board meeting. So we're really very happy.

We had specific requirements. We love the tours coming in but if they don't stop in Harvard Square, then it's really not helpful. So what we like is that they do stop and people can disembark and shop around, and then pick up another trolley that comes by in two or three hours. It

gives people an opportunity to take a walking tour, or have dinner or lunch, do some shopping and that sort of thing. So we're very very happy with these folks and hope that you will consider their application. Thank you.

MR. SCALI: Thank you, Ms. Jillson.
Questions, Commissioners?

MR. HAAS: No questions.

MR. SCALI: As you know, this is only a recommendation to the City Manager for the City Council. If we do vote this evening, there is no City Council next Monday night, so the soonest you would be heard would be the following Monday, which is the 27th of April. I just want to make sure, the date of application on this is?

MS. LINT: March 17 -- No, March 18.

MR. SCALI: So it's heard within 30 days and then decided within 60 days. So that would be before May. So we'll have plenty of time to do that.

Motion then to recommend approval to the City Manager with the Traffic and Parking

conditions as laid out, trolleys as mentioned in your statement here, no other vehicles without approval coming before us, stops as mentioned at Mount Auburn Street, Main Street at Kendall, and Massachusetts Avenue at Linden, and the Galleria on Cambridge Park Drive.

MR. HARTE: Cambridgeside Way.

MR. SCALI: That little small street.

MR. KRAEZ: Right before the cab stand.

MR. SCALI: You're not going to stop on my cab stand, are you?

MR. KRAEZ: We're not stopping at a cab stand.

MS. LINT: You might recall Mr. Chair, we had a meeting, I had a meeting last year with Cambridgeside and with the various trolley companies, and we worked that out, and there have been no complaints.

MR. SCALI: All right, Cambridgeside Drive. It's already laid out, seven days a week, 9:30 to 6:00, two to three trolleys per hour, and the IDs for your drivers as you already know, and

any changes need to come before us.

That's a motion. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: So you probably know the drill by now. It goes to the City Manager and then it goes before the City Council on April 27. If you want to attend, you need to sign up to speak beforehand on the list, otherwise they won't let you talk.

Also, if you could put in the letter, Mrs. Lint that this is a replacement of the double-decker route with some minor changes. So we're not adding another jitney to the system, we're just replacing the double-decker route. Thank you very much.

MS. LINT: Application: Falafel Corner, LLC d/b/a Falafel Corner, Yousef Yassin, Manager, has applied for a Common Victualer license for 14 seats at 8 1/2 Eliot Street. Said license if granted would allow food and nonalcoholic beverages to be sold, served, and consumed on said premises and to have hours of operation from 8:00 a.m. to 3:00 a.m. on Monday through Saturday, and 8:00 a.m. to 12:00 a.m. on Sundays. Applicant has also applied for an Entertainment license to include an audio tape machine/CD playing background music below ordinary conversation level.

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

MR. YASSIN: Yousef Yassin.

MR. SCALI: You want to become the new owner?

MR. YASSIN: Yes, I'm buying the place.

MR. SCALI: Who's the previous owner?

MR. YASSIN: Greek Corner.

MR. SCALI: It was your Falafel Corner. Tell us your experience in the restaurant business.

MR. YASSIN: In the restaurant business I worked for about two years for Bishra in Chicago, and then I moved here and worked for Falafel Palace for another two years.

MR. SCALI: So you've been working there for two years, at Falafel Palace.

MR. YASSIN: At Falafel Palace, that's right.

MR. SCALI: Not at this location?

MR. YASSIN: No, not that one. And at Baraca also.

MR. SCALI: At where?

MR. YASSIN: Baraca Restaurant, that is a cafe actually. That's also on Kendall Street.

MR. TURNER: The Palace used to be in Central Square.

MR. HAAS: It's still there.

MR. SCALI: How come you need to be open until 3:00 a.m.?

MR. YASSIN: Usually I hung out around Harvard Square, and at night there is no place to even -- I see people coming all the way to Central

or going to Davis Square.

MR. SCALI: This is around the corner from the IHOP location?

MR. YASSIN: Yeah, just in front of the Hotel Harvard.

MR. SCALI: And they're open until 4:00 a.m.; right?

MR. YASSIN: Right. I am definitely a completely different type of food.

MR. SCALI: We haven't had any trouble with that have we, Mrs. Lint?

MS. LINT: I haven't heard anything.

