

## COMMONWEALTH OF MASSACHUSETTS

## CITY OF CAMBRIDGE

IN RE: LICENSE COMMISSION  
DECISIONMAKING HEARING

LICENSE COMMISSION BOARD MEMBERS:

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

STAFF:

Elizabeth Y. Lint, Executive Officer

- held at -

Michael J. Lombardi Municipal Building  
831 Massachusetts Avenue  
Basement Conference Room  
Cambridge, Massachusetts 02139  
Thursday, July 2, 2009  
10:20 a.m.

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P R O C E E D I N G S

MS. LINT: License Commission  
Decisionmaking Hearing, Thursday, July 2. It's  
10:20 a.m. We're in the Michael J. Lombardi  
Municipal Building, 831 Massachusetts Avenue,  
Basement Conference Room. Before you the  
Commissioners: Chairman Richard Scali, Deputy  
Chief Dan Turner, and Commissioner Robert Haas.

From June 9 -- well, do you want to go in  
order?

MR. SCALI: Let's see who we have.  
Oh, I'm sorry. Motion to accept the minutes from  
June 23.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: We have the agenda from June 9. We have Burdick's here, we have OM here. Who else is here for any other matter.

UNIDENTIFIED SPEAKER: Landlord.

MR. SCALI: For?

UNIDENTIFIED SPEAKER: For Burdick's.

MR. SCALI: So we have those two.

Do the Commissioners wish to go in order on June 9, or go to those items?

MR. HAAS: Why don't we take care of the people that are here.

MR. SCALI: Let's go to the June 23 agenda. Let's do OM. Do you want to come forward Mr. Goldberg and Mr. Chowdhury? That was on the agenda on June 9 and on June 23. It had been continued from the 9th to the 23rd, to today.

Ranjit just came down and talked to us, so why don't you give us an update as to what's happened.

MR. GOLDBERG: As far as I know, whatever requirements by Inspector Burns at the premises has been taking care of by Solmon with

regard to a knob on the door and some beads that are hanging down and the like. That was one of the questions that Ranjit asked me when I went up there to speak to him and tell him about the meeting today.

Inspector Burns also -- Ranjit had asked that we fill out this particular form, which is a certificate of occupancy, but I believe you have a similar form which requires sign off by the various department heads. I don't know whether he'll need this or not.

MR. SCALI: That's separate from ours. You need to do that with him.

MR. GOLDBERG: I think he has already said that it's not necessary; that this is not necessary so far as he is concerned. If it is, it has been partially completed and we'll fill it out and get the necessary signatures.

MR. SCALI: You still need to get the certificate of inspection done if you're changing the setup.

What Inspectional Services has said is

he's okay with the zoning but he still needs to go back and re-inspect the items that you've done. He said that they had been completed but that he needs to go out and re-inspect. So I guess as far as the use goes, we're okay with the use as entertainment on the first-floor, and with the configuration as to how you presented it.

The one issue is the re-inspection from the Building Department on those items that you've completed. Then the two items for us to consider, Commissioners, has to do with the amount, the capacity issues, and the occupancy issues on the setup. And then on the Disciplinary matter; right?

MS. LINT: Right.

MR. SCALI: Which is the backup on the Disciplinary matter. Discussion, Commissioners on numbers, or do you wish to wait for the inspection by the Building Department?

The proposal was, as we had talked about, was to go from 153 to 194 with the two time periods as we talked about, before 10:00 p.m. and

after 10:00 p.m. Ms. Boyer had laid out the laid out the numbers very clearly as to what would be allowed on the first-floor and what would be allowed on the second-floor.

We had talked about where the tables were going to be stored. That was a concern of the Fire Department for storage. There was some discussion about making sure that somebody or everybody is responsible for making sure these numbers are adhered to. That was my concern. How are staff going to be counting between 9:30 and 10:00 p.m., when things are changing over, how is that going to take place? There was discussion about it being confusing to some employees as to how those numbers are calculated.

MR. HAAS: It just sounds like a logistical nightmare. Again, part of our concern is that is kind of a very dense area, and I'm hoping you can make those kinds of movements seamlessly. We've had some assurance that you were going to be able to take care of the capacity counts, and then shortly thereafter, we had the

violation. I just don't want to see you setting yourself up for failure. That's my biggest concern; that we go back in there again and we either have confusion, or go back and the counts are off again. So that's my major reservation about this whole thing.

MR. SCALI: Do you wish to consider it at this time at all and then do a six-month evaluation?

MR. HAAS: I think in fairness to them we should allow for a trial period. I just want to make sure it's clear that we have some concerns.

MR. CHOWDHURY: I understand.

MR. SCALI: If it works, it will be great. But I think we have our doubts that it's going to be just difficult to maintain.

MR. GOLDBERG: I think I was quoted the last time we had a hearing, and I said it's up to him to take care of that. If the probationary period proves otherwise, then this Board will be perhaps justified that it was a situation that could be taken care of, and he will be responsible



for it during that probationary area. And I trust that he recognizes through this long process that you and I have been going through, and he has been going through that it's a serious matter and should be considered a serious matter.

MR. SCALI: Are you feeling comfortable with it, Mr. Chowdhury, that you can do this?

MR. CHOWDHURY: Absolutely. Our goal is to have two securities: one at the door having count for the whole restaurant and one inside the restaurant near the stairs where it splits between the second-floor and the first-floor. So you'll have two counters, one for upstairs and one for downstairs. And also making sure people that are upstairs, they're not coming downstairs, or people from downstairs are not actually going upstairs.

Our issue is -- not an issue but -- after 10:00, the majority of the night, we actually won't have anybody upstairs because it is a dining room, and after 10:00, 11:00, there is nobody upstairs other than people that's having dinner,

and after 10:00, if we have 10 or 15 people, that's a lot of people. It's basically the first-floor that we really need to be concentrating on after 10:00.

MR. HAAS: How will you manage the overflow if you have an overflow situation where you've decided you've reached capacity and now you've got a number of people still at the front door trying to get in.

MR. CHOWDHURY: Any time we have more people than we can fit, we always have a line outside.

MR. HAAS: And you maintain the line?

MR. CHOWDHURY: Of course. We haven't really had that problem lately. Once in a while, we have to have a line and we take care of it right away.

MR. TURNER: Mr. Chair, I concur with what's been stated already. We do have a plan in place. We requested a document that would explain how they're going to enforce their different occupancy limits. I'm comfortable with that plan.

This is not unusual in the sense that you have an establishment that is moving tables and chairs around to accommodate a dance floor. What does make this unusual is the up and downstairs situation, plus the outdoor patio, throwing that into the mix.

We did request that the occupancy limits by times be posted. Again, the concern for me would be during a task force inspection or if there were a police response or an emergency response, and an official does come in and does want to have an accurate occupancy number to look at, that that be available, and that all your staff is aware of it and makes that known to the official doing the inspection.

So as far as the ISD issues, at this point, I would feel comfortable approving, contingent upon the final ISD inspection, because those numbers aren't part of that, what's outstanding with them.

MR. CHOWDHURY: We also have 60 seats that goes on the patio. And as you know, the

weather since March, if we were lucky, we were able to use two weeks of outdoor seats. We lose 40 percent of our seats for almost half of the year, and that's a lot of our revenue. I pretty much put my life savings in that restaurant and I'm losing out because of the weather.

MR. SCALI: I think everybody is at this point.

