

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
Cambridge, Massachusetts 02139
Thursday, April 2, 2009
10:00 a.m.

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P R O C E E D I N G S

MS. LINT: License Decisionmaking Hearing, Thursday, April 2, 2009. 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.

Going back to March 10, Disciplinary matter of Route 2 Hotel Company, Inc. d/b/a Cambridge Gateway Inn, Raymond Poindexter, Manager, holder of Innholder's license at 211 Concord Turnpike for operating as long-term Section 8 Housing.

MR. SCALI: Before we start, who else is here for what matter? I know that Desfina's here, the gentleman in the back is here for --

UNIDENTIFIED SPEAKER: Just an observer.

MR. SCALI: Anybody else here for any other matter? No. Okay.

Gateway, if you could come forward. We originally had scheduled this matter for March 24; correct?

MS. LINT: Yes.

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

MR. SHADRAWY: Bernard F. Shadrawy, Jr., Shadrawy and Rabinovitz, 15 Broad Street, Boston, Mass.

MR. MARTIGNETTI: I'm Carmen Anthony Matignetti, 211 Concord Turnpike, Cambridge, Mass.

MR. SCALI: When last we were here we continued the matter to March 24. Mr. Shadrawy, you were out of town and so we granted your request to continue to today, which is a little unusual in that we usually meet in the evening and our Decisionmaking meetings are in the morning.

MR. SHADRAWY: Thank you, Mr. Chair.

MR. SCALI: When we met last, we had continued the matter for a couple of reasons: One, we wanted to clarify from the City Solicitor on the definition of lodging house versus innholder. So

we had asked for an opinion from the City Solicitor, which we have received, and then we were going to clarify from ISD the change in use e-mail that he had sent to us as well.

Comments, Commissioners? I know the decision is here from the City Solicitor's office. Perhaps we should go to that first and talk about that a little bit. I know that the Commissioners have read it, Mrs. Lint. Have you received a copy of it?

MR. SHADRAWY: No, I have not.

MR. SCALI: I apologize for that, but actually, you'll probably be happy with the decision.

MR. SHADRAWY: Good.

MR. SCALI: It is a three-page decision with the City Solicitor doing an analysis of the use versus the change in use of the building from an Innholder to a lodging house.

I guess the bottom line is they feel there has been no change in use in doing a comparison with other premises like the Marriott

Residence Inn, looking at the Building Code under the definition of the Residential Group R1.

Basically the City Solicitor feels that you're in compliance with its Innholder's with Food license, and pursuant to the categories established by the State Building Code and the use of the Gateway Inn has not been used for purposes of the State Building Code.

So that is the clarification that we wanted. We wanted to make sure that you were legally safe and making sure there are no legal issues there. I know that the Commissioners want to have a discussion though about the use anyway, and how that would affect the public.

Can you just clarify for me again that we are positively sure that there are no more than the maximum amount of people allowed in those rooms; that there are -- I think you said four that are allowed, maximum in any one room at any one time; and that that is being monitored?

MR. MARTIGNETTI: If I could speak?

MR. SHADRAWY: Absolutely. In fact,

why don't I, while he's doing that just hand this out to the Commissioners. Go on, Carmen.

MR. MARTIGNETTI: I get a weekly printout on all of the rooms, all the residents. We make sure that no room has more than four occupants. In the case of families with more than four occupants, we rent them two rooms. My desk personnel is well aware of this.

All of the comings and goings of guests are arranged during the daytime hours where my daytime manager, Elaine Tolson is right on top of this. I am there at least five or six days a week myself. I also go over all of the comings and goings to make sure.

We average somewhere in the area of 2.5 to 2.7 people per room. So the average is far below the four and never exceeds the four. We're very very careful with that.

MR. SHADRAWY: Some of the rooms are adjoining; right?

MR. MARTIGNETTI: We have three rooms that have adjoining.

MR. SCALI: Tell me again, how do you make sure that that's happening? Do you go room to room? I'm just trying to figure out how you make sure.

MR. MARTIGNETTI: When they register, Community Services Network tells us how many people are coming into the room. We make sure that we -- that's part of the registration procedure and we make sure we watch for that.

MR. SHADRAWY: Just to explain what the handout is, this is a handout of the written procedures that have already been implemented. This isn't something that was implemented because of this hearing, this is actually the procedures that were implemented by Mr. Martignetti in regards to all the staff.

MR. MARTIGNETTI: It's training in public safety procedures.

MR. SHADRAWY: As you can see what it is, it's the steps taken to address the public safety concerns that exist on the premises now. I could read it or just place it with you. Would

you like me to?

MR. SCALI: No. no. We have it right here. We're reading it.

MR. SHADRAWY: Then there is the fire alarm procedure relative to what happens when the fire alarm goes off, and the front desk procedure relative to when fire alarms or alarms go off, and then the evacuation in the event that there is an evacuation plan, which all tie in together.

MR. MARTIGNETTI: Let me add, we've had this for years. This is not something we just did. This has been in effect for years.