MR. SCALI: I'm sure I would have heard from Ms. Jillson by now if there was trouble. There were noise and no police complaints?

MS. LINT: No.

MR. SCALI: So 8:00 to 3:00 Monday through Saturday, 8:00 to 12:00 on Sundays, background music only below ordinary conversation level, food and nonalcoholic. No outside patio at all?

MR. YASSIN: No.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. TURNER: No questions.

MR. SCALI: Anybody from the public want to be heard? Ms. Jillson.

MS. JILLSON: I just signed him up. He's our latest member.

We've been of course very familiar with the Greek Corner, and the Greek Corner up in North Cambridge, which are neighbors of mine. I think that this gentleman will do a fine job, and we would certainly advocate on his behalf for 3:00. We haven't had any problems at all with the IHOP.

In speaking with IHOP it's kind of interesting because they do their best business after midnight. People want their pancakes and maybe they'll want their Greek salad and falafel and whatever it is that you'll be serving them. Thank you.

MR. SCALI: Questions?

MR. HAAS: No questions.

MR. SCALI: Anybody else want to be

heard?

MR. SCALI: Motion.

MR. HAAS: Motion.

MR. SCALI: Motion to approve.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: All right. We're trusting you with that 3:00. Let's see how it goes.

MS. LINT: Ratifications: Medallion
113, 173 and 105.

MR. SCALI: All refinances?

MS. LINT: Yes.

MR. SCALI: All items in place?

MS. LINT: Everything is fine.

MR. SCALI: Motion to accept. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Anything else before us,
Mrs. Lint?

MS. LINT: No.

MR. TURNER: I'd like to just bring
something up real quickly and I'll be brief.

During some recent inspections in
Harvard Square, I happened to be walking by that
new Shabu Square restaurant. And just looking
through the window I -- you may want to listen to
this -- just looking through the window, I was kind
of looking at the tables in the restaurant. I

happened to notice there were cords that were tied off underneath the table. They were tied into extension cords that ran under the chairs and into outlets that were on the floor.

So that kind of caught my curiosity and then I looked at the table and I noticed what appeared to be a hot plate or something that was built into the tables.

So I went into the establishment and I was kind of surprised at what I had seen. What is taking place is this new Shabu style cooking. It's basically that the restaurants are using these induction cookers, which look similar to hot plates but it's done through magnetic type of cooking where it's plugged into a 110-volt outlet, and basically you put a metal pan on the cooker.

The cooker itself does not get hot, only where it makes contact with the pan. The concept is that the customers sit at a table. For example, a table of two or a table of four. They have this cooker and they steam there. There's boiling water and it boils water and they steam all

their vegetables.

The problem I had with the unit is that the unit was -- or the restaurant owner took an ordinary table, cut a hole in the table to recess this cooking unit to be flush, so the surface of the cooker would be flush with the surface of the table.

Again, in concept I can understand where they're going with this, but having done some research and visiting the second Shabu Restaurant and 57 JFK Galleria, he's done a very similar thing. Only the second fellow was a little more intelligent. He didn't have the dangling cords plugged in beneath the chairs into outlets; he actually had an electrician come in and hardwire a plug to the table.

But he had done the same thing. He had taken an ordinary table, cut a hole in it, recessed the cooker. We had the electrical inspector come out and take a look at it. Clearly Shabu Square, the electrical condition was not a properly wired arrangement; however, he stopped

short of saying whether it was a good or bad idea to be using these cookers as these establishments are using them.

We had the sanitary inspector come out to question or at least look at the operation from a sanitary point of view from the customers being able to cook their food right at a table right in front of them. There's really no codes to cover that they can or cannot do it.

Unfortunately what's happened is had the owners of the restaurants taken these cookers out of the box, laid it on the table, plugged it in, put a pot on it and cooked, I'd have no argument. What's happened is by virtue of the owners taking a cooker that's UL approved or has an approved for use -- been approved by a testing company -- by virtue of them taking that unit and now taking a third-party table, if you will, recessing the cooking unit within the table, it now violates the manufacturer's recommendations.

MR. SCALI: So the table could catch on fire is what you're saying?

MR. TURNER: I can't predict what can or cannot happen. There's two ways to look at this. One is from a safety point of view, and the other of course is basically when you get into a commercial restaurant any cooking equipment has to be approved. It has to have some type of a listing. It has to have some type of approval from the third-party testing company. It has to be labeled for such use.