MR. CHOWDHURY: By having this increase it's actually going to help us out a great deal. As you know, people are not eating out as much but people are going to the bars to drink, and the majority of our outdoor seats comes out of the bar. It's hurting our business a lot.

MR. SCALI: It sounds like we're ready to vote. Just for clarification, looking at Ms. Boyer's list here, what we're changing is after 10:00 p.m., with outdoor seating, March 1 to November 30, it would be 94 patrons on the first-floor, 40 patrons on the second-floor, and 60 outdoor seats for a total of 194. That is without the dance floor after 10:00 p.m.

Then with the dance floor after 10:00 p.m., which is December 1 through March --

MS. LINT: That's with the dance floor.

MR. SCALI: With the dance floor is 118 patrons on the first-floor, 76 on the second-floor, and zero patio seats after 10:00 p.m. There's actually four different scenarios. There's two scenarios before 10:00 p.m., and two scenarios after 10:00 p.m.; right?

MR. GOLDBERG: Right.

MR. SCALI: After 10:00 p.m., if you have outdoor seating, it's 94 on the first-floor, 40 patrons on the second-floor, and 60 outdoor seats. That's with the outdoor seating.

Without the outdoor seating, which is in the wintertime, it's 118 patrons on the first-floor, 76 on the second-floor, and zero outdoor seats. So in the wintertime, there's more people inside on the dance floor. In the summertime there's only 94.

MR. CHOWDHURY: And this is after

10:00?

MR. SCALI: At 10:00, right. And then before 10:00 p.m., are we staying at 153?

MR. CHOWDHURY: No. It's going to 175.

MR. SCALI: That's these numbers here. So before 10:00 p.m., with the patio, 65 on the first-floor, 50 on the second-floor, 60 outdoor seats for a total of 175.

Before 10:00 p.m., without the patio, 99 on the first-floor, 76 on the second-floor, and zero outdoor seats with 175. So before 10:00 p.m., it's 175, after 10:00 it's 194, with or without the patio. I'm confused now. I'm not sure how your employees are going to figure this out.

MR. TURNER: Do you have that flowchart?

MR. HAAS: Here it is.

MR. TURNER: Does that help you at all?

MR. SCALI: That's just how they're going to manage it.

So that's the motion along with the flowchart of responsibility, and a six-month review. Any other conditions? Motion.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MS. LINT: And the Disciplinary?

MR. SCALI: Just to clarify on this one. This has got to go to the ABCC first, and then it comes back to us, and then that's when it begins.

On the Disciplinary matter --

MR. GOLDBERG: Before you go into the Disciplinary matter, this is a matter that I spoke to Ms. Lint with regard to. The manager has been discharged.

MR. SCALI: Which manager?

MR. GOLDBERG: Mr. Sanchez.

MR. SCALI: He's gone?

MR. GOLDBERG: I think for economic reasons he's gone. And as much as it had gone through the ABCC and was brought back, there has been no action taken on that.

MR. SCALI: On the manager?

MR. GOLDBERG: On the manager.

MR. SCALI: Are we still waiting on the approval?

MS. LINT: Yes, but he's not there, so it doesn't matter.

MR. SCALI: So you're starting over.

MR. GOLDBERG: Right. So as a result of that, Bik, the former owner, who is still the manager, is coming back as the manager. I have this letter here.

MR. SCALI: Withdrawing the other application?

MR. GOLDBERG: I will withdraw that, but I wanted to present it to the Board. This letter here explains what Bik's responsibility will be, and certainly Ms. Lint can read it or give it to you for your review.



MR. SCALI: Is he the manager of record before Mr. Sanchez?

MR. GOLDBERG: Yes.

MR. SCALI: So he'll be there every night from 5:00 p.m. to closing?

MR. CHOWDHURY: Yes.

MR. SCALI: Seven days a week.

MR. CHOWDHURY: Five to six days a week I'll be there.

MR. SCALI: You'll be there six days with him?

MR. CHOWDHURY: The day he has the day off, I'll be there.

MR. SCALI: So we'll just make note of that, that the other application is withdrawn.

MS. LINT: All set.

MR. SCALI: With regard to the Disciplinary matter, pleasure of the Commissioners?

MR. HAAS: The thing that troubles me the most about the Disciplinary matter was the accounting of what the mix up was, which didn't reconcile at all with what we found during the course of the thing. If you made a mistake, you made a mistake, but I think you've got to be careful about telling us something happened when we have records that indicate something else happened.

There was an issue about hours, and what you were reporting in terms of the hours when the violation took place was not concurrent with what our investigators found, and things like that. So my question to you quite honestly is that if we do have another violation, you have to be forthright about it. That's what I was concerned about most of all.

I understand the issues and assurances we've had about the occupancy issues, and that you're going to maintain a tight control, and then shortly after, we had a violation. But then I

think it was compounded by you telling us that something occurred at either -- I forget if it was either 9:30 or 11:30, but it was an hour off from what we found the violation to be. I guess my advice to you is if you have a violation, you have to own it.

MR. SCALI: Sometimes reconfiguring the story makes it worse for you sometimes.

Previous violations? I don't think so.

MS. LINT: I don't think so.

MR. SCALI: Discussion at all, Deputy Chief?

MR. TURNER: No discussion.

MS. LINT: Yes, there is. A three-day suspension for being overcapacity and serving to minors.

MR. SCALI: In 2008?

MS. LINT: Yes.

MR. HAAS: Was that three days served, or held in abeyance?

MR. CHOWDHURY: We did serve it. We

were closed for three days.

MS. LINT: You were closed for three days?

MR. CHOWDHURY: Yeah.

MR. SCALI: I know it sounds like a second violation but I think they've been very cooperative in terms of their working with us. They've been very patient in trying to resolve the matter.

I do think there was some confusion in terms of numbers. I think we were confused on just what we even voted on at the actual hearing. And then they went forward with their numbers and I know that their numbers were not correct, but I do feel there was some confusion on all parts. I'd be willing to make a motion for a warning at this time, but I'll leave it up for discussion.

MR. HAAS: It's probably going to place you in -- but I think it also -- what I was going to say is it places you at a greater risk, but it reinforces our point that these next six months are going to be critical for you. What I

would recommend to the Commission is a three-day suspension held in abeyance for six months providing there's no other violations. And if we do encounter another violation, that would be in addition to the subsequent violation.

MR. SCALI: So your motion is a three-day suspension held in abeyance for six months. Discussion?

MR. TURNER: No discussion. Pleasure of the Chair?

MR. SCALI: I'll amend my motion then to go along with the Commissioner. So the motion is to find in violation as charged, and for a three-day suspension to be held for six months. If further violations, three days to be served consecutively?

MR. HAAS: It doesn't matter to me.

MR. SCALI: Three days to be served chosen by the Executive Officer. That's moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: See you in six months.

Hopefully not before.

MR. SCALI: Let's go now to June 23, for L.A. Burdick's. Do you want to come forward? That was on both hearings, too, June 9 and June 23. Just tell us your name for the record again.

MS. WATSON: Kathleen Watson.

MR. BURDICK: I'm Larry Burdick, and I apologize for missing the other meetings. I was away.

MR. SCALI: We knew you were out of town.

We have two applications before us. One is a change of premises description with regards to the basement, and the other application is the increase in capacity on the first-floor. So there's been a number of things tossed around, and I've been hearing rumors of other plans. Why don't you update us.