MR. SHADRAWY: And the premises is staffed 24 hours a day.

MR. MARTIGNETTI: Live in management.

MR. SCALI: I think that was actually part of the decision from the City Solicitor; that in most lodging house situations, there is not someone there, although we do require resident managers in our lodging houses in Cambridge, there are not resident managers in a lot of different places. So in a hotel situation, there is someone

there on duty at all times.

MR. MARTIGNETTI: When I took this franchise over from Swiss Chalet, they had resident managers. Right away, it appeared to me that this was a great idea. It certainly makes the running the operation a lot smoother, and I continued it from that day on.

MR. SCALI: Deputy Chief, any questions?

MR. TURNER: Mr. Chair, I reviewed the opinion rendered by the law department, and I'm comfortable with that decision. The big decision on the Fire Department was safety issues for the occupants.

One of the things I was going to be requesting today is exactly what I just received from Counsel, and I've just given it a quick review and I'm satisfied with the procedures and measures the Gateway is taking in regards to the public safety.

MR. SCALI: Commissioner?

MR. HAAS: I would really have to

defer to the Fire Department on life safety issues. I appreciate the things you have in place. I'm just wondering with the level of occupancy, the duration of the occupancy, if there are some things you could be doing also just to make sure that the people are protected.

We're all concerned about having a fire emergency in that building, and because it has quite a few people living there on a regular basis, making sure they get out safely, and then any kind of fire occurrence would be suppressed very quickly. I'm not sure if you were contemplating taking any additional measures to enhance that, or you're pretty satisfied with the status quo at this point.

MR. MARTIGNETTI: I would be willing to listen to any suggestions, but I've gone over this and I really thought, you know, what can I really do to enhance this at all. I think the best thing I can offer at this point without any additional suggestions from the Board is that we will continue to be as diligent as possible and

keep on top of these things. If it's possible to do even more self-examination, we have in the past, we'll step it up, but we work quite hard at it.

MR. HAAS: I hate to use the "S" word, but you're not contemplating anything about sprinklers or anything like that in the facility at this point?

MR. MARTIGNETTI: Not at this time.

MR. SCALI: I think it's been suggested by people who have spoken to us at the hearing that I guess it's been pretty nice that you're full all the time, which you may not have been in previous years. I think my staff added up what kind of income you're getting from that with a full amount of people there, and it seems quite lucrative from what we're guessing from the numbers you gave us.

MR. MARTIGNETTI: It is; however, we have done better numbers in the past even without this. Don't get me wrong, it's --

MR. SCALI: It's not small change from what we're seeing. So I guess what the

Commissioner is suggesting -- and I don't know what your plans are for the future use of this building, but perhaps due to how lucrative it is, maybe you might want to think about doing the sprinkler system anyway as a protection mechanism for the people that live there.

If you weren't making any money and it was hard times for you, I would say, well, it's not required, it's not something we can order you to do. But it sounds like this has been a pretty good run. So I don't know but I think that's what the Commissioner is suggesting in some way.

MR. HAAS: The other thing I've asked the Deputy Chief, and I don't know what kind of burden it would place on the Fire Department, but I suspect that the quarterly inspections or tests are in accordance with the regulations. Just again, given the occupancy level and just the concerns we have for life safety, does it make sense or do you have the ability to do more frequent inspections just to make sure everything is working properly. I mean God forbid that something happens and in

between that quarter the system fails. If I could put you on the spot?

MR. TURNER: No. In fact, this morning just before I came to this hearing, I was sitting contemplating. I had an e-mail generated and I'm kind of giving it second thoughts, and I would ask the opinion of the Board.

The hotel is required by law to be inspected four times a year, and the Fire Department certainly can inspect that on a more frequent basis based on my order; however, is that going to be accepted as perhaps discriminatory, or choosing based on the fact that what the Gateway is doing is not illegal? However, I guess I would ask Mr. Martignetti, would you mind the Fire Department going through on a more frequent, perhaps a once a month basis?

MR. MARTIGNETTI: I was going to suggest that that's fine. If you want to do it once a month that's not a problem. As a matter of fact, it serves two purposes: It sets your mind at ease and it sets my mind at ease. Because if you

see something, as you know, we'll do it immediately. Within five business days whatever you say will be done. It's better for both of us.

MR. TURNER: Again, this is not to harass anybody. It just to make sure that your employees are following through with their responsibilities.

MR. MARTIGNETTI: I understand fully and I welcome it.

MR. TURNER: And to identify any concerns and point out and have corrections made.

Secondly, again, on the sprinkler system, nobody is requiring you to do a sprinkler system other than as we know sprinkler systems are a proven method, and perhaps the only method that it can sit here and honestly say there's never been a large loss of life in a fully sprinkler protected building.

Certainly I would ask perhaps if you would consider getting a cost estimate; having a sprinkler contractor come out and perhaps just getting some numbers together just to kind of give

an idea of maybe it's something you might want to consider.

Also, something you might want to look at is your insurance underwriter, how a sprinkle system would impact those numbers, too. So I would ask that perhaps you might want to consider exploring it and just maybe get some numbers together and see what the feasibility of installing a sprinkler system would be.