By the owners of the restaurants using these cookers in this manner, it violates and compromises the manufacturer's recommendations. We've actually spoken to the manufacturer of one of the units at Shabu Square, and there was no way he would stand behind his product to be used in this manner.

So the bottom line is this is the livelihood of these restaurants. It's a new concept. There was a little write up just last week in the Chronicle. There's a little video clip that you can watch how they actually do the cooking. We don't want to put these restaurants

out of business.

We did cite them. There is a violation in the fire code that talks about an appliance being used in a manner that it wasn't designed to be used. So that's kind of the only thing we're holding our hat to.

I just want to bring it to everyone's attention that it's going to become an issue in that -- again, by virtue of what we've seen and now that we've cited them, now there's going to have to be the next of how to resolve it or make this workable.

MR. SCALI: Are there tables that are made for that; already built in?

MR. TURNER: No.

MR. SCALI: This is the Korean restaurant across the street.

MS. LINT: Corianna, it's the same thing. It's like the hot pots.

MR. TURNER: Corianna has been approved for use. It's a very similar situation where you have a table with in this case, an actual

open flame in the center of the table. The difference with Corianna is the tables that they are using were designed to be used in that way. They're the whole table assembly with the cooking unit in it with the ventilation system. It has a suppression system built into it. The safety features are that the control is at the end of the table and the patrons do not do the cooking. It's actually a chef that comes over and does the cooking.

MR. SCALI: So are you saying they have to get something like that in order to be in compliance?

MR. TURNER: Not necessarily. I guess what I would like to see to make these workable -- and this is right from the manufacturer's or the instruction manual, the owner's manual. It says, "Do not touch ceramic glass plate surfaces while or after cooking. The ceramic glass surfaces will become hot from heat operated by a cooking pan." So there is clearly a burn hazard involved.

"Close supervision is necessary when

induction range is being used. Operator must be properly trained on all operation and safety procedures especially when using near children." See, that was the big concern. If you had boiling water on your table and if it gets knocked over and there's children there. So there is certainly safety -- and there's a whole list of other safety issues.

But most specifically, it's -- interestingly it says, "Allow sufficient space around the cooking area and always place unit on a level flat surface. Do not block the air intake panel as this may cause the unit to overheat. Keep unit a minimum of four inches from wall or other equipment or obstructions for proper ventilation."

"Installation: Maintain a distance of five inches between the appliance and walls or other objects." Then lastly, what's interesting with these magnetic type, or this induction type of cooking, it says, "People with pacemakers should stand a minimum of 30 inches from the unit while in use." So clearly there's some issues that need to

be addressed.

On the good side, these two restaurants also have countertop service, I guess for non-couples or single customers where they can sit behind the countertop. In this situation, it's set up a little differently.

The countertop has a hole, it's a granite countertop with a hole cut out. The cooking unit is actually only accessible from the server's side, and it's recessed on a shelf below the countertop, and it's plugged in and that's where it's operated. And then there's a different style pot. The pot actually recessed in the table. So the customer cannot touch the hot plate, cannot access anything to do with the hot plate. The hot plate is pretty much just laying on a shelf with the proper clearances and plugged in and being used as designed.

So what we're going to try to do for Step 2 is to convince these restaurant owners that if they can set up the tables similar to the way the countertops are set up, I think we would have

no issues at that point. As it is right now, I think we have some issues that need to be --

MR. SCALI: So you're giving them some time to do that?

MR. TURNER: We are. They've just opened up. It's a new concept and I think they got through the inspection process with nobody giving a thought to what they were actually using these items for.

MR. SCALI: I know I've been to a number of different restaurants and the Melting Pot has those things in the table, made in the table already. I think you have to buy the table that goes with it.

MS. LINT: Should they have warning signs up about pacemakers?

MR. TURNER: Again, it depends -- I guess the issue would be who is going to say that it's okay for them to do what they're doing? Certainly by virtue of them having their CV --

MR. SCALI: I guess the only way that we would be involved is if for some reason it

doesn't work out the way that you think it should work out, it would come before us as a complaint from the Fire Department.

MR. TURNER: Correct.

MR. SCALI: And then we would have a hearing on the issue of them complying. If you need any assistance, we can do that.

Motion to adjourn.

MR. HAAS: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Aye.

(Whereupon, the proceeding concluded at 8:49 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 21st day of April, 2009.

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