MS. WATSON: We're not going to worry about any other plans at this point I think. I think right now, what we'd like to do is stick with --

MR. SCALI: First of all, Mr. Levin,

if you're unable to hear -- and I do apologize for the hearing last time.

MR. LEVIN: You don't mind if I just move up a little?

MR. SCALI: You certainly may. I do apologize for any confusion and certainly don't want you to feel at all that we are making you feel like you're not able to hear.

MR. LEVIN: Mostly I'm okay. It's just sometimes being close helps.

MR. SCALI: Not a problem.

MS. WATSON: We have found that over 49, as everybody has said, is an assembly usage, and we're going to deal with that later. What I'm looking for right now is if we can get approval on 49 for occupancy?

MR. SCALI: So you're amending your application, because the original application was for 54, 16 seats and 38 standing. So what is your request now?

MS. WATSON: Our request is for 49 maximum. We talked to Ranjit yesterday and he had



said that he had no problem with 28 seats, 49 total capacity.

MR. SCALI: So you're looking at more seating now, so 28 seats?

MS. WATSON: With 49 total capacity.

MR. SCALI: And how many standing?

MS. LINT: Twenty-one.

MR. SCALI: Do you have a new plan?

MS. WATSON: No, because we don't have -- the plan that you have has the same amount of seating, and what has happened because we have the bench seats, which has been brought up, people squish together. So the 16 seats, there would not be any increase in seating, it would just be that we wouldn't get in trouble if people squished together.

MR. SCALI: So you're keeping the same setup but people that are squishing together now would be allowed to be 28, as opposed to the 16. So you're really adding another 12 into what you already have.

MS. WATSON: It's what we already

have. Nothing is going to change.

MR. SCALI: And 21 standing?

MS. WATSON: Yes.

MR. SCALI: Tell me how you're going to -- my concern is how are you going to maintain 21 people standing, and how is that going to be done? Because the first question from everyone is going to be, okay, you have a line out the door, and it's more than 21, what do you do? Not that this is like a club, or anything like that.

MS. WATSON: I was just listening to them thinking, boy, it's a wonderful thing that we actually have to think about overcapacity in a chocolate cafe.

During the holidays, what we had talked about doing is possibly removing some of the stools so we have less seating and more people standing to be able to come up to the chocolate case and leave, and we can remove eight stools, and then we have actually -- we can get up to 29 standing.

MR. BURDICK: Is there really a line

out the door?

MS. WATSON: It does go out the door, but there's a line. People bring strollers in there. Sometimes you walk in and there's two strollers that are parked here and parked there. Our cafe has mirrors on both sides, so when you look in there and people are sitting there, it looks like there a hundred people in there.

But we're just going to have to do everything we can because believe me, we don't want to go through this again. So we will do everything that we possibly can.

MR. SCALI: I guess in the very busiest of seasons, which I guess is the wintertime when people are looking for hot chocolate and that kind of thing, I guess that's the time when it's from what I'm hearing is the busiest time. You may have people waiting in line to get up and buy chocolates and buy hot chocolate, and if it's above 21, then your staff or yourself has to say I'm sorry, you must step outside. You can't wait on the sidewalk because you don't want to block the

entrance.

MR. BURDICK: Kathy, one way would be that the person at the chocolate case is also at the front door to make sure when it's busy, someone stays there.

MS. WATSON: We're going to have to figure this out. And we have been talking about it quite a bit. We won't have to worry about it until the holidays, obviously, because we won't have more than 49 in there. It's usually the week before Christmas, two days before Halloween. It's just very sporadic times.

MR. BURDICK: I don't know how we came up with 16. I thought it was 16 seated and then more people were permitted in the store.

MR. SCALI: There was a lack of clarity on that, and that's why we're here.

MR. BURDICK: Likewise with the oven. We've had that for 11 years and all the inspectors have seen it. I didn't know there was an issue with that.

MR. SCALI: That's why we're here.

The plan is the confection oven in the basement as set up; the seating the same, except there would be 28 people seated as opposed to 16, which would make up for the bench seats; 21 standing, which you would maintain and make sure that you adhere to that number even in your busiest times.

My two other issue, two other issues actually, is the issue of people standing on the sidewalk and kind of milling around.

MS. WATSON: What do you do about that?

MR. SCALI: As a licensee, you're responsible for whoever you bring to your premises. So there needs to be a plan that you would have to maintain people not hanging out drinking hot chocolate on the sidewalk. So that would be your responsibility to make sure that people are not blocking entrances.

MS. LINT: Mr. Chair, if I might make a suggestion? Similar to what we had Riverside Pizza do, putting signs up asking not to congregate in front of doorways, and to be mindful of other

businesses in the area.

MR. BURDICK: We could do that.

During the daytime, it's often a combination of people going next door for sandwiches. People from our place, they meet out front and they stop to talk.

MR. SCALI: Which is normal, I understand, but blocking other entrances could be the issue.

The bigger issue, which I guess is the problem of this noise and the wall issue. Maybe the landlord can clarify this for us because I -- Mr. Hedley was out there and he had been watching for a couple of weeks now. From what I understand according to his report, you hear people talking. It's not like you hear people screaming or people making loud noises. He's been on both sides of the wall listening. You can hear a humming from your machines. You can hear people kind of conversing, and if you're on your side, of course that's okay, but if you're on the other side of the wall. .

MS. WATSON: Can I ask something?

MR. SCALI: Yes.

MS. WATSON: Is that something that can be left out of this meeting because it is not the issue?

MR. SCALI: That's why I want to talk to the landlord. I understand there's a number of legal issues going on, and lease issues going on, which we generally don't get involved in. Yet, we have to consider the public good.

MR. BURDICK: Mr. Scali, when we moved in there 11 years ago, we put all our cabinetry and shelving against that wall. I think inadvertently we created a barrier to the noise, and when we took it off we found that -- in my opinion, and one of the sound experts agreed with me -- we probably removed that sound barrier and the wall just is inadequate between the two spaces.

The landlord said if that's the case, then they're good landlords, we'll help them solve the problem, and we would do our share. We told them that upfront. I personally think it's a landlord issue, but obviously we're involved so

we're going to do our share.

MS. WATSON: And that's all we've been dealing with in these meeting is the sound issue.

MR. SCALI: In terms of the observations from our investigator, who is by no means an expert in sound, the wall just looks paper thin and it doesn't seem to be enough to barrier the two stores.

MR. BURDICK: It's three-by-four studs, they're hollow up in the upper part of the wall. And even our to front doors back to back are this close because there's just not much between us.

MR. TURNER: Mr. Chair.

MR. SCALI: Deputy Chief.

MR. TURNER: Was that wall ever removed during your remodeling?

MS. WATSON: Oh, no.

MR. TURNER: That's always been existing?

MS. WATSON: Yes.

MR. TURNER: It's just on your side



you did some taking down and putting back?

MS. WATSON: Yes.

MR. SCALI: When was that wall put up? Was it always two spaces from 11 years ago?

MS. WATSON: It was there when we got there. It almost looks like it was one.

MR. BURDICK: That's what I was wondering about is, was it divided into two stores later in time?

I do want to say, and I'm not trying to get Phil upset, I remember when I first moved in, his wife was complaining about the guy before us, his radio, the people who were going in and the type of neighbor he was. It's not a new problem, but if it is a problem, we're willing to do our share to fix it.

MR. SCALI: Maybe I can ask the landlord if he can come up? Is there something that you want to say about that? I guess I'm trying to be the negotiator/mediator here. Maybe it's not my place but it sounds like we have three parties who have a problem, and someone needs to

step up and take the bait. Maybe it's you, Mr. Landlord. I don't know.