MR. MARTIGNETTI: I will discuss that with my partners.

MR. TURNER: Thank you.

MR. SHADRAWY: In regards to the monthly inspection, I'm assuming that it isn't anticipated that this use for transitional housing will continue forever. In fact, from the articles we've been seeing and the correspondence we've been getting, the State is actually in difficult straits in regards to what to do with transitional housing. So we hope that that would be while it is transitional housing. Once it went back to what we'll deem a more normally use, hopefully that

wouldn't be necessary.

MR. HAAS: Again, my view and I think the Deputy Chief is right, I think what we're looking for is a collaboration between Mr. Martignetti and the Fire Department. It is not intended to put an undue burden on them.

I think Mr. Martignetti's got it right. It's in his best interest to know that it's being inspected more frequently. And the whole purpose is we're trying to offset any chances or reduce the chances of having a catastrophic event at the hotel.

I think that collaboration because it's a voluntary arrangement -- you know, if Mr. Martignetti says this is just too burdensome, or whatever, at that point, then we'd have to revisit it.

MR. MARTIGNETTI: Sure. I just have one suggestion, if I could make it. Could we try to arrange it at a certain day of the month, or at least know when you're coming, because a lot of times it is a bit disruptive if the fire department

comes in with a number of people going through the building and whatnot. My staff isn't going to be -- if they knew you were coming, it would be a lot easier because I would say to everyone, they're coming on this day. Let's try to have everyone here that's supposed to be here. I want my manager on the premises that day. I don't want him out shopping at Costco or the hardware store, or something like that.

MR. SCALI: Isn't the element of surprise the idea?

MR. MARTIGNETTI: Well, yeah. But see, I'd like him to be there because there will be questions he's going to have to answer, and it makes it a lot smoother.

MR. TURNER: That all said, certainly -- I just need a contact name and number, and I'll have the company officer make a phone call prior, say an hour prior to the inspection, just to let them know that we're on the way and that we want to hook up and walk through the building. That would be fine.

MR. MARTIGNETTI: Terrific. As a matter of fact, you could use me as the contact. I'll even give you my cell phone number if you like. I have that with me all the time, so even if I'm out, you can reach me.

MR. TURNER: I think I have all that information back at the office, so I'm fine.

MR. SCALI: Any other comments? Anybody from the public want to be heard on this matter at all? Since it is a continuation from our last hearing, we can still take public comments. I see no hands. Pleasure of the Commissioners?

MR. TURNER: I guess place on file.

MR. HAAS: Yes.

MR. SCALI: With the plan as mentioned.

MR. HAAS: I would just make a notation of the things we agreed upon during the course of the hearing so it's on record.

MR. SCALI: Motion to place the matter on file with safety plans as laid out by licensee, and with the suggestion or intention of more

frequent inspections by the fire department,
perhaps once a month.

MR. TURNER: Monthly inspections will
be instituted today.

MR. SCALI: And the idea of looking
into whether sprinklers may be a possibility.

MR. MARTIGNETTI: I will discuss that
with my partners.

MS. LINT: Can you report back to me
on that?

MR. MARTIGNETTI: Sure.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Aye.

MR. SHADRAWY: Thank you very much.

MR. SCALI: Thank you for your time
and your efforts.

MR. SCALI: The only one we have on for decision from March 10 is with regards to Oxford Spa, which is on Page 3, 102 Oxford Street for Common Victualer's license, 22 seats, with four outside. The issue had to do with the number allowed. We were going to consult with ISD on the number and the plan. They were going from 10 to 22 suits with four outside, for a total of 26 seats.

MR. TURNER: Mr. Chair, I have not heard anything from the applicant or seen any documents.

MS. LINT: Neither have I.

MR. SCALI: I think Mr. O'Neil was going to call them or something.

MS. LINT: They were supposed to get back to us, but I have no further information.

MR. SCALI: Motion then to continue to find out more. Moved.

MR. TURNER: Seconded.

MR. HAAS: I just think that it's up to the owner now to --

MR. SCALI: Clarify the number.

MR. HAAS: What we're waiting for is some response back from him, and I don't know how we can make any -- I don't know. I mean, the notion is to --

MR. SCALI: I'm continuing the matter to give him an opportunity to clarify. He's not getting anything until he gets back to us.

MR. HAAS: So you're going to send him a notice that we're not taking any action with respect to his application?

MS. LINT: Yes.

MR. HAAS: All right, thank you.

MR. SCALI: Motion to continue until clarification comes back to us on the number of seats inside.

MS. LINT: Do you want to give it a date?

MR. SCALI: We meet on April 14, and that's a full agenda.

MS. LINT: That's a packed agenda.

MR. SCALI: We'll go to April 28.

MS. LINT: Yes.

MR. SCALI: April 28 then, moved.

MR. HAAS: Motion.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Okay, that's March 10. On March 24, we have two matters.

MS. LINT: Mr. Chair, accept the minutes.

MR. SCALI: Motion to accept the minutes from our last hearing on March 24. Moved.

MR. HAAS: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: Aye. Thank you very much.

MS. LINT: Bottom of Page 1.

MR. SCALI: Desfina, do you want to come forward? Good morning.

MR. CRANE: Good morning Mr. Chair and members of the Board.

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

MR. CRANE: Kevin Crane, 104 Mount Auburn Street in Cambridge, and Steven Mallakis.

MR. SCALI: This is a real tough one, I've got to tell you, because I know that the Commissioner saw the tape, and the Deputy Chief and I both saw the tape after the hearing, the next day actually I saw the tape. No doubt in my mind it's you. I guess I'm just trying to figure out what you were trying to accomplish by doing that. We talked about this earlier.

Mr. Crane has spoken but I guess we haven't really heard from you. If your attorney is advising you not to speak, I can understand. I guess the biggest concern for me and I think the other commissioners as well, is that this is really

over with and that the neighbors are going to be feeling safe and sound, and there's no continued vendetta going on. I guess whatever action we take here, my feeling is, is that going to anger you further and then this is going to continue? Because if that's going to happen, then we have to take stricter action than we might.

I guess we just need to hear from you that --

MR. CRANE: Mr. Chairman, I have no objection to Mr. Mallakis speaking.

MR. MALLAKIS: I know I overreacted. I was like kind of upset. It's never going to happen again. I'm sorry for what I did.

MR. SCALI: Are you and your neighbors now okay? Is everything settled? Are you still angry?

MR. MALLAKIS: I think it's over with my neighbors, like for the different issues. That's why I overreacted, I was kind of upset, but now the thing is over. What can I do, I don't want trouble with them. It will never happen again.

I try to do my best like all those years. I know I did something stupid. Whatever I did was stupid.

MR. SCALI: You've been a licensee for years and years. I think I've been on the Board the longest of the three Commissioners, and I've known you for years and years and years, and it just doesn't seem like you.

MR. MALLAKIS: I know. Like I said, I did something stupid, overreaction. Like I was very upset. But I said it's never going to happen again, so I wish like we can work it out with my neighbors like there's no problem.

MR. SCALI: Questions?

MR. HAAS: I just want to be reassured that your neighbors can live in peace, and that they don't have to worry about a continuation of this, or something else occurring. It's really in your power to provide that guarantee.

MR. MALLAKIS: I promise it will never happen again. I promise that it will never happen again.

MR. SCALI: It's not just that, but

anything happening again. I guess that's the issue. It's the kind of thing that doesn't warrant just a warning because that sends the wrong message out there to a lot of licensees. So I think we have to take some action. I think the Commissioners have to do something. I have been thinking long and hard during the last week and a half as to what would be an appropriate action to make sure that the neighbors feel that everything is safe and sound, and making sure that you get the message. You have no past record that I know of; right, Mrs. Lint?

MS. LINT: No past discipline.

MR. SCALI: It's kind of a first offense but it's a pretty big one. Deputy Chief?

MR. TURNER: Mr. Chair, my opinion on this matter is, again, as you, giving it a lot of hard thought, having reviewed that tape, it was very disturbing. To impose some type of disciplinary, normally that would be either closure or some type of revocation in the case of an alcohol license, or what have you.

I don't want to impose punishment on P & E Restaurant, Inc. I feel that it wasn't anything to do with the corporation that was having this conflict, I feel it was Mr. Mallakis on a personal matter. Therefore, my recommendation that I would like to discuss would be removing him as manager of this license, and replacing him with somebody that would be more responsible as the license holder.

MS. LINT: He's not the manager.

MR. SCALI: You're also an owner; right?

MR. MALLAKIS: I'm the owner with my brother. My brother is the manager.

MR. TURNER: Steven is?

MS. LINT: Peter.

MR. HAAS: It's a family business.

MR. SCALI: It's he and his brother. He's not going anywhere unless he leaves.

MR. TURNER: Okay.

MR. SCALI: I understand your reasoning.

MR. TURNER: I had that backwards.

MS. LINT: His brother is the manager of record.

MR. MALLAKIS: My son is working there full-time, so my son will take over the corporation in the next couple of years.

MR. CRANE: We would certainly entertain a change of manager proposal, but it would be a family member. The Chief did strike upon a point that I guess we didn't get into too much the other night, but to a certain degree there was mention of it; that his conduct was not directly related to the operation of the premises. I realize that it reflects upon character and fitness, and that there was a venue that his personal conduct was addressed, and that's the Cambridge District Court, not to say that you don't have the authority to do it. I realize because of those circumstances, it makes the sanction difficult.

MR. SCALI: I'm not sure I'm of the same opinion as the Deputy Chief. I think it does

affect the license establishment because he's an owner. If he was just a manager and didn't own it, it would be a different story.

MR. CRANE: I realize that, and also I realize that the whole thing grew out of a relationship with the neighbors. It's not like he was involved in a divorce proceeding and there was something that went on there that's totally unrelated, although it's private conduct, totally unrelated to the operation of the premises.