MR. WOLFSON: My name is Jim Wolfson. My two brothers and I who are from out-of-town, own this building. We've owned it for a long time. It's a complex set of issues on the noise. What I most want is for all of our tenants, and there's other tenants, but for these guys to be able to live harmoniously.

There is definitely a noise issue here. And the question is what is the level of noise that's acceptable? It's not clear. It's an issue that we're negotiating. We're negotiating. We're trying to figure out how to solve this.

First of all, how do you even solve it? So we have all sorts of plans; maybe it's the wall, maybe it's the ceiling, maybe it's the floor, maybe it's the basement. That's one thing, and we're negotiating it. Of course, there's an issue of who's going to pay.

MR. SCALI: Always a big issue.

MR. WOLFSON: Always a big issue, and

we're negotiating that. There's also an issue of whose side do we do the work from? Not clear. There are huge cost differences depending on which side we do it on, so we're negotiating around that.

There is a question of who is responsible. If there is a noise level, is it the landlord? Is it because the wall was never there correctly? Is it because Burdick's has more noise. It's not clear. These are all -- it's this morass swirling around, and we're trying to solve it.

In the course of that, and again, this is just my view, this isn't the truth, because these guys each have their version, and I completely respect that. In the course of that, this occupancy thing has come up, so it's related. They're kind of related, but they are separate issues. As Phil has brought up, there's a thing around this 49 tipping point thing with exits.

Does that help? I mean, there's levels and levels, and layers of detail we could go into here.

MR. SCALI: It sounds like it's been

going on for a couple of years. I guess someone needs to take the lead on this, and I would propose that I think it would be you, the landlord. I'm hoping that both parties will be happy at some point.

It's generally not our role to get involved in a landlord/tenant issue unless it affects the public in some way. Is there some plan in the short-term to resolve this?

MR. WOLFSON: Yes. We're active. I'm here. If I wasn't interested, I wouldn't be here. I'd be off doing my own business. I'm here and we really want a resolution.

We as the landlord, in all of the proposals, are putting up large amounts of money to fix the problem. And we've incurred a large amount of money already in time, legally, as have they. We all have. So we want to get it done.

MR. BURDICK: I have found Jim to be a great landlord, and we are willing to do our share. We just don't want it to be all Burdick's burden, which is what's been proposed mostly.

MR. SCALI: You have to look at what the cause is, what the changes were. Looking at the changes that you've made, perhaps maybe the burden may be a little bit bigger on you because you've made the changes. I don't know. That's a legal issue.

I'm hoping that everyone can be happy at some point, because for this to go on and on and on, does not make any sense. Mr. Levin coming to our window and complaining, does not make our life any easier. And you getting visits and you getting phone calls and letters, I guess -- the quiet enjoyment of the premises through a lease is a big issue. Mrs. Lint can tell you that.

MR. BURDICK: I'm proposing a mediator. I would love a mediator, a third-party, a fourth-party.

MR. SCALI: Let's let Mr. Levin comment because I've been doing all the talking.

MR. LEVIN: I just want to address a couple of issues about the capacity, first of all. First of all, I can't confirm what Mr. Burdick said

about what my wife said. She's not here, obviously. I can't say whether that's fact or not.

But this originally came up for us as -- we began noticing noise at first. That's the honest truth. But in learning what was going on, it eventually sort of expanded into an understanding that a lot of this problem is, as Mr. Burdick said, due to the change in the premises, but it's also the capacity. There is a component there. In other words, the more people, regardless of the wall, you're going to have more sound coming through.

And the claim that that wall is paper thin, I just want to address that. It wasn't our sound experts, the landlord's sound expert, he did testing through that wall. And this may not mean anything to you but 41 to 43 STC; that's the number rating he finally got for the wall in his report, not mine.

MR. SCALI: What does that mean?

MR. LEVIN: All it really has to mean is the fact that that's the standard. Actually,

it's a little -- the higher the number, the more insulation you get. So I believe it's 41 to 43, and he was saying a standard wall of that type is 38. In other words, I don't think it's fair for anyone to claim that there's something unusual about that wall. That's my statement.

On the other side of us is Cafe of India, which as far as we know has the same exact wall. They have a hundred people in there regularly and we don't have any of these problems. We don't have crowding, we don't have noise, so something is different.

MR. SCALI: That's very strange I would think because that's a bigger capacity and a lot more activity than their store.

MR. LEVIN: I'm just telling you what we experienced.

MR. SCALI: So something is off on that side.

MR. LEVIN: There is something different, and that's what I'm getting at. The difference is -- my claim is the difference is,

yes, it's true they removed some insulation from the wall but the true difference is they're over subscribing the place with people. In other words, to me that's the only possible explanation is that it's just too densely populated with crowds, and that is raising the volume when you have 60 to 70 people in there.

MR. SCALI: That doesn't really translate because if you've got over a hundred people in the Cafe of India, there at a bar drinking and eating, and you've got -- it doesn't translate. Something has to do with the dynamics of the way that they're set up.

MR. LEVIN: And I'm almost there -- you're right -- there's more to it than that. The reason that these people are raising their voices is because they have not installed, as suggested in the landlord's report, a number of sound dampening -- I mean they've done some small bits, but it's like throwing a cup of water at a barn fire.

The landlord's sound consultant suggested a hung acoustic tile ceiling, resilient



flooring. These are things which have not -- to me, honestly, the wall should be the last thing that should be done. It doesn't have to happen necessarily.

MR. SCALI: So there are other solutions you feel?

MR. LEVIN: My goal is to say look, they're over capacity legally and safely. Let's get that under control first. See where that gets us. Why should I have to explain away, or spend money, or negotiate to solve a problem that shouldn't be there in the first place, because that is a contributing factor. That's been my goal here.

MR. SCALI: Okay.

MR. LEVIN: If you don't mind, there's just one point, and I'll keep it short.

MR. SCALI: Go ahead.

MR. LEVIN: With the oven in the basement -- now, this is the first time I've heard that it's 11 years. I didn't realize that. I thought it was part of the 2007 renovation.

As I said before, I'm concerned because of the safety record there. You've mentioned we've had three fires in the building. Yes, it was Cafe of India. Yes, it was grease fires. But the fact is, cooking is cooking, and cooking can cause fires regardless of the type.

I agree that the risk is lower but the problem is, when I'm faced with the situation where we've been out of business, we've been impacted, and cleaning up for two weeks, it concerns me. If someone were coming here next to me who had a very nice record, not a perfect record, but a very nice record, I'd probably here in support of it.

In fact, I was here in support of Cafe of India many years ago. I remember being -- I don't know if it was this room, but there were some issues when they expanded their space. They took over another store next to us. There were some issues, I can't remember what they were, and we went through it. I believe it was the second hearing, and the final hearing, I came here in favor of. So it's not like I'm --

MR. SCALI: Did they renovate that wall? Did they do something to that wall?

MR. LEVIN: I don't know.

MR. SCALI: I remember the issues with their noise. I remember you complaining about them.

MR. LEVIN: There was something. I can't remember what it was.

What troubles me, Chairman Scali, is this notion that Larry Burdick sends a letter to you saying there's going to be no cooking on the premises in 1998, and every year when he presumably writes out his application, I believe he's the one that fills it out --

MR. SCALI: It's not an application. It's an automatic renewal.