MR. HAAS: If I had to render a decision the last time, I probably would have had to recuse myself because I was particularly concerned about the conduct and for the duration it went. In my view, it was really an attempt to harass, and intimidate, and put the neighbors in fear. I just think that when you live in your home, you can't live in those kinds of conditions.

I have thought long and hard about it. I do believe that some suspension is warranted, in this case, of the license. I don't think the courts have that kind of jurisdiction, but I think

it has to send a clear message that it was somewhat egregious, but I'm not prepared to be heavy-handed about it. I'm not prepared to drive you out of business. It doesn't serve a useful purpose. I don't want to go down that road.

I'd feel comfortable with some kind of arrangement that doesn't necessarily have to be continuous, but I think there has to be some number of days with the license suspended. It gives us an opportunity to do a review over that period of time so that if there is another event, it's going to have a bearing on what this Commission may do in the future.

What I'm saying to you is you have the power to make sure this doesn't happen again. And I just want to be sure that you can coexist peacefully with your neighbors. Again, that they have some semblance of order back in their life again. That's the most important thing to me. So I would entertain or propose something in the order of ten days, whether it's all served or not. And if it's over the course of a number of months, I'm

not really particularly interested in closing you down for weeks at a time, and then just have your business get destroyed because of it. I don't see any useful purpose in that.

MR. TURNER: Mr. Chair.

MR. SCALI: Deputy Chief.

MR. TURNER: While we consider Commissioner Haas' recommendation I would like to also throw out perhaps any restitution of any expenses that were incurred by the homeowners.

MR. SCALI: I think the court took care of that. Actually, I was trying to think of something else that would entail something. I'm not sure he could really make them whole again in terms of how they feel. I think their property restitution was already taken care of by the court.

Actually, I was going to suggest that there be some suspension as well -- I think the Police Commissioner is right -- but that there be some monetary donation to a charity perhaps of the neighbor's choosing. I know that they're involved in one particular charity in the city that is quite

close to them. So I was thinking a number of suspension days, and then in lieu of serving some of those days that a donation would be made to that particular charity, in hopes that that would try to give some peace and make some semblance of making them feel that you've made some effort to make peace with them.

I do agree that perhaps a ten day suspension suspended for a year, but only to serve five days at this point in time; and that -- I don't know if the Commissioner agrees with me on this part, but I'll make it a motion anyway -- that in lieu of serving the total five day suspension that a donation be made to a charity of the choice of the residents. I'm not talking just a few dollars, I'm talking a reasonably appropriate sizable donation that would be perhaps equivalent to what you might make in those five days. So that's on the table, Commissioners. Discussion of that motion?

MR. CRANE: My two cents, Mr. Chairman, is that -- and maybe we'll just agree to

disagree, but given what seems to be the policy of progressive sanctions, ten days seems steep to me. I realize it's something -- the sanction has to be reflective of the offense.

Usually I'm here representing licensees on disciplinary matters anyway, when we have overcapacity issues or service of my minors. And if it's a first-time offense, and those are serious, I've sat here a couple of times and heard cases that involved -- I remember one in particular in Central Square where an officer from what I could gather was fully justified in drawing his firearm, and when I was seeing it that night, I thought I considered that a very very serious offense. I don't know what happened in that particular instance.

MR. SCALI: I think the case you're talking about, it was a first-time offense and we suspended for six months, and I think on appeal to the ABCC they served two months out of the six.

MR. CRANE: And from what I could gather from the evidence, my own opinion was that

the officer was fully justified in doing what he did. That's a very very -- that crosses a line in my mind. I just think that ten days is high. I forget what we do on ones that are overcapacity and over-21s, but my memory seems to be that there were warnings, and then there's one day, three day, seven day, ten day, thirty day, and then six months.

MR. SCALI: I think this is a particularly egregious offense, different than an overcapacity issue in a lot of different ways, because it was so repetitive and thought out. It wasn't a one-time shot. We're talking about a number of days over a number of months, methodically carried out. I think ten days is probably more than reasonable. Suspended for a year is, you know, that's a pretty reasonable decision I think. Further discussion?

MR. HAAS: Are you proposing we suspend all ten days?

MR. SCALI: No. I was proposing to suspend five days, five days to serve. We can talk

about whether those are consecutive or nonconsecutive; and that in lieu of serving the five days that perhaps the donation would be appropriate over that period of time.

MR. TURNER: Are you offering an option that he serves the five days or a charitable donation?

MR. SCALI: Correct.

MR. HAAS: Now you have me confused. You're suggesting ten days, suspending five of those days in lieu of the contribution? Or, are you saying those five days will be suspended and the first five days, in lieu of serving those five days, you make a donation.

MR. SCALI: Right.

MR. HAAS: So it would be recorded as a ten day suspension or a five day suspension.

MR. SCALI: Ten day suspension.

MR. HAAS: If he chooses to make a contribution, would you then just consider it a five day suspension on the record?

MR. SCALI: No. It would still be a

ten day suspension but held for a year.

MR. HAAS: Again, going with Mr. Crane's comments about it being progressive, the next time he comes in here I would suspect -- I hope he never does come back for a disciplinary matter -- your starting point would be a ten day suspension.

MR. SCALI: Yes.

MS. LINT: It wouldn't necessarily have to be because you have the discretion to impose that which you choose that fits the offense.

MR. TURNER: Mr. Chair, just a clarification. We have a ten day suspension, five days will be suspended for one year, five to be served?

MR. SCALI: Right, either consecutively or nonconsecutively, depending on what the Commissioners feel.

MR. TURNER: In addition to a donation or in lieu of a donation?

MR. SCALI: I was suggesting in lieu of the five day suspension that he make a sizeable

donation.

MR. SCALI: Mr. Crane's confused now, I'm sure.

MR. CRANE: I am, because if you were saying in lieu of the five days, served five days. And my question further on that would be, are you going to put the figure on each day or one figure for the whole five days?

MR. SCALI: Usually how the ABCC does it is they figure out what your revenue might be for a particular five-day period, and then that would be the amount. So if you make \$3,000 in five days, that would be your donation.

MR. CRANE: That would take away the five day served; that's the way the ABCC does it.

MR. SCALI: That would be my suggestion. We don't have the power to fine here. The ABCC usually gives you an option to pay a fine or serve the suspension, so in lieu of that we're suggesting that perhaps some charitable organization should benefit from this.

MR. CRANE: He can make the

contribution and buy off the five days served, so to speak, but he could not go in and say to you well, I'll serve two days, I only want to buy off three days.

MR. SCALI: That's possible too. I'll put that on the table as well. So if you serve two days and you make a donation equal to three days then that would be fine with me as well. Have I sufficiently confused you, Commissioner?

MR. HAAS: I understand.

MR. SCALI: I just think someone else should benefit from this. There's really no benefit you can give to the residents. You can't give them any money and you can't change what happened, so at least let someone else benefit from this matter.

MR. CRANE: It's a creative suggestion, Mr. Chairman.

MR. SCALI: Discussion?

MR. HAAS: I want to be fair about this. It's just my sense of what happened. I understand what you're saying about overcrowding

and underage drinking, but this is really a very different scenario altogether. I agree with the Chairman that this was a deliberate effort to harass and intimidate, as opposed to just simply ignoring capacity rules or ignoring the law with respect to serving.

Granted, I think your client exposed himself to the additional jeopardy of going to court which he wouldn't normally do. So to some degree I feel that's been somewhat addressed. I agree that the Chairman's suggestion is somewhat creative. I don't know how your client feels about making a good faith effort. This would clearly demonstrate that he means what he says; that this will not happen again and he's truly sorry for what he did.

MR. CRANE: I don't know what more he -- you and I can't --

MR. HAAS: I know.

MR. CRANE: I have a feeling he never wants to see the Cambridge District Court in Medford, or he never wants to see this building

unless he's paying his renewal fee again.

MR. SCALI: I know that the resident, Mr. Hildum is here. Did you want to say anything at all? You're welcome to speak or not speak, whatever you feel comfortable with.

MR. HILDUM: I suppose I'm slightly biased but in my opinion I think there's a real question as to whether Mr. Mallakis can responsibly hold a liquor license. I understand you guys see a lot of cases and you have to weigh your punishments and I respect that.

I want to clarify that this activity was initiated in response to a unanimous decision by the Board of Zoning Appeals against Mr. Mallakis' request for a variance for his business, so this behavior I would maintain was directly related to the operation of his business.

I'll leave it to your judgment in terms of what suspension details are. I don't know how a donation amount works. It sounds like a donation is made and it may be a worthwhile amount that reflects the nightly business revenue. Who's

to say?

MR. SCALI: It's kind of a way to -- instead of being closed, whatever revenue you're making on those particular days anyway are going to benefit somebody else in some way.

MR. HILDUM: So we're in that sense taking the word of Mr. Mallakis in terms of what is a reasonable amount of money.

MR. SCALI: Oh no, no. It will be decided by Mrs. Lint and the Board as to what is an appropriate amount and what that would be. Who it would go to I guess is up to us as well.

MR. HILDUM: I'll also say that I certainly appreciate your creativeness in terms of a charitable donation. That's at least a -- if you're trading off suspension versus good for the community, I think that is a worthwhile turn.

MR. SCALI: Something positive can come from this I guess is my point. It just seems like everybody got hurt on both sides. You can't be made whole, he can't be made whole at this point. He did what he did and it can't taken back,

so let's let somebody get something positive out of this I guess is my point.

MR. HILDUM: I'm sad to say and I'm sure I can speak for Reisa as well, we're in a situation where we have to continue to keep an eye on things.

MR. SCALI: We will too.

MR. HILDUM: I appreciate that too, and I'm not confident that without your oversight things would go perfectly well. It's an ongoing concern for us.

MR. SCALI: I think Mr. Mallakis misunderstands the situation. I'm getting that feeling that at least we've come to the end of the road here, so everything is over. That's what I'm hoping I'm feeling from him right here is what I'm getting. But we have a year to see how that goes.