MR. LEVIN: Well, someone fills it out; correct?

MR. SCALI: No. There's nothing to fill out. All you do is sign your name.

MR. LEVIN: But anyway, he did do that. He did say there'd be no cooking on the

premises. All his Common Victualer licenses say no cooking on the premises. It troubles me -- that's what troubles me. It's not as if you're offering a privilege to someone who clearly understands the risks and takes care of it. If someone tells you that they're not cooking on the premises and then go do it, and they wait until they get caught, what do I have --

MR. SCALI: That's why we're here.

MR. LEVIN: That's my argument.

Simply stated, if it weren't the case, I'd have nothing to say. What's the big deal? He's cooking. He's shown he's been safe, fine, but that's not the case. Thank you.

MS. WATSON: We have a full baking facility in our Walpole office with ovens, with stoves, with everything. So to us, warming pastries that are coming from there is really not considered baking.

MR. SCALI: I think we understand that in the Fire Department's analysis.

MR. BURDICK: There's an implication

that we sneaked it in and we're trying to hide that. We had permission for that. Why it's not on the license, I don't know.

MS. WATSON: It's a warming oven.

MR. SCALI: We understand that.

MR. BURDICK: What Phil was requesting and putting pressure on the landlords to request was far more expensive than what he just said. The landlords have the feeling that Phil will settle for nothing other than closing us down, rebuilding the wall, taking the place apart. If it's just a matter of putting up an isolated ceiling, or blowing some insulation into the wall.

MR. SCALI: Maybe you need an expert to do that analysis for you as to what would solve the problem, and there are many that will do that.

MS. WATSON: I just want to confirm that he just agreed that the wall is not the problem; that we should be working on the ceiling.

MR. SCALI: Let's not get into that. You're opinion is different than his as it has been all along.

MS. WATSON: Right, and the ceiling is definitely an easier fix.

MR. SCALI: I think you need someone to tell you exactly what that fix would be, and maybe that's the landlord. Mr. Wolfson needs a person to tell him that.

MS. WATSON: I have one more question.

MR. BURDICK: Mr. Scali, believe it or not, the experts have changed their opinion.

MS. WATSON: Between Settebello and the Cafe of India, in the front, there's a huge brick -- is that just a facade, or is that wall brick?

MR. BURDICK: I think it's a different type of wall. I think our store was big store and divided down the middle.

MS. WATSON: There's two huge brick sections between them and the Cafe of India, and if that brick follows down, then of course, it's going to be different.

MR. SCALI: There's an engineering issue and acoustical issue going on there which is

-- no offense, Mr. Wolfson -- really your responsibility to find out what that problem is. I'm not giving you legal advice, I'm just giving you my experience in terms of what's going on in the City.

There's no need of these two people fighting about it. Get in there and resolve the issue. Figure out what the problem is, and cost is another issue altogether in terms of what that might be. Speaking from experience in being here for 23 years, this is a small issue compared to many many other issues in the City with people's noise. And it can be resolved just like that in terms of getting someone in there to tell you this is the problem. It's the ceiling, it's the wall, it's the floor; whatever it is an acoustical engineer can tell you that in a matter of minutes.

MR. SCALI: Pleasure of the Commissioners?

MR. HAAS: Right now, we're listening to applications. This is not a disciplinary hearing so I think we have to rule on the

applications that are presented before us. The only thing I would defer to the Deputy Chief Turner about is the safety issues with respect to the oven in the basement, and making sure that that is not going to pose a fire hazard, and that the amperage and the electricity feeding that oven is sufficient so it's not compromising the electrical system in that building. I'd look to the Deputy Chief on that front.

MR. TURNER: Commissioner Haas, I've seen the oven in the basement. It is just a warming oven. There is no use of grease laden vapors, no grease cooking; therefore, there is no fire suppression system that's required. So from my opinion, it is a safe operation for the intended use of the oven.

I do understand the concern of the tenant where this oven showed up 11 years ago. Again, inspectors may have gone to the property and seen the oven but were unaware that it was not included on the license. However, they are here before us so my testimony would be that I've



inspected the oven, and in my opinion, it's safe for its intended use on the premise.

MR. SCALI: Further discussion?

MR. HAAS: I make a motion to approve the application.

MR. SCALI: There are two different applications here. One is the change of premises description for the basement, which would be the oven. So you're motion is to approve.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: So change of premises description for the basement is approved.

MR. SCALI: The second matter before us is your original application with regards to the capacity, which is amended now to include not over 49, meaning 28 seats with the same setup, meaning people seated as they still are now, but just allowing the additional people, and 21 people standing.

MR. LEVIN: Am I allowed to ask a question?

MR. SCALI: We're in discussion right now with regard to this. Discussion?

MR. HAAS: Going back to your original question to the applicants, I'd like to know what their plans are going to be with respect to managing during their peak hours. We floated a number of suggestions but I think we need to have more of a solid proposal in terms of how it's going to be managed. Are you going to have somebody at the door, are you going to put signage outside?

We need a formal proposal in terms of how you're going to manage your capacity within the store to make sure you don't exceed it, and what

steps you're going to take to mitigate it should you in fact have an overflow outside the store.

MR. SCALI: I would think that would be a reasonable request. We've asked that of many premises in terms of a plan that are a lot larger than you, so this is not an unusual request by any means.

MR. HAAS: I would strongly encourage the landlord during this time to see if they can resolve the other issue that may or may not be part of the capacity issue in terms of noise. I agree with you, Mr. Chairman, I think the noise issue inside the premises is really a landlord/tenant issue. It's not really a matter before this Commission.

MS. WATSON: And I'll send this to Elizabeth Lint?

MR. SCALI: Does the Commission wish to see that plan before you take a vote?

MR. HAAS: Yes.

MR. SCALI: The issue really is that we would need to see the plan laid out as to how

you're going to maintain that number; how you're going to secure the sidewalk and the interior in a plan that's laid out in writing to us.

I guess the suggestion of the Commissioner is that at this time which is not before us is that Mr. Wolfson, you come up with a plan in the meantime on how to resolve that issue, maybe with a timeline would be the best. And perhaps maybe a mediation. I'm certainly willing -- Mr. Hedley is certainly willing to talk with you about this. He's not by any means an expert, but he certainly is very good at mediating and negotiating, and he'd be very happy to sit down with you and talk with all parties as long as everyone is civil.

MR. WOLFSON: Just so you understand the issues in trying to settle this are one, who pays? Not clear at all.

Number 2, and this is a very important issue, which side is the work done on? Nobody wants the work done on their side, and there's big cost differences, maybe, depending on whose side

you do it on, from our assessment.

And three, does this solve the problem? We don't have a clear read that it solves the problem, and if we go as the landlord and spend all this money, then we want comfort that we're not then going to be sitting in a discussion six months later.

MR. SCALI: Of course, but there are many acoustical engineers that we deal with in the City every day that give you a report and a recommendation, and they have to certify that that's the plan. And you obviously have recourse if they tell you something and it doesn't resolve it.

MR. WOLFSON: So you've heard from people like me before.

MR. SCALI: Like I said to you, this is a minor noise issue compared to the noise issues we deal with every day.

MS. WATSON: But will it really end? I mean will it ever really end?

MR. SCALI: It certainly should end if

everyone can work together and kind of come up with a plan. I don't know how you solve the money issue. That's a whole -- is it responsibility versus -- you know, what side it's on. I'm not sure that the engineer can tell you better on this side if you do the work than on this side. I don't know.