MS. LINT: Mr. Chair, I would recommend also that if there is going to be a charitable donation that it be something that's important to Mr. Hildum and his wife, as opposed to just any charity.

MR. SCALI: That would be what I would suggest. I know that your wife is part of Transition House.

MR. HILDUM: Transition house would probably be perfect.

MR. SCALI: Discussion?

MR. HAAS: No more discussion.

MR. TURNER: No more discussion.

MR. SCALI: If you're not happy, let me know.

MR. HAAS: I think it's creative and to some degree I think it clearly demonstrates an effort to make amends. Again, I think there is a sufficient review period so that -- we have an opportunity to kind of monitor the situation and at the same time, we've also established a starting point if there is another disciplinary hearing, which at this point, I'm convinced we will ever see that again.

MR. SCALI: I can tell; right, Mr. Mallakis? Let bygones be bygones. It's friendly, neighborly; right? "Hello, Mr. Hildum,

nice to see you today."

MR. MALLAKIS: I can't do that.

MR. CRANE: He's like to do that but he's under a court order that he can't do that.

MR. SCALI: You're not supposed to, all right. Maybe that's not a good idea then. Sorry.

Anybody from the public want to be heard on this matter at all?

MR. HAAS: Mechanically, how would this work?

MR. SCALI: My motion would be that we find him in violation of rule one; right, Mrs. Lint?

MS. LINT: Yes.

MR. SCALI: With regard to fitness of character and actions inappropriate for a license, and that because of the egregious repetitive nature of the actions over a number of months that we find the ten day suspension is in order of the liquor license and -- do you have an entertainment license?

MS. LINT: Yes.

MR. SCALI: For whatever licenses he has, and that that be suspended for a year. So the five days is suspended for a year; and that you would either serve five days consecutively, or non-consecutively served or have the option of an in-kind donation equivalent to your revenue of those five days, or some combination thereof. If you choose two and three, or three and two, or you choose to serve two days or three days, the donation would be equivalent to the remainder of the days. Discussion?

MR. HAAS: No discussion.

MR. TURNER: No discussion.

MR. SCALI: Motion moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Thank you very much. I'm sorry. Also that there be an automatic review in a year, Mrs. Lint, too.

MS. LINT: Yes. Did you say six-month review?

MR. SCALI: One year. If we could just figure out a way to figure out what that equivalent of revenue --

MS. LINT: Of course, he has a right to appeal.

MR. SCALI: Of course, yes.

MS. LINT: I suspect they don't want the ABCC to see that tape.

MR. SCALI: I wouldn't think. So if you could just figure out a way to figure out his revenue for those particular -- if he decides not to serve the five days, then we have to --

MS. LINT: I'll ask for his books.

MR. SCALI: Who else?

MS. LINT: Lord Hobo.

MR. SCALI: Lord Hobo is not here but he did call in, Mr. O'Neil; right? He's in Amherst and thought it was tonight.

MS. LINT: His attorney advised him it was tonight.

MR. O'NEIL: He expected to come at 6:00 tonight.

MS. LINT: He can come; we won't be here.

MR. SCALI: Lord Hobo, which is a transfer from B-Side.

MS. LINT: Before you get into it, Mr. Chair, Councilor Toomey asked that I read verbatim his letter into the record, which he doesn't often ask.

"Dear Mr. Scali, I'm writing in regard to the application for a transfer of license from B-Side Lounge to Checkraise LLC d/b/a Lord Hobo.

Over the years, B-Side Lounge has established themselves as a fixture in the neighborhood. While many neighbors have expressed to me that the restaurant was a welcomed addition

to the neighborhood, there have been some who are constantly bothered by late-night gatherings during and after operation hours.

As this application is before you, I ask that the Board will seriously consider the impact that late-night licenses can have on areas that are primarily residential. Perhaps it would be wise for the new management to establish themselves as a trusted member of the community before allowing the 2:00 a.m. closing hours. If the restaurant proves to be a responsible partner with the neighborhood, it would be easier for them to gain the residents' support in altering their license at a future date.

It is my hope that the new management develops a suitable menu that will attract a dining crowd and not expect to rely heavily on alcohol sales. Please keep this in mind as well when you are considering this request."

Thank you for taking this into consideration as you arrive at your decision."

I did advised Councilor Toomey that at

the last hearing the 2:00 a.m. was already off the table and that a new menu had been submitted, and I sent a copy of it over to him.

MR. SCALI: My only reservation about this is -- I mean he has decided he would close at 1:00 a.m., a concession from 2:00 a.m. to 1:00 a.m., and he did revise his menu so that it's 65 percent food and 35 percent alcohol, I think it was.

MS. LINT: I believe that's right.

MR. SCALI: Which I think may be tough to adhere to but I guess he's going to try.

My biggest reservation is that he sat right here and said that he had no past violations in Amherst or Northampton, or wherever it was that he was before. I would have felt better that he actually said to me, I only had a violation and we've changed and that whole thing.