MR. WOLFSON: And it's not relevant here.

MR. SCALI: It's relevant here because the Commissioners suggestion is that we are not voting on the capacity issue right now until the plan, and perhaps a timeline with regards to --

MS. WATSON: Honestly. We're waiting with 16 people now again.

MR. SCALI: We're discussing.

MR. BURDICK: I don't want to take more of the City's time but could we have a mediator from the City like Mr. Hedley, as you suggested.

MR. SCALI: He's not an acoustical engineer. He's very good and adept at negotiating

and sitting down with parties and mediating in terms of discussion. By no means would it be binding.

MR. BURDICK: If there was a fourth party listening in that could see, in my opinion, that all the suggestions up to now were very one-sided and all the burdens were on Burdick's. I'd like someone else to listen in and be able to say why should Burdick's pay for everything? Why should Burdick's do everything on their side?

Plus, also, and I wanted to ask Mr. Haas, can we request that the Levins and their employees, and other peoples associated with them don't come in our store anymore? Are we able to request that? Because it's beginning to feel like harassment. Meanwhile we will work closely with the landlord as fast as possible.

MR. SCALI: If you're taking on another level of police matters and do not trespass, and all, you're taking on another whole burden. I think if you all can agree, Mr. Levin, if you all could agree here to say let's call a

truce until we resolve the issue. I know you're trying to get evidence and information to present to us and have for your lawsuit and all of that, but I think the issue --

MR. LEVIN: There's no lawsuit. I'm not sure what lawsuit you're talking about.

MR. SCALI: There was some discussion with regards to attorneys. There were attorneys talking.

MR. LEVIN: There is no lawsuit.

MR. SCALI: But there could be I guess.

MR. LEVIN: There always could be, but there is none.

MR. SCALI: Is it possible you all could agree at this point in time that let's just resolve the matter through the three of you discussing and not -- because the only way you're going to get to a conclusion is if you all corporate with one another.

MR. LEVIN: I understand and we have been trying. I mean that's our position, we are



trying.

MR. SCALI: But in terms of going into the store, there's no need to do that because in their opinion, it's an issue. So the issue is how to resolve the issue.

MR. LEVIN: Fair enough.

MR. SCALI: There's no need to gather more evidence I guess is what I'm saying.

MR. LEVIN: There's nothing more to be gathered. It's all on the table. I'd like to know if I'm legally allowed to -- I don't go in there. My employees have asked me even when this all came up very recently to be perfectly frank, they said, "Do you want us not to go to Burdick's?" I said, "You do what you want. You know, I'm not telling you." And that's how I feel.

MR. BURDICK: We're getting strange visits and they're not friendly.

MR. SCALI: I think if you all can just agree to not bother one another at this point in time. Commissioner Haas is an expert in this.

MR. LEVIN: Well, I'd like to know

from Commissioner Haas if -- I mean it's fine if you're going to ban me from the store, but I'd like to know so I don't get myself in trouble.

MR. SCALI: I'm not saying that. I'm saying that if you all could agree to just not interfere with one another at this point in time.

MS. WATSON: We would like to agree to that.

MR. LEVIN: I would be fine with that.

MR. SCALI: Meaning that there's no need to go in and say things and gather information.

MR. LEVIN: As I say, there's nothing else to be said. It's all on the table.

MR. SCALI: This is a very common issue with many different restaurateurs in the City, and that kind of thing. We have residents that live next door to restaurants that feel disturbed, and they go in and say things they shouldn't say, and then they come back at them. It just accelerates for no reason.

MS. WATSON: I have a very major

concern now with the 16, and with continuing this on and on and on.

MR. BURDICK: Kathy, let's move on as fast as possible.

MR. SCALI: The issue is not blame at this point in time.

MS. WATSON: No, no. I just need --

MR. SCALI: It's resolution.

MS. WATSON: That's what I'm trying to do. That's what I've been trying to do every time we come here, and we keep dealing with the noise instead of -- which I understand.

MR. BURDICK: Let's write down our plan as requested.

MS. WATSON: Can we do that today?

MR. SCALI: You can write down your plan at any time you want and submit it to us.

MS. WATSON: Can I take five minutes and do it right now?

MR. SCALI: You'll need more time than that to write down a real comprehensive plan.

MR. BURDICK: The person in the front

of store will stay there. That's becomes their responsibility. You've got to put signage in the right places.

MR. SCALI: Let's have Mr. Hedley contact you through Mr. Wolfson. I'll have him contact Mr. Wolfson to set up a meeting, and you can discuss with Mr. Hedley there, and he'll be happy to oversee that.

MS. WATSON: Can we have a timeline?

MR. SCALI: The timeline is as quick as you can all resolve this.

MS. WATSON: But if we get the plan to you, do we have to wait for all this other stuff to resolve more than 16. Can we compromise in between the 49 and the 16?

MR. SCALI: Let's resolve the issues at hand, because as soon as we make a decision, and we're not saying we're not going to make a decision. We're just saying that Mr. Levin is somehow going to feel that he is not being heard at this point in time, and it's been going on for two years. So let's resolve it quickly.

MR. TURNER: Mr. Chair.

MR. SCALI: Deputy Chief.

MR. TURNER: When do you propose to have the hearing on the Part 2 of this, the occupancy load change?

MR. SCALI: We've already had a hearing on it.

MR. HAAS: But for taking action with respect to this --

MR. TURNER: I'm sorry, a vote. When do you propose to vote?

MR. SCALI: Pleasure of the Commissioners?

MR. TURNER: The 13th.

MR. SCALI: I think the Commissioner is suggesting that he wants to see the plan and a timeline on the resolution of the interior issue, at least a mediation plan in terms of how it's going to be resolved.

MR. TURNER: So I assume the night of the 13th we could hear or review --

MR. SCALI: I don't know that that's

enough time. I think maybe perhaps we need to continue this to August 10 might be the solution, Commissioner. Or, to a Decisionmaking meeting, which is July 30.

Do you think three or four weeks will be enough to resolve this, Mr. Wolfson?

MR. WOLFSON: I think if there's going to be a renovation --

MR. SCALI: I'm not talking about the work being done. I'm talking about a plan, everyone agreeing on a plan.

MR. WOLFSON: This is very important. The renovation has to be done in the summer.

MR. SCALI: Perfect timing.

MR. BURDICK: Why is that, Jim?

MR. SCALI: Slow time. This is slow.

MR. WOLFSON: I know the renovation is not going to be done at my house. It's going to be done on that wall, and so it may happen on Burdick's side, it may happen on Settebello's side.

MR. SCALI: Or both.

MR. WOLFSON: It's not going to be on

both. It's going to be on one or the other.

MR. SCALI: I think you need to discuss all that.

MR. WOLFSON: My only point is, is if it's on Burdick's side, from a business standpoint, it's way more impactful if it's done not in the summer. I just know that from discussion over the years.

MR. SCALI: Okay.

MR. WOLFSON: So my vote would be to have this done much sooner. Like August 10 seems -- wow, I would vote to have this in one week.

MR. SCALI: If you can come up with a plan very quickly and you all can agree.

MR. BURDICK: If we can't find a mediator that everyone accepts, could we ask Mr. Hedley to participate?

MR. SCALI: I'm going to have him call you all to do that, yes. I'm not saying he's a binding mediator. I'm saying he's willing --

MR. BURDICK: Someone else who will look at it and say --

MR. SCALI: Well, that's not what he'll say. He's going to make suggestions in terms of how you all can come to some agreement.