MR. TURNER: Mr. Chair, my opinion on this one, I'm on the fence on this one actually. I'm the pendulum in the middle. The first hearing and their first proposal, there certainly was more

neighborhood objection to neighborhood support to this establishment, and certainly his proposal of what he -- his intentions of what he was going to do with the establishment raised a number of flags.

On the second hearing, the pendulum swung in his favor, in the applicant's favor and that yes, there was some more neighborhood support, and less neighborhood opposition at the second hearing. And then certainly the menu, looking at the menu, it would appear that it is going to be more of an upscale restaurant versus the barroom atmosphere. So based on that and hopefully the customers that will be attracted to that establishment, hopefully will sway the neighborhood opinion in favor.

MS. LINT: I did also receive very positive feedback from both licensing authorities in Amherst and Northampton that he does run a clean ship.

MR. SCALI: They felt satisfied that even with the violations he's --

MS. LINT: They felt that when the

violation that he did not tell the Board about on advice of his attorney, that when that occurred, he immediately fired all the staff, and that that staff had been holdovers from the prior owner.

MR. TURNER: Mr. Chair, I think the message is quite clear to the applicant on what our expectations are, and what's expected of him, and the neighbors.

MR. SCALI: You're willing to give him a shot?

MR. TURNER: I would be willing to. Again, I believe there was some testimony from neighbors that they are concerned because now the establishment has been closed down, which I thought was unique. It's kind of all over the place on this one.

MR. SCALI: It's quiet when it's closed down, that's for sure.

Commissioner?

MR. HAAS: In many respects I agree with the Deputy Chief. I think the neighbors are rightfully concerned because of the prior operation

but I don't believe it should be automatically inherited to the owner. I think the new owner has made a number of concessions, but I am troubled by the fact that he wasn't forthright in terms of his issues in the other communities. And because of that I would ask the Commission to make the license conditional on a six-month review.

I'd also want to see if in fact -- to your comments -- whether or not he truly is running a restaurant or a tavern; that part of that review includes what is his percentage of alcohol sold, to food. I think he's making a concerted effort by virtue of the fact that he's revised his menu twice now in response to the issues and concerns he's heard both from the community and the Commission. And also, the fact that he wishes to concede to a 1:00 opening, again, for a trial period to see how things work.

I would make it very clear to the owner that after that six-month period, it's not an automatic granting of the 2:00; that because of the concerns that we have, we are going to be somewhat

stringent in reviewing that six-month period. I would really be hard-pressed if we had a number of issues that crop up to even entertain looking at a 2:00 opening at that point, regardless of the fact that the license is allowing for a 2:00 opening.

I'm inclined to vote in favor of the application based on the conditions that are set forth with respect to what our expectations are, and the limited closing, and banking the remaining hour. But also it's serving the six-month review and the conditions under which we're going to -- the things we're going to take into consideration during the course of that six-month review.

MR. SCALI: I don't disagree with either of you so my suggestion is that -- I'm making a motion to approve subject to the following conditions: That there be a 1:00 a.m. closing, banking the 2:00 a.m. portion for him; that he adhere to the new menu or the upscale menu, showing 65/35 food over alcohol; and that there be -- I'm going to suggest a monthly review of that revenue by the Commission; that he check into the ADA issue

of compliance -- I think he said he was going to do that anyway -- that the ADA compliance issue be looked into; and that there be a six-month review of all of this from the date of opening, not the date of approval, but from the date of opening.

Discussion?

MR. HAAS: No.

MS. LINT: I have a question. For the 2:00 a.m., would you require him to apply, advertise, notify abutters, and the whole procedure?

MR. SCALI: To re-establish it?

MS. LINT: Yes.

MR. SCALI: It would have to be put on to un-bank the 2:00 a.m., and notification as would normally would to anybody.

MR. TURNER: Any TIPS training, or anything like that for the staff?

MR. SCALI: Yes, 21-Proof training.

MS. LINT: For all staff.

MR. SCALI: For all staff, not just him.

Anything else, Commissioners?

MR. HAAS: No.

MS. LINT: How do you want the revenue review to occur? Do you want him to submit to me?

MR. SCALI: He should supply that to you, the revenue of food versus alcohol per month from date of opening.

That's a motion. Moved.

MR. HAAS: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Was that entertainment as well? No. There was no entertainment.

MS. LINT: There is an entertainment license, but I believe it's background music only.

MR. SCALI: I think that was it; right? All right, anything else? Faialense was continued to the 14th.

MR. HAAS: I sent you that e-mail from Deputy Walsh. He was going to take care of it and make sure there was an officer here for that

hearing on the 14th.

MS. LINT: Yes. We already have confirmation from two officers.

MR. HAAS: It's got to work that way.

MR. SCALI: Anything else before us?

MS. LINT: No.

MR. SCALI: Motion to adjourn. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. SCALI: Aye.

MR. TURNER: Aye.

(Whereupon, the proceedings concluded at 11:21 a.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 8th day of April, 2009.

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