MS. WATSON: And I already agree, ceiling on ours, flooring on theirs.

MR. BURDICK: I'd prefer a third-party.

MR. SCALI: Mr. Levin may not agree with that, so we need to make sure he's heard.

MR. WOLFSON: So if we have a plan and they have their plan -- and I don't know what a plan means. But I want to clarify that the vote would be on July 13, if you get that stuff within a week or so?

MR. SCALI: July 13 is a very long agenda so I don't want you to be sitting here July 13, waiting. We already have a very long agenda on the 13th. So I'm trying to come up with a reasonable date you all can agree.

MR. BURDICK: If it's an imposition for the Commission, then let's not, but we don't mind waiting if it's not, only because it would be



good to resolve it. If it's too long a meeting for you as well then we could put it off.

MR. HAAS: I think in fairness, we want to have some time to digest your proposal. We want to make sure that we're comfortable with whatever measures are taking place. The last thing we want to see happen is have you set up and then go into a disciplinary process. So we're trying to avoid that and I think we just need some time to look at it and make sure it makes sense.

I think in fairness to you all, you should go back and think about what that should look like, put together a concrete proposal, let us evaluate it. Please don't provide it to us on the night of the hearing, because again, we'll be in a position where we're going to have to say we have to look at it and then come back again. It would be nice if we have it in the interim so we can look at it. And then when it comes time for a vote, we can take that matter up.

MR. SCALI: I'm going to suggest that we continue it to July, which is like this meeting

here, a daytime meeting. It's quieter, it's easier for everyone to kind of -- it will give us -- it's really only three weeks away actually, so you're not talking about a long period of time really.

MR. BURDICK: At 10:00 here?

MR. SCALI: It will be at 10:00 on July 30 is when our next Decisionmaking meeting is, and we can talk about your plans at that point.

MR. WOLFSON: When you talk about a resolution, what form do you want? Do you want a document from me?

MR. SCALI: That would be helpful, ideally that all parties agree to. So if you come in here and Mr. Levin doesn't agree, it may not be helpful.

MR. LEVIN: Is there something that makes you believe I wouldn't? I mean seriously, Chairman Scali, I just want to state this: All we want to do is run our business in peace and safety. That's all we ask.

MS. WATSON: And so do we.

MR. LEVIN: Nothing more.

MR. BURDICK: The reason I keep bringing up a mediator is, we've been talking about this for quite a while. So if there was a mediator who could just say, listen, you have to give this, you have to give this, you have to give this, I think that's fair what you say.

MR. WOLFSON: But Larry, the mediator has to come from us three agreeing. It's not going to come from them.

MR. BURDICK: I know, but sometimes when you're in a dispute, you need someone from outside to point out when something is out of balance.

MR. WOLFSON: I'm not disagreeing, but a mediator is not going to be -- they can't force us to have one, they can't appoint one. It has nothing to do with them. It's us three agreeing.

MR. SCALI: Right, a mediator will just help you all talk, because right now, you're not talking to one another, you're talking at one another.

I don't know what the resolution may

be. It may be something completely different than what you already think it is. And maybe you talk to an acoustical engineer between now and then, and they tell you something altogether different than what you had planned.

Our intention is to resolve this as quickly for you and for you too, so that you all can just get on with your lives.

MS. WATSON: And run a business.

MR. SCALI: It's just time to move on and get it resolved.

So motion on this, on the second application is to continue to July 30, Commissioners?

MR. HAAS: Correct.

MR. SCALI: With regard to your occupancy plan, and then your mediation proposal with regard to the interior issues, and Mr. Hedley will be available as a mediator for you through Mr. Wolfson.

Mr. Wolfson, if you could leave a card for him to contact you?

That's a motion, moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: And you have all agreed that we're going to stay in our own stores and let it all play out without anybody interfering with other people's business.

MR. LEVIN: Sounds like a great plan.

MR. SCALI: Excellent. I appreciate you all cooperating.

MR. SCALI: June 9, Disciplinary matter for Tommy Doyle's with regards to the issue that Ms. Boyer was involved in along with Officer Drewicz with regard to the money being exchanged on the fake IDs. This is a difficult one because I don't know that the management really knew about it.

MR. HAAS: This is my take on it. They need to have multiple layers of checks and balances within the system. I think the way they presently work it right now is as long as you get through the door, you can do whatever you want inside the restaurant. So I think there's still an obligation on the part of employees to challenge folks that are buying drinks, including the bartender, and the fact that this is going on, I don't think completely exonerates them, because I think they still have responsibility for their employees and monitoring them.

It's not up to us to say, well, you've got an employee in there violating the law and things like that. So I still think they have some

culpability here. I agree with you that there's some mitigating factors here, but I think now in response to this issue, they've got to figure out what are they going to do now so it can't reoccur.

I think it's up to Tommy Doyle's -- they kind of eluded to it during their testimony that they understand -- well, they're going to actually position themselves on the doors, but I think there's still some other things they need to do in terms of some kind of multilayer checks with respect to folks purchasing.

If somebody walks up to the bar and appears to be underage, there's nothing wrong with being challenged to produce an ID. I'm not too sure that's going on. They were pretty much relying on the door people to filter out anybody who would be underage coming into the establishment. They've now seen that's not foolproof.

MR. SCALI: I know Mrs. Lint probably may disagree, but I do agree that it's their responsibility no matter whether they knew about

the bouncer or not.

MS. LINT: That's Rule 1.

MR. SCALI: I do agree though that they have been very cooperative in terms of doing many things in the City to show that they're interested in making sure that it's done correctly.

MS. LINT: They did fire that individual on the spot, and someone else because they didn't like his response to the situation.

MR. HAAS: I agree there are some mitigating factors here but I also believe that ultimately they now have an obligation to demonstrate to the Commission that they're going to close that loop hole in terms of how they operate their business.

MR. TURNER: Mr. Chair.

MR. SCALI: Deputy Chief.

MR. TURNER: I would agree with Commissioner Haas 100 percent. And in fact, he made a comment that I never actually considered before, which is yes, once they're through the door, what is to stop anyone from obtaining



alcohol? It is still the obligation of the staff to ID these people.

I would support some type of disciplinary, whether it be held in abeyance, and perhaps a review. Put a timeframe on a review, but we do need to send a message.

Yes, there are mitigating circumstances. I happen to see Mr. Tingle working the Taste of Cambridge event. We had some good conversation and I was pleased to see his letter that was written to the License Commission. However, we still need to send a message home so that he can get it across to the employees.

MR. SCALI: Past history? They have no past history? I thought they had some kind --

MR. TURNER: A couple of things.

MR. SCALI: I think they've had some previous violations. A warning in 2008, for failure to change manager and violation of the happy hour regulations.

MR. HAAS: They also had that thing with the bust.

MR. SCALI: The Yale and Harvard thing. I don't think we took action on that.

MS. LINT: There was no action on that. They canceled it.

MR. SCALI: Pleasure of the Commissioners?

MR. HAAS: I'd move that we place the matter on file, but part of that would be for them to submit a written plan to us in terms of how they're going to provide adequate checks of their patrons with respect to age.

MR. SCALI: Discussion?

MR. TURNER: I guess not so much on the Disciplinary, but how do we know this isn't happening? In other words, is there any steps we can take to make sure that this isn't happening? In other words, where did this guy go? Did he go into Boston? Is he doing the same thing? Did the word get out on this incident?

MR. SCALI: I'm sure he didn't get a favorable recommendation from Tommy Doyle's, but I don't know.

MS. LINT: That's for sure.

MR. SCALI: Motion is place it on file with a written plan.

MR. HAAS: My position would be is it's one thing to place it on file, but also that they have an affirmative response in terms of giving us a written plan in terms of how they're going to -- based on this situation -- going to provide adequate checks of their patrons with respect to controlling for underage drinking.

MR. SCALI: Placing on file with a written plan for adequate checks on the age of patrons, and an affirmative response to the Commission. That's a motion. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Prospect Liquors with regards to the incident with Officer Velucci from May 9, and with regards to Ms. Boyer's sting on May 13. This is a problematic spot for me.

MR. TURNER: Past history?

MS. LINT: Oh yes.

MR. SCALI: A continuing issue. They already have a violation of an intoxicated person, and there was a sale to someone with a fake ID before.

MS. LINT: Selling to an intoxicated person in 2008; a letter of reprimand for selling to a minor without requesting ID in 2006. In addition, I met with Mr. Patel back in 2008 regarding all of these issues and steps that he could take to avoid having problems with the Commission, and he clearly did not take them very seriously.

He does open later in the morning so that the homeless population is not gathering out front, but now they're all coming in at 9:00 when he does open.

I would remind the Commissioners that the individual who was responsible for the sale to a minor in 2008, was the same person who was responsible for the sale in these situations.

MR. SCALI: Same employee?

MS. LINT: Same employee.

MR. TURNER: Past disciplinary action that we took?

MS. LINT: There was a letter of reprimand for selling to a minor without requesting ID in 2006, and it was a warning for selling to an intoxicated person in 2008.

MR. SCALI: They've had a number of warnings already.

So we have two other violations here. With regard to the violation of May 9, on Officer Velucci. This is the issue where the officer saw the person going in to buy, and then went back in and they carded the person.

Is there a motion to find a violation?

MR. HAAS: Do you want to take the two violations separately?

MR. SCALI: I would prefer to vote it as two separate actions. You can combine the penalty if you'd like.

MR. HAAS: What I'm more troubled by, and I think Mrs. Lint touched upon this, and again, listening to the testimony of things also, we get a lot of excuses. In a prior situation, you had an officer go in and warn them, and in spite of that, turned around and still sold alcohol. Then you have violation again with the person, and then you have the sting operation, and still it's --

MR. SCALI: Four days later, which is really disturbing.

MR. HAAS: I don't see how they can make any excuses for anything. The letter doesn't answer any of that stuff. Again, it's minimizing the violations. There have been a number of violations taking place, and as you indicated Mr. Chairman, this has been an ongoing problem with this particular liquor establishment. And I agree with you, I don't think a warning is going to have any impact. I just think the Commission has to

send a very strong signal that their past behavior is unacceptable and we take these matters very seriously.

I guess we could take them one at a time, but at the end of the day I think it's --

MR. SCALI: This is probably a third and fourth violation. So on a third violation, you're talking a three to five day suspension. On a fourth violation, we're talking 10 days, or worse, actually. Actually we've never really gotten to a fourth violation before.

MS. LINT: I believe we have. We had suspended Martin Brothers for 30 days, two years ago.

MR. SCALI: And somebody else too that got a six-month suspension that was negotiated down. Was that Martin Brothers, the one you went to the ABCC on?

MS. LINT: That was Martin Brothers and we negotiated it down.

MR. SCALI: So the Commissioners wish to make a motion that there was a violation on the

9th and the 13th?

MR. HAAS: I think there were two violations.

MR. SCALI: Two violations found. Motion by the Commissioners to find a violation on those two. Moved.

MR. HAAS: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Discussion on penalty? Do you wish to combine them? I guess if we're taking them separately, there would be a three-day suspension on the first, and then with our policy it would be something greater than that on the second matter.

MS. LINT: If I could make a suggestion, Mr. Chair, it might be wise to separate them, because if he chooses to appeal to the ABCC, and if he won or lost on one or the other --

MR. SCALI: Right, I would definitely agree. The sting Ms. Boyer did is an issue with



regard to the IDs.

MR. HAAS: I would move a three-day suspension for the first violation.

MR. SCALI: Three-day suspension with regard to May 9.

MR. HAAS: Officer Velucci's filing.

MR. SCALI: Three consecutive days to be chosen by Mrs. Lint?

MR. HAAS: Correct.

MR. SCALI: Three consecutive chosen by the Executive Officer. Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. TURNER: Aye.

MR. HAAS: Aye.

MR. SCALI: With regards to May 13, which is Ms. Boyer's sting operation with an Ohio out of state driver's license.

MR. HAAS: I just want to be very clear that the sting operation was not as a result of the June 9 violation. It was totally independent from that. So I want to make it very

clear for the record that this wasn't just a follow-on to an earlier violation to see if we could catch them doing this again. This was totally independent.

I think it again speaks to the seriousness of the fact that they can't seem to get this matter under control. Having said that, I would move for a 10-day suspension for the subsequent violation.

MR. SCALI: Motion for a 10-day suspension, consecutive days to be chosen by Mrs. Lint. Discussion?

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: 660 Package Store with regard to Ms. Boyer's sting from the same date of May 13, where there was an out of state ID used by Ms. Boyer with a 17-year-old intern. Discussion?

MR. HAAS: Any prior violations?

MS. LINT: A warning in 2007.

MR. SCALI: They went through training already.

MR. HAAS: If I recall correctly, the way we treated the other violations as a result, this is all part of that sting operation; that we actually imposed a one-day suspension held in abeyance for six months. And I would agree that we do this for 660 Package in view of their prior record.

MR. SCALI: So the motion is to find a violation, one-day suspension held for six months. If future violations, one day to be served. And they have already been trained so this is not an issue. Do you wish to impose training again?

MR. HAAS: I think you did in fact require them to go through training again.

MR. SCALI: In addition, training for all employees through 21-Proof. That's moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

MR. SCALI: Is that it?

MS. LINT: That would be it.

MR. TURNER: Did we hear from Museum Markets?

MS. LINT: They're on for the 13th.

MR. SCALI: Anything else, Commissioners?

I just wanted to clarify on the record if we could the dates coming up for our hearings.

MR. HAAS: Is that for me or Deputy Turner?

MR. SCALI: Deputy Turner didn't respond to the e-mail.

MR. TURNER: Once I turned the calendar over to July, I saw that there was the hearing at 10:00 a.m. this morning.

MR. SCALI: So it's July 13 on a Monday night at 6:00 p.m. And then we have a special hearing coming up July 28 at 6:00 p.m. for the taxicab regulations and changes, and that whole thing. Then July 30 at 10:00 a.m. And then we have August 10 at 6:00 p.m., which is a Monday night again. Then we changed Decisions to the 12th, because the Commissioners will be away at

11:00 a.m. on Wednesday the 12th.

I will get the package of information to you on the taxicab changes before that date so you can look at it. It's a whole long -- I've already typed it up. I just have to finalize it.

Motion to adjourn.

MR. HAAS: Motion.

MR. SCALI: Moved.

MR. TURNER: Seconded.

MR. SCALI: All in favor?

MR. HAAS: Aye.

MR. TURNER: Aye.

(Whereupon, the proceeding was concluded at 11:45 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 9th day of July, 2009.

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